

Decision No. 32532

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application	)	
of JOHN O. ERNST to transfer to	)	
ERNST TRUCKING CO., INC., a Cali-	)	Supplemental
ifornia corporation, certificate of	)	Application
public convenience and necessity	)	No. 22987
for operation of motor trucks, and	)	
to issue stock therefor.	)	

BY THE COMMISSION:

SUPPLEMENTAL OPINION AND ORDER

By Decision No. 32241, dated August 12, 1939, on the original application herein, the Commission authorized John O. Ernst to transfer the operative right created by Decision No. 8505 to Ernst Trucking Company, Inc.

Said Decision No. 32241 also authorized the corporation, Ernst Trucking Company, to issue on or before November 1, 1939, to J. O. Ernst one hundred shares of its no par value common capital stock in full payment for the properties which said decision authorized to be transferred to the corporation.

From this supplemental application, filed by Katie Ernst, it appears that John O. Ernst died on the 11th day of August 1939 before the transaction authorized by said Decision No. 32241 could be consummated.

It further appears from said supplemental application that the Probate Court of Los Angeles County did on August 12, 1939, make its order transferring, assigning and setting over unto Katie Ernst, petitioner herein, all of the estate of John O. Ernst, including the certificate of public convenience and necessity heretofore issued to John O. Ernst by this Commission.

Katie Ernst further requests that the Commission set aside said Decision No. 32241 and authorize her to acquire the operative right heretofore created by Decision No. 8505 pursuant to the order of the Probate Court of Los Angeles County.

This does not appear to be a matter requiring a public hearing and it further appearing that the request is in the public interest it will be granted.

Katie Ernst 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.

Good cause appearing,

IT IS ORDERED that Decision No. 32241, dated August 12, 1939, is hereby vacated, revoked and annulled.

IT IS FURTHER ORDERED that the order of the Probate Court of Los Angeles County transferring to Katie Ernst the operative right heretofore granted to John O. Ernst by Decision No. 8505 is hereby approved, subject to the following conditions:

1. Katie Ernst shall immediately file with the Commission a certified copy of the order of the Probate Court of Los Angeles County which transferred and assigned to her the estate of John O. Ernst, deceased.
2. The authority herein granted shall lapse and be void if applicant shall not have complied with all of 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.

3. Katie Ernst shall within thirty (30) days from the effective date hereof file with the Railroad Commission an adoption of the tariffs and rates of John O. Ernst now on file with said Commission.

4. Katie Ernst shall within thirty (30) days from the effective date of the order herein file a time schedule in her own name covering the service heretofore provided by John O. Ernst which time schedule shall cancel time schedules now on file with the Commission in the name of John O. Ernst.

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 Katie Ernst unless such vehicle is owned by said applicant or is leased by her under a contract or agreement on a basis satisfactory to the Railroad Commission.

7. Applicant 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 San Francisco, California, this 7<sup>th</sup> day of November, 1939.

Raymond  
Francis Smith  
Ray R. Rice  
W. H. H. H.  
Justus J. Coe  
COMMISSIONERS