

Decision No. 32453

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application
of CORINNE E. ROSE, as executrix
of the last will and testament of
George Harvey Rose, sometimes known
as Harvey Rose, Sr., to sell, and
EDWARD A. MILLER to purchase, an
automobile passenger line operated
between Martinez and Associated
(Avon), California.

Application No. 22979

BY THE COMMISSION:

O P I N I O N

Corinne E. Rose, as executrix of the estate of G. Harvey Rose, deceased, has petitioned the Railroad Commission for an order approving the sale and transfer by her to Edward A. Miller of an operating right for the automotive transportation as a common carrier of passengers between Martinez and Avon. Edward A. Miller has petitioned for authority to purchase and acquire said operating right and 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 given as \$250, all of which sum is alleged to be the value of the intangibles. No equipment is to be transferred.

The operating right herein proposed to be transferred was created by virtue of operations by G. Harvey Rose prior to May

I, 1917 between Martinez and Avon.

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

Edward A. Miller 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.

ORDER

IT IS ORDERED that Corinne E. Rose, as executrix of the estate of G. Harvey Rose, deceased, is hereby authorized to transfer to Edward A. Miller and Edward A. Miller is hereby authorized to acquire the operative right referred to and described in the foregoing opinion, in accordance with the terms of the agreement marked Exhibit "A," attached to the application herein and to hereafter operate thereunder, subject to the following conditions:

1. 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.
2. 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.

3. Applicant Edward A. Miller shall within thirty (30) days after the effective date of the order herein, and on not less than five (5) days notice to the public and the Commission, unite with applicant Corinne E. Rose, executrix of the estate of G. Harvey Rose, in common supplement to the tariffs on file with the Commission, covering service given under the certificate herein authorized to be transferred, applicant Corinne E. Rose withdrawing and applicant Edward A. Miller accepting and establishing such tariffs and all effective supplements thereto.
4. Applicant Corinne E. Rose shall within thirty (30) days after the effective date of the order herein, and on not less than five (5) days' notice to the public and the Commission, withdraw all time schedules filed in the name of G. Harvey Rose, deceased, with the Railroad Commission, and applicant Edward A. Miller shall within thirty (30) days after the effective date of the order herein file in duplicate, in his own name time schedules satisfactory to the Railroad Commission.
5. 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.
6. No vehicle may be operated by applicant Edward A. Miller 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.

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

Dated at San Francisco, California, this 17th day of
October, 1939.

Ray K. Crier
Ray K. Crier
Justice J. Coenen
 COMMISSIONERS