

Decision No. 36484

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Frank Foppiano to sell and John P. Oberto and Frank Borges, a co-partnership, to buy, right to operate vessels as a common carrier in the transportation of persons and property on the inland waters of the State of California.

Application No. 25656

BY THE COMMISSION:

O P I N I O N

By this application, Frank Foppiano, an individual, seeks authority to sell to John P. Oberto and Frank Borges, copartners, an operative right as a common carrier of persons and property by vessel upon the waters of San Francisco Bay between San Francisco and vessels in the stream and two gasoline launches known as the "Captain Russell" and the "Sea Gull."¹ The copartners propose to continue the operations heretofore conducted by Foppiano.

The total consideration involved, \$4,500, is to be paid in cash. Of this amount, applicants state, \$500 is agreed to be paid for the operative right and the balance for the vessels. 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

¹ The right involved is that which Foppiano was found to possess in Decision No. 29778 (40 C.R.C. 493).

made by this Commission, nor by its authorized representatives, of the physical assets involved in this transfer as to their existence, value or ownership.

John P. Oberto and Frank Borges are 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. 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.

It appears that this is a matter in which a public hearing is not necessary and that the application should be granted.

O R D E R

IT IS ORDERED:

(1) That Frank Foppiano is authorized to sell and transfer to John P. Oberto and Frank Borges, copartners, and said copartners are authorized to acquire (a) the common carrier operative right of Frank Foppiano to transport passengers and property by vessel between the points described in this application and (b) the two vessels known as the "Captain Russell" and the "Sea Gull."

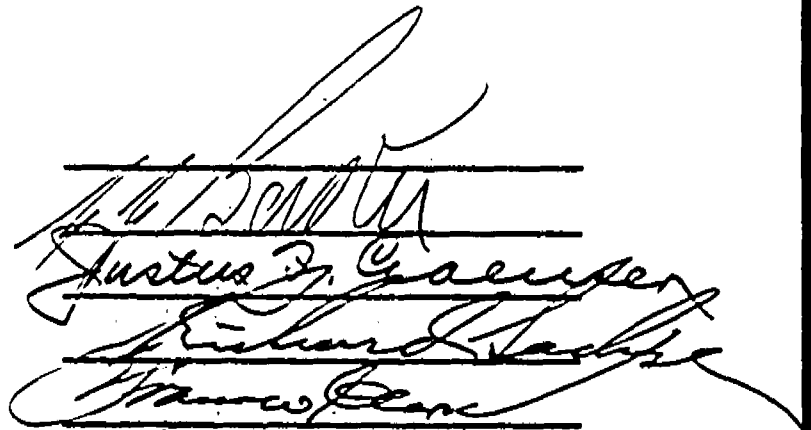
(2) That the authority herein granted is subject to the provisions of Section 52(b) of the Public Utilities Act and further to the condition that John P. Oberto and Frank Borges, their

successors and assigns, shall never claim before this Commission, or any court or other public body, a value for said operative right or claim as a cost thereof, an amount in excess of that paid to the State as the consideration for such right.

(3) That the authority herein granted is subject to the further condition that Frank Foppiano and John P. Oberto and Frank Borges shall comply with the rules of the Commission's Tariff Circular No. 2 by filing, in duplicate, and concurrently making effective tariffs satisfactory to the Commission within sixty (60) days from the effective date hereof and on not less than five (5) days' notice to the Commission.

This order shall become effective twenty (20) days from the date hereof.

Dated at San Francisco, California, this 13th day of July, 1943.


Commissioners