

Decision No. 33008

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

IN the Matter of the Application of
MARIN EXPRESS SERVICE, a corporation,
seller, and KELLOGG EXPRESS AND DRAYING
COMPANY, a corporation, buyer, for an
order authorizing the former to sell
and convey and the latter to purchase
and acquire the operative rights and
property herein described.

ORIGINAL

Application No. 23410

BY THE COMMISSION:

O P I N I O N

Marin Express Service, a corporation, has petitioned the Railroad Commission for an order approving the sale and transfer by it to Kellogg Express and Draying Co. of operative rights for the automotive transportation of property as a highway common carrier between San Francisco and certain points in Marin County. Kellogg Express and Draying Co., a corporation, has petitioned for authority to purchase and acquire said operative rights and hereafter to operate thereunder. The sale and transfer is to be made in accordance with an agreement, a copy of which, marked Exhibit "C" 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 \$10,000. Of this sum, applicants state that \$1,135.63 is the value of the equipment and that the remainder is the value of the intangibles.

The operative rights herein proposed to be transferred are those which applicant Marin Express Service acquired under the authority of the Commission's Decision No. 32678, dated December 27, 1939, and Decision No. 32756, dated January 23, 1940, both in Application No. 23177.

This does not appear to be a matter in which a public

hearing is necessary and the application will be granted. No request was made for the consolidation of the operative rights involved herein with those presently owned and operated by applicant Kellogg Express and Draying Co. and such rights will necessarily have to be operated as separate rights.

Kellogg Express and Draying Co. 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 Marin Express Service, a corporation, is hereby authorized to transfer to Kellogg Express and Draying Co., a corporation, and Kellogg Express and Draying Co. is hereby authorized to acquire the operative rights referred to in the foregoing opinion in accordance with the terms of the agreement marked Exhibit "C," attached to the application herein and hereafter to operate thereunder. The authority herein granted is 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. Applicant Marin Express Service 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 Kellogg Express and Draying Co. in common supplement to the tariffs on file with the Commission covering the service given under the operative rights herein authorized to be transferred, applicant Marin Express Service withdrawing, and applicant Kellogg Express and Draying Co. accepting and establishing such tariffs and all effective supplements thereto.

4. Applicant Marin Express Service 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 its name with the Railroad Commission and applicant Kellogg Express and Draying Co. 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 its own name, time schedules covering service heretofore given by applicant Marin Express Service 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 Kellogg Express and Draying Co. unless such vehicle is owned by said applicant or is leased by it 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 16th day of April, 1940.

Ray L. Rice
Frank D. Brown
Justice J. Coe
COMMISSIONERS