

ORIGINAL

Decision No. 31684

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of MOTOR TRANSIT COMPANY, a corporation, for permission to sell and assign, and of R. P. KELLOGG, doing business as Inter-City Bus Line, to acquire certain motor coach line operating rights between Upland and Ontario and intermediate points.

} Application No. 22179

C. W. CORNELL, for Pacific Electric Railway Company and Motor Transit Company, applicant.

LOREN W. SMITH, applicant in propria persona.

EDWARD GRAY, City Attorney, City of Upland, Interested Party.

RILEY, Commissioner:

O P I N I O N

As originally filed, this was an application by Motor Transit Company, a corporation, to sell and Robert P. Kellogg, an individual, to purchase an operating right for the transportation of passengers between Upland and Ontario.

By supplemental application filed with the Commission on November 16, 1938, Robert P. Kellogg transferred and assigned all of his rights to purchase this operating right to Loren W. Smith who thereafter became the co-applicant of record in this proceeding.

The operating right herein proposed to be transferred was acquired by Motor Transit Company by Decision No. 30432, dated December 20, 1937, on Application No. 21610. Prior to the acquiring of this right by Motor Transit Company it had been in possession of and

operated by Pacific Electric Railway Company⁽¹⁾

The consideration for the property herein proposed to be transferred is given as the nominal sum of \$1 which is declared to be the value of the intangibles in accordance with an agreement marked exhibit "A", attached to and made a part of this application. No equipment is to be transferred.

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A public hearing in this proceeding was had in Los Angeles on December 3, 1938, where the matter was submitted and it is now ready for decision.

In behalf of Motor Transit Company H. O. Marler, its traffic manager, testified that his company had been operating between Upland and Ontario since January 2, 1938, pursuant to the order of the Commission above referred to. The distance operated, according to Mr. Marler, is 2.9 miles (one way) for which a local fare of 6 cents is assessed. Certain through fares are also in effect in connection with other operations of the company.

The experience of Pacific Electric Railway Company in the operation of the line during 1937 resulted in an operating loss of some \$4,000 based on a full allocation of expenses. A similar experience has been had by Motor Transit Company since taking over the line and it is still being operated at a substantial loss according to witness Marler. Revenues per motor coach mile from January to October of 1938, according to this witness, ranged from 9.1 cents per mile to 12.8 cents per mile. Based on out-of-pocket operating revenue and expense of this line as a separate entity Mr. Marler estimated that his company sustained an approximate loss of \$1,000 per year.

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1. Decision No. 24834, dated June 13, 1932, as amended by Decision No. 24258, dated December 10, 1932, on Application No. 17984.
 2. Before Examiner McGettigan.

The witness attributed the failure of this line to pay to the fact that while there had been a substantial increase in operating expenses, including labor, there had been no material increase in the number of passengers carried. He asserted that a material reduction in service plus an attempt to assess a flat 10 cent fare had failed to produce needed revenues. He was confident that an individual operator would be in a better position to operate this line profitably and expressed the opinion that Motor Transit Company would be obliged to seek abandonment of this line were other relief not forthcoming.

Loren W. Smith, testifying in his own behalf, stated that he had had four years transportation experience with the California Transit Company and that subsequently he had become, and still was, a director of the Laguna Beach - Santa Ana Stage Line, a certificated passenger stage corporation. He explained that this last named line had been taken over from Motor Transit Company under similarly adverse conditions and subsequently developed into a successful operation. He was convinced, he stated, that with the aid of two step-sons who would drive for him, together with the fact that administrative expenses would be small, he would be able to effect the necessary operating economies to adequately carry on this service. He further stated that he anticipated operating at a loss for a time but was willing and able to sustain the deficit. Mr. Smith intends to devote full time to the active conduct of this business and will make his home in Upland. No change in fares or schedules is proposed by Mr. Smith and joint rates will be maintained.

Edward Gray, City Attorney of Upland, appearing in behalf of that city, stated that the community's primary interest was in the preservation of this bus service. He expressed a fear that the transfer sought was but a preliminary step to complete abandonment

of the line. Upon being assured by both Mr. Smith and Motor Transit Company that the instant proceeding was a sincere attempt to prevent just such an occurrence, he gave assurance that the city of Upland would co-operate fully in the interest of preserving the service.

Although the figures appearing in this record are not complete or conclusive it is quite evident that Motor Transit Company is not able, under the circumstances outlined, to successfully conduct this service on a compensatory basis. Conversely, it is equally true in the case of applicant Smith that he presented no figures or estimates of what he believed he would receive in the way of revenue, or the expense incident to the maintenance of this line. However, his past experience and the unquestionable facts as revealed by him with relation to lack of administrative expense plus family help will, no doubt, contribute substantially in assisting him in this venture. His further willingness to operate this service, at a loss if necessary at the outset, when included with the other factors discussed give reasonable assurance, we believe, that the transportation problem here presented can be handled on a much more equitable basis than now obtains.

If given the active support and co-operation of the citizens of the communities involved upon whom, in the last analysis, the rise or fall of a carrier is predicated there appears no reason for other than a favorable action on this application by the Commission.

The application will be granted.

Loren W. Smith 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 Motor Transit Company, a corporation be and it is hereby authorized to sell and Loren W. Smith be and he is hereby authorized to purchase and hereafter operate a certificated right for the automotive transportation of passengers as a passenger stage corporation as such is defined in section 2 $\frac{1}{2}$ of the Public Utilities Act between Upland and Ontario as heretofore acquired by said Motor Transit under authority of Decision No. 30432, dated December 20, 1937, on Application No. 21610, 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 Motor Transit Company shall within twenty (20) days after the effective date of the order herein unite with applicant Loren W. Smith in common supplement to the tariffs on file with the Commission, covering service given under the certificate herein authorized to be transferred, applicant Motor Transit Company withdrawing and applicant Loren W. Smith accepting and establishing such tariffs and all effective supplements thereto.
3. Applicant Motor Transit Company shall within twenty (20) days after the effective date of the order herein withdraw all time schedules filed in its name with the Railroad Commission and applicant Loren W. Smith 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 Motor Transit Company which time schedules shall be identical with the time schedules now on file with the Railroad Commission, in the name of applicant Motor Transit Company 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 Loren W. Smith 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.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

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

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

Laurel W. Baker
Frank C. Dwyer
Ray L. Curry
H. H. Hill
Justin J. Caswell
COMMISSIONERS