

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.)

Second Supplemental
Application No. 23410

ORIGINAL

BY THE COMMISSION:

FIRST SUPPLEMENTAL OPINION

By the Commission's Decision No. 33008, dated April 16, 1940, in the above-entitled matter, Kellogg Express and Draying Co., a corporation, was authorized to acquire from Marin Express Service, a corporation, a highway common carrier operative right between San Francisco and Hamilton Field and intermediate points, via Sausalito, Mill Valley, San Anselmo, Fairfax and San Rafael.

In its second supplemental application Kellogg Express and Draying Co. requests the Commission to issue to it a certificate of public convenience and necessity in lieu of the above described operative right.

As justification therefor applicant avers substantially as follows:

That the Interstate Commerce Commission has issued its Rule and Regulation requiring any holder of an intrastate certificate, desiring to engage in interstate or foreign commerce as to the points and commodities authorized by such certificate, to register a certified copy thereof with said Interstate Commerce Commission; that neither Marin Express Service, nor its

predecessor in interest, has so registered the operative right as acquired by applicant under the authority of said Decision No. 33008; that such registration must be made by the owner and holder of such intrastate certificate and the particular right involved cannot be registered by applicant's predecessor in interest inasmuch as it no longer possesses such right; that the purpose of this Second Supplemental Application is for an order of the Railroad Commission granting to the present holder and owner of said right, Kellogg Express and Draying Co. a certificate of public convenience and necessity authorizing it to conduct the same operation authorized in said Decision No. 33008 in order that it may effect such registration.

This is not a matter in which a public hearing is necessary. The request appearing to be reasonable will be granted.

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.

FIRST SUPPLEMENTAL ORDER

Good cause appearing,

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA HEREBY DECLARES that public convenience and necessity require the establishment and operation by Kellogg Express and Draying Co., a corporation, of an automotive service as a highway common carrier,

as such term is defined in section 2-3/4 of the Public Utilities Act, between San Francisco, Fairfax and Hamilton Field and intermediate points, via Sausalito, Manzanita, Mill Valley (by diversion) Corte Madera, Larkspur, Kentfield, Ross, San Anselmo, Yolando, Lansdale and San Rafael, over and along U.S. Highway 101 and public highways on which such points may be situated, provided that no service may be rendered to or from any point on said U. S. Highway 101 which is intermediate to Manzanita and San Rafael.

IT IS ORDERED that a certificate of public convenience and necessity therefor is hereby granted to Kellogg Express and Draying Co., a corporation, not in addition to, but in lieu of, the operative right heretofore acquired by applicant under the authority of the Commission's Decision No. 33008, dated April 16, 1940. Said certificate is granted subject to the following conditions:

1. The applicant shall file a written acceptance of the certificate herein granted within a period of not to exceed thirty (30) days from the effective date hereof.
2. The rights and privileges herein authorized may not be discontinued, sold, leased, transferred nor assigned unless the written consent of the Railroad Commission to such discontinuance, sale, lease, transfer or assignment has first been obtained.
3. No vehicle may be operated by applicant herein unless such vehicle is owned by said applicant or is leased by applicant under a contract or agreement on a basis satisfactory to the Railroad Commission.

IT IS FURTHER ORDERED that the operative right heretofore acquired by applicant Kellogg Express and Draying Co. under the authority of the Commission's Decision No. 33008 is hereby revoked and annulled.

The effective date of this order shall be the date hereof.

Dated at San Francisco, California, this 10th day of September, 1940.

Ray L. Croy
Frank W. ...
Ray ...
Justin J. ...
COMMISSIONERS