

Decision No. 32485

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
H. V. THATCHER and E. H. LOWDEN to
sell and LESLIE T. ALWARD to purchase
the interests of E. V. Thatcher and
E. H. Lowden in and to the right
granted in Decision #31482 of the
Railroad Commission to operate auto
stages between Redding and Kennett,
California.

ORIGINAL

Application No. 23292

BY THE COMMISSION:

O P I N I O N

H. V. Thatcher, E. H. Lowden and Leslie T. Alward have petitioned the Railroad Commission for an order approving the sale and transfer by them to Leslie T. Alward of an operative right for the transportation of passengers and baggage, as a common carrier, between Redding and Kennett and intermediate points. Leslie T. Alward has petitioned for authority to purchase and acquire said operative right and hereafter to operate thereunder. The sale and transfer is to be made 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 \$3,437.04. Of this sum, \$2,687.04 is alleged by applicants to be the value of the equipment and \$750 is alleged to be the value of the intangibles.

The operative right herein proposed to be transferred was created by the Commission's Decision No. 31312, dated September 26, 1938, on Application No. 19250, and acquired by the co-partnership (Alward, Thatcher and Lowden) under the authority of the Commission's Decision No. 31482, dated November 28, 1938, on Application No. 22360. The right was later modified by Decision No. 32813, dated February 13, 1940, on supplemental Application No. 19250, which authorized the abandonment of highway common carrier service, with the exception of baggage, originally authorized by said Decision No. 31312.

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

Leslie T. Alward 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 H. V. Thatcher, E. H. Lowden and Leslie T. Alward are hereby authorized to transfer to Leslie T. Alward, and Leslie T. Alward is hereby authorized to acquire the

operative right referred to in the foregoing opinion in accordance with the terms of the agreement, marked Exhibit "A" attached to the application herein, and hereafter to 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. Applicants Thatcher, Lowden and Alward shall within thirty (30) days after the effective date of the order herein, and upon not less than one (1) day's notice to the Commission and the public, unite with applicant Leslie T. Alward 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 Thatcher, Lowden and Alward withdrawing, and applicant Leslie T. Alward accepting and establishing such tariffs and all effective supplements thereto.

4. Applicants Thatcher, Lowden and Alward shall within thirty (30) days after the effective date of the order herein, and upon not less than one (1) day's notice to the Commission and the public, withdraw all time schedules filed in their name with the Railroad Commission, and applicant Leslie T. Alward shall within thirty (30) days after the effective date of the order herein, and upon not less than one (1) day's notice to the Commission and the public, file in triplicate, in his own name, time schedules covering service heretofore given by applicants Thatcher, Lowden and Alward, 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 Leslie T. Alward 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 5th day of March, 1940.

Ray S. Kelley
Frank R. Blum
R. S. ...
H. D. ...
Justin J. Caenen
COMMISSIONERS