

Decision No. 36693

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)	
FRANK CARLI to sell and JOHN GONZALES)	
and JOE S. GONZALES to purchase an)	Application No. 25839
automobile freight line operated)	
between Sunnyvale, California and)	
Oakland, California.)	

ORIGINAL

BY THE COMMISSION:

O P I N I O N

In the above-entitled application, as amended, Frank Carli requests the authority of the Commission to sell and transfer his highway common carrier operative right and certain equipment and other physical assets, to John Gonzales and Joe S. Gonzales. John Gonzales and Joe S. Gonzales request authority to purchase and acquire said operative right and physical property and thereafter to operate thereunder.

The operative right involved was created by the Commission's Decision No. 29483, rendered January 25, 1937, in Application No. 20803. In general, it authorizes the transportation of fresh fruits and vegetables between Mountain View and a certain adjacent area and Oakland, subject to certain restrictions as more particularly set forth in the decision creating the operative right.

The physical property involved in the proposed transfer consists of four units of motor vehicle equipment and one trailer, and certain office and terminal supplies and fixtures, as set forth in Schedule "A" attached to the application, and the amendment thereto. The consideration involved is \$8,000. It is asserted

that \$7,500 of this sum represents the value of the physical assets and the remainder the value of the operative right proposed to be transferred.

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.

After full consideration of applicants' request it appears that the authority sought is in the public interest and should be granted. This is not a matter which requires a public hearing.

John Gonzales and Joe S. Gonzales 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

An application therefor having been filed and good cause appearing,

IT IS ORDERED that Frank Carli may sell and transfer to John Gonzales and Joe S. Gonzales the equipment and other physical property described in Schedule "A" attached to the application herein, and the highway common carrier operative right created by the Commission's Decision No. 29483, in Application No. 20803. John Gonzales and Joe S. Gonzales may purchase and acquire said equipment, physical assets and operative right and hereafter operate thereunder, subject to the following condition:

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

IT IS FURTHER ORDERED that 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 tables 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.

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

Dated at San Francisco, California, this 9th day of November, 1943.

Frank A. Avenue
W. H. H. H.
Walter A. Adelman
Richard A. Adams
Francis A. Adams
 COMMISSIONERS