

Decision No. 34602

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of BRUCE F.)
WOODWORTH to sell and DICK W. MERRILL to purchase) Application
an automobile passenger and freight line, operated) No. 23718
between Hornbrook and Happy Camp, California.)

BY THE COMMISSION:

O P I N I O N

Bruce F. Woodworth has petitioned the Railroad Commission for an order approving the sale and transfer by him to Dick W. Merrill of a prescriptive operative right for the transportation of passengers and property between Hornbrook and Happy Camp and intermediate points. Dick W. Merrill has petitioned for authority to purchase and acquire said operative right and hereafter to operate thereunder.

The Commission in its Decision No. 31112, dated July 19, 1938, authorized applicant Merrill to lease from applicant Woodworth the right herein proposed to be transferred. Merrill is now operating under the lease arrangement but, as stated in the application, he is in arrears on his rental payments to Woodworth. Under the terms of an agreement, it is proposed to transfer the operative right under discussion for a consideration of \$200. A copy of this agreement, marked Exhibit "A," is attached to and made a part of the application herein. Of such amount \$199 is in settlement of the rentals now owing by Merrill to Woodworth and the termination of the lease now in effect. One dollar is stated to be the value of the operative right.

The operative right herein proposed to be transferred is a prescriptive operative right for the transportation of passengers and property between Hornbrook and Happy Camp and intermediate

points, via Gottville, Walker, Oak Bar, Scott Bar, Hamburg, and Seiad which was established by J. W. Bower prior to May 1, 1917. Through successive transfers such right was eventually acquired by applicant Woodworth under authority of the Commission's Decision No. 22748, on Application No. 16736.

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

Dick W. Merrill 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 Bruce F. Woodworth is hereby authorized to transfer to Dick W. Merrill, and Dick W. Merrill 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," and attached to the application herein, and hereafter to operate thereunder. The authority herein granted is subject to the following conditions:

1. The order of the Commission in Decision No. 31112, which authorized Merrill to lease from Woodworth the operative right referred to in the foregoing opinion, shall terminate upon compliance with all the following conditions.

2. 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.

3. 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.

4. Applicant Bruce F. Woodworth 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 Dick W. Merrill 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 Woodworth withdrawing, and applicant Merrill accepting and establishing such tariffs and all effective supplements thereto.

5. Applicant Woodworth 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 his name with the Railroad Commission and applicant Merrill 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 applicant Woodworth which time schedules shall be satisfactory to the Railroad Commission.

6. 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.

7. No vehicle may be operated by applicant Merrill 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.

8. Applicant shall, prior to the commencement of service authorized herein and continuously thereafter, comply with all 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 15th day of
October, 1940.

Ray L. Riley
James A. Smith
Robert L. ...
...
Justus F. Calver
COMMISSIONERS