

Decision No. 31655

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
ANITA SORENSEN to sell and THOMAS R.
ZITELLI to purchase an automobile
(passenger line) operated between San
Jose - Agnew and Alviso, California.

} Application No. 22483

BY THE COMMISSION:

ORIGINAL

O P I N I O N

In this application Anita Sorensen has petitioned the Railroad Commission for an order approving the sale and transfer by her to Thomas R. Zitelli of an operative right for the transportation of passengers and express between San Jose and Alviso via Santa Clara and Agnew, as more particularly described in the decision creating said right; and Thomas R. Zitelli 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 set forth in the application.

The consideration to be paid for the property herein proposed to be transferred is given as \$300, of which \$200 is alleged by applicants to be the value of the equipment and \$100 is alleged to be the value of the intangibles.

The operative right herein proposed to be transferred was acquired by applicant Sorensen by virtue of the authority granted by the Commission's Decision No. 29863, dated June 14, 1937 as amended by Decision No. 30775, dated April 11, 1938, on Application No. 21054.

This does not appear to be a matter in which a public hearing is necessary and the authority requested will be granted.

Thomas R. Zitelli 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 ORDERED that Anita Sorensen is hereby authorized to transfer the above described operative right to Thomas R. Zitelli and Thomas R. Zitelli is hereby authorized to acquire said operative right and to hereafter operate thereunder, 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 Anita Sorensen shall within twenty (20) days after the effective date of the order herein unite with applicant Thomas R. Zitelli in common supplement to the tariffs on file with the Commission, covering service given under the certificate herein authorized to be transferred, applicant Sorensen withdrawing and applicant Zitelli accepting and establishing such tariffs and all effective supplements thereto.
3. Applicant Sorensen shall within twenty (20) days after the effective date of the order herein withdraw all time schedules filed in her name with the Railroad Commission and applicant Zitelli 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 Sorensen which time schedules shall be identical with the time schedules now on file with the Railroad Commission, in the name of applicant Sorensen 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 Zitelli 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 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 16th day of
January, 1939.

Lawrence J. ...
James R. ...
Ray ...
H. ...
Justin J. ...
COMMISSIONERS