

Decision No. 31972

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of WILLIAM M. SMITE and MAKIN H. SMITE, JR., Co-Partners, doing business under the name and style of Transbay Motor Express Co., to sell, and V. FRED JAKOBSEN, an Individual, to purchase an interest in an automotive freight line (motor-cycle delivery service) operated between San Francisco and Piedmont, Oakland, Berkeley, Alameda and Emeryville, California. )  
Application No. 22709

BY THE COMMISSION:

O P I N I O N

William M. Smith and Makin H. Smith, Jr., co-partners, doing business as Transbay Motor Express Company, have petitioned the Railroad Commission for an order approving the sale and transfer by them to V. Fred Jakobsen of an undivided one-fourth interest in an operative right for the automotive transportation as a highway common carrier of property between San Francisco and Oakland, Berkeley, Alameda, Emeryville and Piedmont; and V. Fred Jakobsen has petitioned for authority to purchase and acquire said undivided one-fourth interest in said operative right and said co-partnership of William M. Smith and Makin H. Smith Jr. and V. Fred Jakobsen to hereafter operate thereunder. The sale and transfer is 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 shown to be \$1250. Of this sum \$750 is alleged to be the value of equipment and \$500 is alleged to be the value of the intangibles.

The operative right herein proposed to be transferred was created by Decision No. 27975, dated May 20, 1935, as amended by Decision No. 29291, dated November 23, 1936, both on Application No. 19293, and Decision No. 31863, dated March 27, 1939, on Application No. 22497.

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

William M. Smith, Makin E. Smith, Jr. and V. Fred Jakobsen are 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 William M. Smith and Makin E. Smith, Jr. are hereby authorized to transfer an undivided one-fourth ( $\frac{1}{4}$ ) interest in and to the operative right hereinbefore described to V. Fred Jakobsen and V. Fred Jakobsen is hereby authorized to purchase and acquire said undivided one-fourth ( $\frac{1}{4}$ ) interest in and to said operative right, 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 William M. Smith and Makin E. Smith, Jr. shall within twenty (20) days after the effective date of the order herein unite with applicant V. Fred Jakobsen in common supplement to the tariffs on file with the Commission, covering service given under the certificate herein authorized to be transferred, applicants Smith and Smith withdrawing and applicants Smith, Smith and Jakobsen accepting and establishing such tariffs and all effective supplements thereto.
3. Applicants Smith and Smith 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 applicants Smith, Smith and Jakobson shall within twenty (20) days after the effective date of the order herein file, in duplicate, in their own names time schedules covering service heretofore given by applicants Smith and Smith which time schedules shall be identical with the time schedules now on file with the Railroad Commission, in the name of applicants Smith and 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 applicants Smith, Smith and Jakobsen unless such vehicle is owned by said applicants or is leased by them 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. Applicants shall, prior to the commencement of service authorized herein and continuously thereafter, comply with all of the provisions of this Commission's General Order No. 91.

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

Dated at Los Angeles, California, this 2<sup>nd</sup> day of  
 May, 1939.

*Raymond J. Hoover*  
*Frank J. Hoover*  
*Jeffrey T. Hoover*  
*Justice J. Hoover*  
 COMMISSIONERS