

Decision No. 31947

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application
of BURT W. SMITH to sell and L. D.
BOHNETT, JR. to purchase an automobile
passenger line operated between San
Jose and Alum Rock Park, California.

Application No. 22678

ORIGINAL

BY THE COMMISSION:

O P I N I O N

Burt W. Smith operating under the fictitious name and style of Alum Rock Bus Line has petitioned the Railroad Commission for an order approving the sale and transfer by him to L. D. Bohnett, Jr. of an operating right for the automotive transportation as a common carrier of passengers between San Jose and Alum Rock on Sundays and holidays only, as a seasonal service from approximately May 1 to October 1 of each year; and L. D. Bohnett, Jr. has petitioned for authority to purchase and acquire said operating 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.

The consideration to be paid for the property herein proposed to be transferred is given as \$600. Of this sum \$300 is alleged by the applicant to be the value of the equipment and \$300 is alleged to be the value of the intangibles.

The operating right herein proposed to be transferred was created by Decision No. 29897, dated June 28, 1937, on Application No. 21153.

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

L. D. Bohnett, Jr. 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 is hereby 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 Burt W. Smith shall within twenty (20) days after the effective date of the order herein unite with applicant L. D. Bohnett, Jr. in common supplement to the tariffs on file with the Commission, covering service given under the certificate herein authorized to be transferred, applicant Burt W. Smith withdrawing and applicant L. D. Bohnett, Jr. accepting and establishing such tariffs and all effective supplements thereto.
3. Applicant Burt W. Smith shall within twenty (20) days after the effective date of the order herein withdraw all time schedules filed in his name with the Railroad Commission and applicant L. D. Bohnett, Jr. 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 Burt W. Smith which time schedules shall be identical with the time schedules now on file with the Railroad Commission, in the name of applicant Burt W. Smith 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 L. D. Bohnett, Jr. 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 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.

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

Dated at San Francisco, California, this 25th day of
April, 1939.

Raymond
James
Ray
H. J. Kelly
Justice J. Craven
COMMISSIONERS