

Decision No. 31656

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of The Estate)
of VICTORIA MISETICH, Deceased, MIKE BELICH)
and MARY HEGLEN, by and through MIKE BELICH and)
MARY HEGLEN, Executor and Executrix respectively)
and MIKE BELICH and MARY HEGLEN as individuals,)
to sell, and ERNEST TYHURST to purchase an)
automobile passenger line operated between)
West Sacramento, County of Yolo, and Sacramento,)
County of Sacramento, California.)

Application
No. 22438

BY THE COMMISSION:

O P I N I O N

Mike Belich and Mary Heglen, executor and executrix respectively of the estate of Victoria Misetich, have petitioned the Railroad Commission for an order approving the sale and transfer by them to Ernest Tyhurst of an operative right for the transportation of passengers for compensation as a passenger stage corporation, between Sacramento, Westgate and Bryte; and Ernest Tyhurst 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 part thereof.

On December 5, 1938, the Superior Court in and for the County of Yolo made its order authorizing the execution of said agreement and the transfer of the operative right to Ernest Tyhurst.

The agreed consideration to be paid by applicant Tyhurst is the sum of \$6,000 of which \$500 is payable upon confirmation of the transfer by the Superior Court and approval by this Commission, and the balance of \$5,500 in monthly installments thereafter

equivalent to 20 per cent of the gross receipts for the preceding month and, in addition to said monthly payments, annual installments of \$500, of which the first installment is due on or before twelve months from the date of delivery of the stage line to said Tyhurst and the remaining installments at the expiration of each twelve months period thereafter until the full purchase price has been paid.

The gross revenues from the operation of the stage line have been reported at \$5,168.20 for 1935; at \$6,126.70 for 1936 and at \$7,323.30 for 1937. It thus appears that the agreement contemplates payments on the purchase price over a period of more than twelve months and accordingly in our opinion it constitutes an evidence of indebtedness coming within the purview of Section 52 (b) of the Public Utilities Act and requiring the authorization of the Commission. Such authorization in turn will call for the payment of the twenty-five dollars (\$25) minimum fee prescribed by Section 57 of the Act. The order herein will so provide.

The operative right herein proposed to be transferred was created by Decision No. 16324, dated April 2, 1926, on Application No. 11769, and Decision No. 27548, dated November 26, 1934, on Application No. 19695, and supplements thereto respectively.

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

Ernest Tyhurst 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 Mike Belich and Mary Heglen, as executor and executrix respectively of the estate of Victoria Misetich, are hereby authorized to transfer the hereinabove described operative right to Ernest Tynhurst, and Ernest Tynhurst is hereby authorized to acquire said right and to hereafter operate thereunder such transfer to be made in accordance with the terms of the agreement filed in this proceeding as Exhibit A, which agreement said applicants are hereby authorized to execute.

The authorization herein granted is 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. Applicants Mike Belich and Mary Heglen shall within twenty (20) days after the effective date of the order herein unite with applicant Ernest Tynhurst in common supplement to the tariffs on file with the Commission, covering service given under the certificate herein authorized to be transferred, applicants Belich and Heglen withdrawing and applicant Tynhurst accepting and establishing such tariffs and all effective supplements thereto.
3. Applicants Belich and Heglen shall within twenty (20) days after the effective date of the order herein withdraw all time schedules filed in their name with the Railroad Commission and applicant Tynhurst 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 applicants Belich and Heglen which time schedules shall be identical with the time schedules now on file with the Railroad Commission, in the name of applicants Belich and Heglen 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 Tyhurst 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.
7. The authority herein granted will become effective when applicants have paid the minimum fee prescribed by Section 57 of the Public Utilities Act, which fee is \$25.

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

Dated at San Francisco, California, this 16th day of
January, 1939.

Raymond S. Brown
George D. Allen
Ray J. Craig
H. H. Miller
Justin J. Caswell
 COMMISSIONERS

