

Decision No. 32586

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
TIMOTHY W. PON to transfer and assign)
to FRANK W. DUN, his interest in the)
partnership express business con-)
stituting an automobile freight line)
operating as a City Carrier and as a)
Radial Carrier, and operated under)
the firm name of the CANTON EXPRESS)
CO.)

ORIGINAL

Application No. 23120

BY THE COMMISSION:

O P I N I O N

Timothy W. Pon and Frank W. Dun have petitioned the Railroad Commission for an order approving the sale and transfer by them to Frank W. Dun of an operative right for the automotive transportation of property as a highway common carrier between San Francisco, Oakland, Alameda, Emeryville and Berkeley. Frank W. Dun has petitioned for authority to purchase and acquire said operative 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. Under the terms of said agreement the co-partnership of applicants is being dissolved and applicant Dun proposes to acquire sole interest in the operative right and to continue the operations. As consideration for such transfer Applicant Dun will assume all of the outstanding liabilities and obligations of said co-partnership.

The operative right herein proposed to be transferred is a prescriptive operative right (see Commission's Decision No. 25960, dated May 22, 1933, in Case No. 3505). By Decision No. 29297, dated

November 23, 1936, in Application No. 20854, applicants were authorized to use the San Francisco - Oakland Bay Bridge as an alternate route of operation, said alternate route not to be construed as an enlargement of applicants' operative right.

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

Frank W. Dun 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 ORDERED that Timothy W. Pon and Frank W. Dun are hereby authorized to transfer to Frank W. Dun, and Frank W. Dun is hereby authorized to acquire the operative right referred to in the foregoing opinion in accordance with the terms of an 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 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.

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. Applicants Timothy W. Pon and Frank W. Dun shall within thirty (30) days after the effective date of the order herein, and upon not less than five (5) days' notice to the Commission and the public, unite with applicant Frank W. Dun, in common supplement to the tariffs on file with the Commission covering the service given under the operative rights herein authorized to be transferred, applicants Pon and Dun withdrawing, and applicant Dun accepting and establishing, such tariffs and all effective supplements thereto.

4. Applicants Pon and Dun shall within thirty (30) days after the effective date of the order herein, and upon not less than five (5) days' notice to the Commission and the public, withdraw all time schedules filed in their name with the Railroad Commission and applicant Dun shall within thirty (30) days after the effective date of the order herein, and upon not less than five (5) days' notice to the Commission and the public, file in duplicate, in his own name time schedules covering service heretofore given by applicants Pon and Dun which time schedules shall be 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.

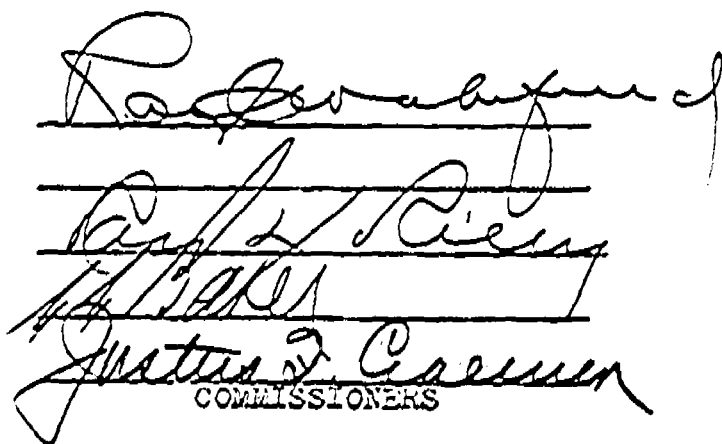
6. No vehicle may be operated by applicant Dun unless such vehicle is owned by said applicant or is leased by him under a contract or agreement on a basis satisfactory to the Railroad Commission.

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 Los Angeles, California, this 27th day of

November, 1939.



Justus J. Coe
COMMISSIONERS