

Decision No. 36187

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application
of MAX HENDERSON to sell and WALTER
C. McILVAIN and LILLY McILVAIN to
purchase an automobile passenger
and express line operated between
Redwood City, California, and
Woodside, California.

ORIGINAL

Application No. 21449

BY THE COMMISSION:

O P I N I O N

Max Henderson has petitioned the Railroad Commission for an order approving the sale and transfer by him to Walter C. McIlvain and Lilly McIlvain of an operating right for the automotive transportation as a common carrier of passengers and express between Redwood City and Woodside; and Walter C. McIlvain and Lilly McIlvain have petitioned for authority to purchase and acquire said operating right and to hereafter operate thereunder, the sale and transfer to be in accordance with an agreement, a copy of which, marked Exhibit "A", is attached to the application herein and made a part thereof.

The consideration to be paid for the property herein proposed to be transferred is given as \$500. Of this sum \$150 is alleged by the applicant to be the value of the equipment and \$350 is alleged to be the value of the intangibles.

The operating right herein proposed to be transferred was acquired by Max Henderson under authority of Decision No. 25208, dated September 26, 1932, on Application No. 12416. Originally this operating right was granted to A. A. Hosford by Decision No. 7956, dated August 3, 1920, on Application No. 5952 and granted authority for the transportation of passengers only. Subsequently, by authority of Decision No. 22201, dated March 14, 1930, on Application No. 16364, Herman Meitzner, Jr. acquired this operating right and in

turn sold it to Max Henderson as heretofore referred to. No enlargement of this operating right was ever sought and the inadvertent inclusion of the word "property" in Decision No. 25208 whereby Max Henderson acquired the right cannot be construed as granting him the right to transport express as alleged in his instant application, and further Max Henderson has never filed with the Commission an express tariff or indicated in any way that he operated other than a passenger service.

The Commission is of the opinion and so finds that Max Henderson is the possessor of a certificate of public convenience and necessity to transport passengers only between Redwood City and Woodside and therefore the authority to sell and transfer herein requested will be predicated on this basis.

This appears to be a matter in which a public hearing is not necessary. The application will be granted for the transfer of a passenger operating right only.

Walter C. McIlvain and Lilly McIlvain are hereby placed upon notice that "operative rights" do not constitute a class of property which should be capitalized or used as an element of value in determining reasonable rates. Aside from their purely permissive aspect, they extend to the holder a full or partial monopoly of a class of business over a particular route. This monopoly feature may be changed or destroyed at any time by the state which is not in any respect limited to the number of rights which may be given.

O R D E R

IT IS HEREBY ORDERED that the above entitled application be, and the same is hereby granted, subject to the following conditions:

1. The consideration to be paid for the property herein authorized to be transferred shall never be urged before this Commission, or any other rate fixing body, as a measure of value of said property for rate fixing, or for any purpose other

than the transfer herein authorized.

2. Applicant Max Henderson shall within twenty (20) days after the effective date of the order herein unite with Applicants Walter C. McIlvain and Lilly McIlvain in common supplement to the tariffs on file with the Commission, covering service given under the certificate herein authorized to be transferred, applicant Max Henderson withdrawing and applicants Walter C. McIlvain and Lilly McIlvain accepting and establishing such tariffs and all effective supplements thereto.

3. Applicant Max Henderson shall within twenty (20) days after the effective date of the order herein withdraw all time schedules filed in his name with the Railroad Commission and applicants Walter C. McIlvain and Lilly McIlvain shall within twenty (20) days after the effective date of the order herein file, in duplicate, in their own names time schedules covering service heretofore given by applicant Max Henderson which time schedules shall be identical with the time schedules now on file with the Railroad Commission, in the name of applicant Max Henderson or time schedules satisfactory to the Railroad Commission.

4. The rights and privileges herein authorized may not be sold, leased, transferred nor assigned, nor service thereunder discontinued, unless the written consent of the Railroad Commission to such sale, lease, transfer, assignment or discontinuance has first been obtained.

5. No vehicle may be operated by applicants Walter C. McIlvain and Lilly McIlvain unless such vehicle is owned by said applicants or is leased by them under a contract or agreement on a basis satisfactory to the Railroad Commission.

6. The authority herein granted to sell and transfer the right and/or property shall lapse and be void if the parties hereto shall not have complied with all the conditions within the periods of time fixed herein unless, for good cause shown, the time shall be extended by further order of the Commission.

The effective date of this order shall be the date hereof.

Dated at San Francisco, California, this 4th day of

October, 1937.

Walter C. McIlvain
Lilly McIlvain
Frank McIlvain
John C. McIlvain
John C. McIlvain
COMMISSIONERS