

Decision No. 31569

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of  
ROY MARK to lease and sell to Thomas  
B. Riley an automotive service for  
the transportation of property between  
Redding and Pittville, Shasta County,  
California.

Application No. 22411

ORIGINAL

BY THE COMMISSION:

O P I N I O N

This is an application for an order authorizing Roy Mark to lease and sell to Thomas B. Riley certain operative rights under and pursuant to the terms and conditions of an agreement dated October 17, 1938, a copy of which agreement is filed with the application as Exhibit A.

The application shows that Roy Mark is engaged in the operation of a truck line for the transportation of freight and packages between Redding and Pittville in Shasta County, serving as intermediate points Ingot, Round Mountain, Montgomery Creek, Burney, Cassel, Fall River Mills, Glenburn and McArthur, as authorized by a certificate of public convenience and necessity granted by the Commission by Decision No. 24794, dated May 23, 1932, in Application No. 18148. In addition, Mr. Mark has a permit, dated August 22, 1938, to operate as a highway contract carrier between Pittville and Alturas and intermediate points, and a permit from the Interstate Commerce Commission covering said routes. He has pending before the Commission an application for an extension of his operating right from Pittville to Alturas.

For the last three calendar years Mr. Mark reports his revenues and expenses as follows:-

<u>Item</u>	<u>1935</u>	<u>1936</u>	<u>1937</u>
Operating revenues	\$2,515.30	\$3,070.40	\$3,551.83
Operating expenses	<u>1,409.87</u>	<u>1,274.50</u>	<u>1,846.39</u>
Net operating revenues	<u>\$1,105.43</u>	<u>\$1,795.90</u>	<u>\$1,705.44</u>

It appears that Mr. Mark desires to retire from business and has made arrangements to lease and sell his operating right for the sum of \$3,500.00 to Thomas B. Riley who has agreed, in making payment, to pay \$398.81 upon execution of the agreement; to pay monthly installments of \$50.00 upon a note heretofore executed by Roy Mark to Bank of America, in the total amount of \$400.00; to pay \$415.00 to J.D. Weast on account of indebtedness due him from Roy Mark; to pay to Roy Mark \$50.00 a month for twelve months commencing November 17, 1938; \$75.00 a month for the next twelve months and thereafter \$66.47 per month until the entire \$3,500.00 has been paid. Deferred payments will bear interest at the rate of six per cent. per annum.

The installment payments will continue over a period of approximately three years. The title to the operative rights will remain in Roy Mark until final payment has been made.

Thomas B. Riley, the purchaser, is and for some time has been operating automobile stage lines for the transportation of passengers, baggage and express between Redding, Alturas and Lakeview and between Redding and Pine Creek. It is stated that he can operate the freight service here involved in connection with his present transportation service and that he is better equipped with motor vehicles than Roy Mark.

There seems to be no reason why this application should not be granted and an order accordingly will be entered. In making the order, however, the Commission wishes to place applicants 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 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.

#### ORDER

Application having been made for an order authorizing Roy Mark to lease and sell automotive operative rights to Thomas B. Riley, and the Commission being of the opinion that this is not a matter in which a public hearing is necessary and that the application should be granted, as herein provided,

IT IS HEREBY ORDERED that Roy Mark be, and he hereby is, authorized to lease and sell to Thomas B. Riley the certificate of public convenience and necessity heretofore acquired by him pursuant to authority granted by Decision No. 24794, dated May 23, 1932, in Application No. 18148, such lease and sale to be in accordance with the terms and conditions of the agreement dated October 17, 1938, between said Roy Mark and Thomas B. Riley, a copy of which agreement is attached to the application as Exhibit "A", provided-

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. Applicants Roy Mark and Thomas B. Riley shall join within twenty(20) days after the effective date of this order, in common sup-

plement to the tariffs on file with the Commission covering service given by Roy Mark, said Roy Mark withdrawing, and applicant Thomas B. Riley accepting and establishing as his own, such tariffs and all effective supplements thereto.

3. Applicant Thomas B. Riley 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 Roy Mark, which time schedules shall be identical with the time schedules now on file with the Railroad Commission, in the name of said applicants, 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, Thomas B. Riley, 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. Thomas B. Riley, prior to the commencement of service, as authorized herein, and continuously thereafter, shall comply with all of the provisions of the Commission's General Order No. 91.

8. The authority herein granted shall become effective when Thomas B. Riley has paid the minimum fee prescribed by Section 57

of the Public Utilities Act, which minimum fee is Twenty-five (\$25.00) Dollars.

DATED at San Francisco, California, this 19<sup>th</sup> day of December, 1938.

Ray B. Wainwright  
Leon White  
George R. Deane

[Signature]

Commissioners.

