

Decision No. 36421

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
H. M. ANDERSON to sell and P. A. W.)
BOYLE to purchase an automobile freight) Application No. 25406
line operated between Coronado and San)
Diego, California.)

SAMUEL G. NORTH, for applicant.

P. A. W. BOYLE, in propria persona.

EDWARD L. DAVIN, for Coronado Transfer Company,
protestant.

H. W. NOSLER, for Pacific Transfer Company,
protestant.

LUCILLE H. CUNIFF, for Truck and Warehouse
Association of San Diego and Imperial
Counties, interested party.

BY THE COMMISSION:

O P I N I O N

The application herein requests authorization for the transfer of a prescriptive highway common carrier operative right together with certain equipment, ⁽¹⁾ from H. M. Anderson to P. A. W. Boyle. The operative right in question, defined in Re Anderson, 34 C.R.C. 323, is between Coronado and San Diego.

Public hearings were held at San Diego on January 20 and March 17, 1943, before Examiner Cameron, evidence was received, the matter was submitted and is now ready for decision.

(1) One Chevrolet truck; 3 hand dollies; 1 hand truck; 1 piano dolly; 1 frigidaire dolly and pads.

Attached to the application is a bill of sale covering the operative right and equipment. H.M. Anderson died after the application was filed, and his son, Marks Henry Anderson, was appointed administrator of the estate. The administrator has been directed by Court order to approve the transfer and to do all things necessary to obtain the Commission's authorization therefor. (Estate of H. M. Anderson, Superior Court, San Diego County, No. 31161.) Upon the issuance of the Court's order, all protests to the granting of the application were withdrawn.

The total consideration involved is \$1,000. The applicants assert that \$650 of this sum represents the value of the operative right, and the balance the value of the equipment. Such may be the understanding between the parties, but it should be clearly understood that the authorization hereinafter granted is not an approval of the purchase price in any respect, nor a finding of value for the purpose of rate fixing, issuance of securities, accounting, or for any other purpose. No examination has been made by this Commission, nor by its authorized representatives, of the physical assets involved in this transfer as to their existence, value or ownership.

P. A. W. Boyle is placed upon notice that "operative rights" as such do not constitute a class of property which may be capitalized or used as an element of value in rate fixing for any amount of money in excess of that originally paid to the State as the consideration for the grant of such rights. 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

Good cause appearing,

IT IS ORDERED as follows:

(1) That Marks Henry Anderson, as Administrator of the Estate of Henry Marks Anderson, is authorized to transfer, and P. A. W. Boyle is authorized to acquire, the prescriptive highway common carrier operative right defined in Decision No. 22090, Application No. 16074, together with the equipment enumerated in Exhibit "A" to the application herein.

(2) The authority herein granted is subject to the provisions of section 52(b) of the Public Utilities Act, and further to the condition that P. A. W. Boyle, his successors and assigns, shall never claim before this Commission or any Court or other public body, a value for said operating rights or claim as a cost thereof, an amount in excess of that paid for said rights by those to whom said rights were originally granted.

(3) Applicants shall comply with the rules of the Commission's General Order No. 80 and Part IV of General Order No. 93-A by filing, in triplicate, and concurrently making effective, tariffs and time schedules satisfactory to the Commission within sixty (60) days from the effective date hereof, and on not less than one (1) day's notice to the Commission and the public.

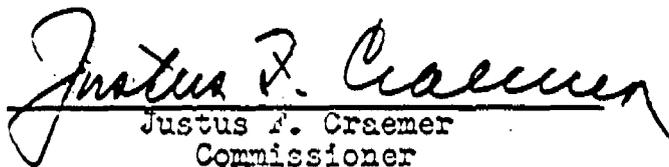
This order shall become effective immediately.

Dated at San Francisco, California, this 5th day of June, 1943.

Frank R. Havens
Richard K. Kachra
F. W. W. W. W.
COMMISSIONERS

By Commissioner Craemer

I concur in the result only, for the
reasons briefly expressed in my concurring opinion
rendered this day on Application No. 25532.


Justus F. Craemer
Commissioner