

Decision No. 36690

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
ALBERT E. WARBURTON to sell and GEORGE)
FIDLER and CECIL FIDLER to purchase an)
automobile passenger line operated)
between Martinez, California, and)
Permanente Metals Corporation Shipyards)
Nos. 1, 2, 3 and 4 situate in Richmond,)
California.)

Application No. 25771

BY THE COMMISSION:

O P I N I O N

This is an application by Albert E. Warburton to sell, and George Fidler and Cecil Fidler to purchase, an operative right heretofore granted to Warburton in Decision No. 36521, dated July 27, 1943, on Application No. 25622.

By the terms of the order in said decision Warburton was authorized to operate a passenger service, as that term is defined in section 2 $\frac{1}{2}$ of the Public Utilities Act, for the transportation of passengers between Martinez and Permanente Metals Shipyards Nos. 1, 2, 3 and 4, located in Richmond, California, and intermediate points. Service as authorized was restricted to passengers having either point of origin or point of destination at one or the other of the shipyards specified.

Warburton now proposes to sell and transfer, and George Fidler and Cecil Fidler to acquire, said operative right. An agreement was entered into on August 13, 1943, between the parties under the terms of which the buyer agrees to pay the seller the sum of \$3000 as consideration for the property proposed to be transferred, of which amount \$1800 represents the value of the

equipment and \$1200 the value of the operative right. One thousand dollars is to be paid as of the date of signing the agreement and the balance in six equal monthly installments.

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.

We believe it to be in the public interest that authority for the proposed transfer should be granted, and it will be so ordered. A public hearing is not necessary.

George Fidler and Cecil Fidler 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 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

Application having been made in the above entitled matter and the Commission being duly advised, and hereby finding

that public convenience and necessity so require,

IT IS ORDERED that Albert E. Warburton is hereby authorized to sell and transfer to George Fidler and Cecil Fidler, the operative right granted by Decision No. 36521, dated July 27, 1943, in Application No. 25622, and George Fidler and Cecil Fidler are hereby authorized to purchase and acquire said right and thereafter to operate thereunder, subject to the following condition:

The authority herein granted is subject to the provisions of Section 52(b) of the Public Utilities Act and further to the condition that George Fidler and Cecil Fidler, their successors or assigns, shall never claim before this Commission, or any court or other public body, a value for said operative rights or claim as the cost thereof, an amount in excess of that paid to the State as the consideration for such rights.

IT IS FURTHER ORDERED that applicants herein shall comply with the rules of the Commission's General Order No. 79 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 five (5) days' notice to the Commission.

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

Dated at San Francisco, California, this 2nd day of November, 1943.

Francis A. Haveman
H. K. K. K.
Justice J. Calaway
Richard K. K. K.
George A. K. K.
COMMISSIONERS