

Decision No. 32784

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of  
D. GARIBALDI, JR. for the transfer  
of the certificate of public conven-  
ience and necessity of JOHN H. HARRIS  
to operate as a highway common car-  
rier for the transportation of live-  
stock between Los Angeles and many  
other points within the State of  
California.

ORIGINAL

Application No. 23224

BY THE COMMISSION:

O P I N I O N

John H. Harris has petitioned the Railroad Commission for an order approving the sale and transfer by him to D. Garibaldi Jr. of an operating right for the automotive transportation, as a highway common carrier, of livestock between the points and over the highways more specifically set forth in Decision No. 32673, dated December 19, 1939, on Application No. 22208; and D. Garibaldi, 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 operative right and equipment herein proposed to be transferred is given as \$31,875. No allocation of this sum was made by the applicants with respect

to the value assignable to equipment or that assignable to the intangibles.

Applicant Garibaldi proposes to assume all outstanding indebtedness incurred by applicant Harris in connection with his livestock transportation operations under terms and conditions set forth in Exhibit "A" herein.

The operating rights herein proposed to be transferred were created by Decision No. 32673, dated December 19, 1939, on Application No. 22208.

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

D. Garibaldi, 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 ORDERED that John H. Harris is hereby authorized to transfer to D. Garibaldi, Jr, and D. Garibaldi, Jr. is hereby authorized to acquire the operative rights referred to 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 applicant 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. D. Garibaldi, Jr. shall commence the service authorized by the order in Decision No. 32673, dated December 19, 1939, on or before March 8, 1940 and shall file in triplicate and concurrently make effective on not less than ten (10) days' notice to the Commission and the public, a tariff or tariffs constructed in accordance with the Commission's General Orders, and containing rules and regulations which in volume and effect shall be identical with the rates, rules and regulations shown in this Commission's Decision No. 31924, dated April 11, 1939 and amendments thereto and to conform to the certificate granted by Decision No. 32673, or rates and rules satisfactory to the Railroad Commission.
4. D. Garibaldi, Jr. shall file in duplicate and make effective on or before March 8, 1940 on not less than five (5) days' notice to the Railroad Commission and the public, a time schedule or time schedules covering the service authorized by said order in said Decision No. 32673, dated December 19, 1939 in a form 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 D. Garibaldi, 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.

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 twenty (20) days from the date hereof.

Dated at San Francisco, California, this 6<sup>th</sup> day of February, 1940.

Ray L. Rice  
Grant D. Murray  
H. H. Bates  
Justin J. Coe  
COMMISSIONERS