

Decision No. 1329419

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
ARTHUR NEWTON to sell and ESKDALE NEWTON)
to purchase an automobile passenger line)
operated between Hunter Square and)
Diverting Canal, Stockton, California.)

Application No. 23336

BY THE COMMISSION:

O P I N I O N

Arthur Newton and Eskdale Newton have petitioned the Railroad Commission for an order approving the sale and transfer by them to Eskdale Newton of an operative right for the automotive transportation as a common carrier of passengers between Hunter Square in the city of Stockton and the junction of Waterloo Road and the Diverting Canal. Eskdale Newton 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 \$1850. Of this sum \$400 is alleged by the applicants to be the value of the equipment and \$1450 is alleged to be the value of the intangibles.

The operative right herein proposed to be transferred was created by Decision No. 16212, as amended by Decision No. 24690, on Application No. 11549, and acquired by applicants herein under authority of the Commission's Decision No. 26896, on Application No. 19361.

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

Eskdale Newton 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 Arthur Newton and Eskdale Newton are hereby authorized to transfer to Eskdale Newton, and Eskdale Newton 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 applicants 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 Arthur Newton and Eskdale Newton 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 Eskdale Newton 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 Arthur Newton and Eskdale Newton withdrawing, and applicant Eskdale Newton accepting and establishing such tariffs and all effective supplements thereto.

4. Applicants Arthur Newton and Eskdale Newton 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 Eskdale Newton 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 triplicate, in his own name, time schedules covering service heretofore given by applicants Arthur Newton and Eskdale Newton 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 Eskdale Newton 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 19th day of March, 1940.

Ray L. Rice
Frank R. W. W. W.
W. B. W. W. W.
W. B. W. W. W.
Justus J. Cooney
COMMISSIONERS