

Decision No. 20581

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application	)	
of WILLIAM KAYSER to sell and	)	
J. E. WALSTROM, to purchase an	)	
automobile Freight Line operated	)	Application No. 21523
between Crescent City, California,	)	
and California-Oregon State Line,	)	
U. S. Highway No. 101.	)	

William Kayser, in propria persona,

J. E. Walstrom, in propria persona.

BY THE COMMISSION:

O P I N I O N

In this proceeding applicant William Kayser, doing business as K & L Truck Line, seeks authority to sell and transfer to applicant J. E. Walstrom, doing business as Central Transit Co., and the latter seeks authority to purchase and acquire from the former, certain operative rights now held by William Kayser for the transportation of property as a highway common carrier between Crescent City and a point on the California-Oregon boundary line where such boundary line is intersected by U. S. Highway 101.

A public hearing was had before Examiner Paul on January 5, 1938, when evidence was offered, the matter submitted, and it is now ready for decision.

Applicant Kayser is now operating a highway common carrier service over two routes; one between Crescent City and the California-Oregon boundary line via U. S. Highway 199 serving the intermediate points of Gasquet, Patrick Creek and Idlewild, and another route between Crescent City and the California-Oregon boundary line over

U. S. Highway 101 serving the intermediate points of Fort Dick, Smith River, Chateau Lodge, Mathews Service Station and White Rock Auto Park. The latter route is the one herein sought to be transferred. This operating right was created in William Kayser by the Commission's Decision No. 29567, dated March 1, 1937, on Application No. 20986.

As justification for the authority sought applicant Kayser testified that he has transferred his interstate operations between Gold Beach, Oregon, and Crescent City, California, over U. S. Highway 101 to applicant J. E. Walstrom and now desires to transfer his intrastate operative rights over the same route to applicant Walstrom.

Applicant Kayser testified that he is now transporting United States mail under contract between Grants Pass, Oregon, Crescent City, California, and Gold Beach, Oregon, that he proposes in the event that the authority herein sought is granted to employ applicant Walstrom on a salary basis to transport said United States mail between Crescent City, California, and Gold Beach, Oregon. The record shows and applicant Kayser so testified that his total receipts from his highway common carrier operations between Crescent City, California, and Gold Beach, Oregon, over U. S. Highway 101 for the months September, October, November, 1937, totaled \$70.73. It appears that part of this revenue covers some interstate movements.

Mr. L. O. Walstrom, general manager of the automotive transportation business of applicant J. E. Walstrom, testified that he has had wide experience in the transportation of property as a highway common carrier. He also testified that, at the present time, applicant Walstrom has available fifteen pieces of automotive equipment

including trailers, in addition to extra tires and parts, on hand, of a total present value of \$11,100. The record shows that on December 24, 1937, applicant Walstrom had a net worth of \$39,564.

It appears, therefore, that the financial resources of said applicant are adequate to permit the proper operation of the service over this route.

By the terms of an agreement entered into between applicants it is provided that applicant Walstrom will acquire one piece of automotive equipment in addition to the operative right. For this he has agreed to pay a total consideration of \$600, of which \$200 represents the value of the operative right.

Ordinarily, we are inclined to view with disfavor the splitting of an operative right as contemplated in this application and the Commission has heretofore sought to discourage such division of operative rights. But, as pointed out in re Benjamin Walters, et al, Decision No. 30062, dated August 23, 1937, on Application No. 21076, and associated cases, the rule will be relaxed where it appears that the circumstances are such that the division will be in the public interest, and that otherwise an unjust, unreasonable or inequitable situation would be created. The record shows that applicant Kayser being unable to continue the conduct of his highway common carrier operation over the route in question, except at a loss, is upon the point of abandoning such operation. We have here a case of an applicant with ample financial facilities, equipment and experience, standing ready and desirous of possessing such right and continuing the service, and in our judgment the public interest will best be served by sanctioning, in this instance, a division of the operative right as sought. Therefore, the application will be granted.

J. E. Walstrom is 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 a reasonable rate. 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

A public hearing having been had, evidence received, the matter submitted, and the Commission now being fully advised:

IT IS ORDERED that the application herein is granted; that applicant William Kayser, doing business as K & L Truck Line, is authorized to sell and transfer to applicant J. E. Walstrom, doing business as Central Transit Co., and the latter is authorized to purchase and acquire from the former, and to hereafter operate thereunder, an operating right for the conduct of an automotive service as a highway common carrier between Crescent City, California, and a point on the California-Oregon boundary line where such boundary line is intersected by U. S. Highway No. 101, which right was created by Decision No. 29567, dated March 1, 1937, on Application No. 20986, subject to all the restrictions and limitations therein imposed, together with the automotive equipment more specifically described in the application herein, 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 William Kayser shall within twenty (20) days after the effective date of the order herein unite with applicant J. E. Walstrom in common supplement to the tariffs on file with the Commission, covering service given under the certificate herein authorized to be transferred, applicant William Kayser withdrawing and applicant J. E. Walstrom accepting and establishing such tariffs and all effective supplements thereto.

3. Applicant William Kayser 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 applicant J. E. Walstrom shall within twenty (20) days after the effective date of the order herein file, in duplicate, in his own name time schedules covering service heretofore given by applicant William Kayser which time schedules shall be identical with the time schedules now on file with the Railroad Commission, in the name of applicant William Kayser 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 applicant J. E. Walstrom unless such vehicle is owned by said applicant or is leased by him under a contract or agreement on a basis satisfactory to the Railroad Commission.

6. The authority herein granted to sell and transfer the rights 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.

7. Applicant J. E. Walstrom shall, prior to the commencement of service authorized herein and continuously thereafter comply with all of the provisions of this Commission's General Order No. 91.

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

Dated at San Francisco, California, this 7<sup>th</sup> day of  
February, 1938,

Walter Mason  
Leon O'Connell  
Francis P. Hill

W. L. Riley  
COMMISSIONERS.