

Decision No. 26759

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
L. F. McKINNEY to sell, and FLOYD)
CROSS and HARRIET CROSS, copartners,)
to purchase automobile freight line)
operated between points in the)
Antelope Valley south of Rosamond,)
including Rosamond, and Saugus,)
Newhall, Burbank and Los Angeles.)

ORIGINAL

Application No. 25818

BY THE COMMISSION:

O P I N I O N

In the above-entitled application L. F. McKinney requests authorization for the sale and transfer of a highway common carrier operative right, one Chevrolet tractor, one International truck and one semi-trailer, to Floyd Cross and Harriet Cross. The right involved was granted by the Commission's Decision No. 15415, on Application No. 11232. In general it authorized a highway common carrier service between Antelope Valley points, Burbank and Los Angeles, as set forth in the margin. (1) Through successive transfers this operative right was acquired by L. F. McKinney under the authority of the Commission's Decision No. 24099, in Application No.

(1) Said Decision No. 15415 granted a certificate to S. A. Gates, as set forth in the following declaration:

"THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA HEREBY DECLARES that public convenience and necessity require the operation of a service as proposed by applicant herein for the transportation of milk and other dairy products from points in the Antelope Valley south of Rosamond, including Rosamond, and from Saugus and Newhall, to Burbank and Los Angeles, and for the return transportation of articles and commodities necessary for the business of dairying and consigned only to dairymen shipping from the above-mentioned points over applicant's service to the city of Los Angeles, including feed, dairy supplies, acetylene tanks, ammonia vats, utensils and machinery used exclusively in dairying, and also for the general transportation of freight of all classes, upon demand, between Bouquet Canyon and Los Angeles."

17664.

The total consideration to be paid for the operative right and equipment is stated to be \$4,280.00 of which amount \$1,000.00 is said to represent the value of the operative right, and the remainder the value of the equipment proposed to be transferred. According to the agreement marked Exhibit "A," and attached to the application, the buyers agreed to pay the seller the sum of \$1,250.00 within 10 days after the Commission's authorization of the transfer sought, and the remainder is to be paid without interest in 12 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, nor for any other purpose. Examination has not been made by this Commission, or 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 the authority for the proposed transfer should be granted and it will be so ordered. A public hearing is not necessary.

Floyd Cross and Harriet Cross 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 having been made in the above-entitled matter and the Commission being fully advised and hereby finding that public convenience and necessity so require,

IT IS ORDERED that L. F. McKinney is hereby authorized to sell and transfer to Floyd Cross and Harriet Cross the operative right acquired by said McKinney under the authority of the Commission's Decision No. 24099, in Application No. 17664, and the automotive equipment described in Exhibit "A" attached to the application herein, and Floyd Cross and Harriet Cross are hereby authorized to purchase and acquire said operative right and the equipment and thereafter to operate under said operative right, 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 Floyd Cross and Harriet Cross, 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. 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 five (5) days' notice to the Commission.

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

Dated at San Francisco, California, this 7th day of December, 1943.

[Signature]
Justin J. Casper

[Signature]
COMMISSIONERS