

Decision No. 31547

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
CHAS. F. WILCOX, d/b/a J. D. WAYNARD)
COMPANY, to sell and EDWARD EUGENE)
DUNNE, to purchase an automobile Freight) Application No. 22397
Line operated between SARGENT, CALIFORNIA)
on the one hand and SAN FRANCISCO and)
OAKLAND, CALIFORNIA, on the other hand.)

BY THE COMMISSION:

O P I N I O N

Chas. F. Wilcox has petitioned the Railroad Commission for an order approving the sale and transfer by him to Edward Eugene Dunne of a highway common carrier operative right; and Dunne has petitioned for authority to purchase and acquire said operative 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 party thereof.

The consideration to be paid for the property herein proposed to be transferred is given as \$4,000. Of this sum \$3,500 is alleged by the applicant to be the value of the equipment and \$500 is alleged to be the value of the intangibles.

The operating right herein proposed to be transferred was created by Decision No. 26047, dated June 12, 1933, on Application No. 11183, as amended, and authorized the transportation of certain specified commodities between San Francisco, Oakland, and points in Santa Clara County as more particularly set out in said Decision No. 26047. Wilcox acquired said right by virtue of Decision No. 29918, dated July 1, 1937.

This appears to be a matter in which a public hearing is not necessary. The application will be granted.

Edward Eugene Dunne 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 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 hereby is 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 Chas. F. Wilcox shall within twenty (20) days after the effective date of the order herein unite with applicant Edward Eugene Dunne in common supplement to the tariffs on file with the Commission, covering service given under the certificate herein authorized to be transferred, applicant Wilcox withdrawing and applicant Dunne accepting and establishing such tariffs and all effective supplements thereto.
3. Applicant Wilcox shall within twenty (20) days after the effective date of the order herein withdraw all the time schedules filed in his name with the Railroad Commission and applicant Dunne 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 Wilcox which time schedules shall be identical with the time schedules now on file with the Railroad Commission, in the name of applicant Wilcox 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 Dunne 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 right 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 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 twenty (20) days from the date hereof.

Dated at San Francisco, California, this 12th day of December, 1938.

Raymond
Leon Whittell
Frank R. Dunne
Walter R. Rupp
H. B. Kelly
COMMISSIONERS