

Decision No. 26807

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
ANNA BEZERA, an individual, doing)
business as SONOMA EXPRESS COMPANY,)
to sell to ROBERT G. ANDERSON and)
JOHN V. ANDERSON, a co-partnership,)
all of the express and highway)
common carrier operative rights)
of Sonoma Express Company.)

ORIGINAL

Application No. 25393

DOUGLAS BROOKMAN, for Anna Bezera, doing business
as Sonoma Express Company, and for Robert
G. Anderson and John V. Anderson, co-partners,
applicants.

REGINALD L. VAUGHAN, for Kellogg Express and
Draying Company, protestant.

BEROL & HANDLER, by MARVIN HANDLER, for Coast
Line Stages, Inc., protestant.

BY THE COMMISSION:

O P I N I O N

In this proceeding Robert G. Anderson and John V.
Anderson, a co-partnership, propose to acquire from Anna Bezera,
doing business as Sonoma Express Company, certain operative rights
authorizing operation as an express company, as defined by Section
2(k), Public Utilities Act, and as a highway common carrier, as
defined by Section 2-3/4 of that Act, together with the good will
of the business, office equipment and supplies, and certain motor
vehicle equipment used in such express operations. Objections to
the approval of this transfer were voiced by Coast Line Stages,
Inc. and by Kellogg Express and Draying Co., respectively, each
of which is a corporation operating as a highway common carrier. (1)

(1) For brevity, the applicants mentioned will be referred to
respectively as Sonoma Express and as Anderson; and protestants
will be designated severally as Coast Line and as Kellogg.

A public hearing was had before Examiner Austin at San Francisco and at Santa Rosa, when the matter was submitted upon briefs, subsequently filed.

For many years Sonoma Express has operated as an express corporation between San Francisco and certain points in the territory north of that city. This service was established prior to 1933. In fact, the company commenced operation in 1887. The operative right sought to be transferred, therefore, rests upon the "grandfather" clause of Section 50(f), Public Utilities Act, which prescribes August 1, 1933 as the critical date. ⁽²⁾

Recently there has been a change in the identity of the principal underlying carrier serving Sonoma Express. Until December 14, 1942, Sonoma Express operated over the line of Petaluma and Santa Rosa Railroad Company and its predecessors, thus reaching all points which it served. The traffic moved by the steamers "Gold" and "Petaluma" between San Francisco and Petaluma, and beyond that point by rail. On the date mentioned Robert G. Anderson, doing business as Marin-Sonoma Fast Freight (referred to subsequently as Marin-Sonoma), a highway common carrier, was substituted for the rail line as the underlying carrier. Through his facilities, and through those of his successor, Marin-Sonoma Fast Freight (a corporation), ⁽³⁾ Sonoma Express has served the

(2) This section was so construed in Re Pacific Motor Transport Co. et al., 39 C.R.C. 242, 245.

(3) By Decision No. 36445, rendered June 22, 1943, in Application No. 25631, Robert G. Anderson, doing business as Marin-Sonoma Fast Freight, was authorized to transfer to Marin-Sonoma Fast Freight, a California corporation controlled by Anderson, the highway common carrier operative rights mentioned above.

territory, generally speaking, between San Francisco, Petaluma, Santa Rosa, Sebastopol and Healdsburg. Over the triangular route diverging from U. S. Highway No. 101 at Petaluma and reaching Tomales, Fallon, Valley Ford and Bloomfield the underlying service is provided by Jansen Truck Line; between San Francisco and Napa it is supplied by Napa Transportation Company.

In connection with its operations as an express corporation, Sonoma Express offers a pickup and delivery service. At San Francisco this service is performed by that carrier itself; at Petaluma, Sebastopol, Santa Rosa and Healdsburg it is provided by local draymen with whom Sonoma Express has entered into contracts; and at other points it is performed by the underlying carrier. Excepting the Tomales-Valley Ford triangle, where a tri-weekly schedule is observed, a daily service (other than Sundays and holidays) is offered.

Sonoma Express has also been authorized to conduct a highway common carrier operation, which it proposes to transfer to Anderson. By Decision No. 25669, rendered February 27, 1933, in Application No. 18696, it was granted a certificate under which it may engage in the transportation of express shipments only between Santa Rosa, Sebastopol, Cotati and Penngrove. Admittedly, Sonoma Express is not operating under this certificate, nor does Anderson propose to do so, since Marin-Sonoma itself holds an unlimited operative right as a highway common carrier between these points. The operative right having been thus abandoned, its transfer cannot be permitted.

(4) Re Lee B. Hawkins - Transfer - Reader Truck Lines, 43 C.R.C. 303, 308.

Closely linked with the present proceeding is Application No. 24925, filed April 16, 1942, where Coast Line sought a certificate authorizing an extension of its operative right to permit the performance of underlying highway common carrier service for an express corporation (later identified as Sonoma Express) between San Francisco, on the one hand, and Petaluma, Santa Rosa and Healdsburg, on the other. That carrier then operated as a highway common carrier between San Francisco and Jenner, Cloverdale and Rockport, and certain intermediate points including Fort Bragg, handling traffic between Petaluma, Santa Rosa and Healdsburg and points north of Cloverdale, but not between San Francisco and those points. Application No. 24925 sought the removal of this restriction to the extent mentioned. Protests were voiced by the rail lines serving the territory, comprising Petaluma and Santa Rosa Railroad Company, Northwestern Pacific Railroad Company and its affiliate Pacific Motor Trucking Company; by Railway Express Agency, Inc.; and by Marin-Sonoma. Both Sonoma Express and Kellogg supported the application. Following a public hearing the matter was submitted on briefs, the last of which was filed September 25, 1942. The application, briefs and transcript in that proceeding were, by reference, made a part of the record herein.

Shortly after the final submission of Application No. 24925, Sonoma Express determined to dispose of its properties and operative rights, this conclusion having been prompted by the desire of the proprietor, Mrs. Anna Bezera, to retire from business, and by the decision of her nephew, Milton J. Daly, who acted as her manager, to devote all of his time to other interests. In furtherance of this objective, Daly approached Coast Line, with whose representatives he had several conversations. Although the

latter expressed its interest in acquiring the operation, no agreement, so this record discloses, was ever consummated. In respect to the claim, asserted by Daly, and denied by Coast Line, that a definite date had been fixed within which the latter should submit an answer to the proposal, the evidence sharply conflicts. Shortly after the expiration of the period assertedly so prescribed Daly, having received no reply from Coast Line, approached the Andersons (applicants herein), with whom an agreement of sale and purchase was soon closed, following which the instant application was filed. Obviously, the acquisition by Anderson of the operative right of Sonoma Express, as an express corporation, would destroy the very foundation underlying the previous application of Coast Line, consequently the latter appeared in this proceeding as the principal protestant.

The record discloses the following issues, to which the contentions of the parties have been directed:

1. Would the transfer, if authorized, tend to diminish competition, contrary to the public interest?
2. Would the transfer to Anderson be inequitable from the standpoint of Coast Line, because of the effect upon its pending application, and the deprivation of needed revenue which could be obtained were it permitted to become the underlying carrier for Sonoma Express?
3. Has the transfer been unlawfully consummated?
4. Would the transfer violate any provisions of the certificate held by Marin-Sonoma, the proposed new underlying carrier, regarding the transportation of express traffic?

5. Would the transfer be contrary to the provisions of the Interstate Commerce Act?
6. Would Kellogg suffer any competitive disadvantage were the transfer authorized?

These will be considered in their respective order.

1. Diminished Competition

If this application were granted, protestants contend, the number of common carriers serving the territory between San Francisco and Healdsburg would be reduced from three to two. The rail lines and their affiliate Pacific Motor Trucking Company, as well as Marin-Sonoma and Sonoma Express, now occupy the field; should the transfer be approved, it is claimed, but two carriers would remain, since Marin-Sonoma would then completely dominate Sonoma Express. Coast Line would be shut out, for its application would collapse. In view of the growth and development of this region, and the strained and overburdened condition in which the carriers generally find themselves under war conditions, the resulting curtailment of competition, it is contended, would be contrary to the public interest.

To avoid such a situation, it is suggested that Sonoma Express be required to employ Coast Line as its underlying carrier, as contemplated by the latter's pending application. Inherent in this proposal is the assumption that the operative rights of Coast Line would be expanded to include the San Francisco-Healdsburg territory as well as that which it now serves. There is no assurance, however, that Sonoma Express would employ Coast Line as its underlying carrier were the application granted. In fact, the manager of Sonoma Express testified positively that that carrier

no longer would be willing to enter into such an arrangement. Clearly, such a relationship can be created only by the consent of the carriers affected.

That the transfer of Sonoma Express to Anderson would materially restrain competition among the carriers serving this territory, was not established by the present record. There would still remain the Anderson and the railroad interests, which would continue to compete for the available traffic, neither of them enjoying a monopoly within this field. Should a public need develop for additional service the Commission is free to meet that requirement whenever it may arise.

2. Equities of Coast Line

The approval of the transfer sought herein, it is urged, would defeat the application of Coast Line to extend its operations so as to provide an underlying service for Sonoma Express, on which it has expended both time and money. Moreover, it is claimed, the ability of Coast Line to continue operations within the territory it now serves would be jeopardized, since it needs the revenues flowing from Sonoma Express traffic within the territory to be served under the proposed extension.

It is true, as this protestant contends, that Sonoma Express has changed its position. At the hearing on Application No. 24925 Daly supported Coast Line, testifying that its proposal was satisfactory and that the underlying service then provided by the railroad was inadequate. The latest manifestation of that support appeared in applicant's closing brief filed in that proceeding on September 24, 1942, only two months before Sonoma Express entered into the agreement with Anderson, on November 23, 1942,

by which the latter undertook to purchase the express operative right. In the prosecution of that proceeding Coast Line has undergone certain expenses, including counsel fees. Clearly, this shift in the attitude of Sonoma Express has been detrimental to Coast Line, since it apparently has destroyed the foundation of the latter's application.

We cannot, in this proceeding, retry the issues presented in Application No. 24925; we are concerned here with the question whether the proposed transfer of the Sonoma Express operative rights to Anderson would be consistent with the public interest. Consequently, we shall not undertake to determine whether the plan proposed by Coast Line in the former application would be practicable or feasible. Though Sonoma Express now stigmatizes that proposal as inadequate to meet its requirements, this contention should be viewed against the background of its present interest in effecting the consummation of the transfer to Anderson.

Nor can we consider the need of Coast Line for the traffic of Sonoma Express, which can be satisfied only by permitting it to enter a field now served by other carriers. It is apparent that Sonoma Express no longer is willing to employ Coast Line as its underlying carrier. Were we, because of inequitable conduct on the part of Sonoma Express, to deny the present application, it is apparent that the relationship previously existing between these carriers could not be restored.

The reasons urged, therefore, are not sufficient to justify a denial of the present application.

3. Consummation of Transfer

Protestants contend, in substance, that the transfer sought has already been accomplished. They point to the removal

of the Sonoma Express terminal, in San Francisco, from its former location to that of Marin-Sonoma; to the publicity accompanying this step; to the employment of joint agents for certain purposes; and to the degree of control exercised by Marin-Sonoma over the operations of Sonoma Express. These circumstances, they say, indicate the consolidation of Sonoma Express with a carrier which it formerly regarded as a serious competitor.

Although the record discloses close cooperation between Sonoma Express and Marin-Sonoma, it does not establish the consolidation of their operations. The removal of the terminal of Sonoma Express to that of Marin-Sonoma was merely incidental to the employment of the latter by the former as its underlying carrier. Anderson participated to some extent in the conduct of the business of Sonoma Express, but it is clear that Daly retained complete control of its operations. Separate office space was provided for the express company, a separate telephone was used, and an employee of that carrier devoted his full time to its affairs. It cannot be said that under this arrangement the operations of Sonoma Express have been merged unlawfully with those of Marin-Sonoma.

4. Effect of Provisions in Certificate of Marin-Sonoma
Regarding Transportation for Express Corporations.

Protestants contend that to permit the transfer sought would violate the terms of the certificate under which Marin-Sonoma was permitted to serve this territory as a highway common carrier.

That carrier, it is true, was directed to abandon certain operations as an express corporation but this action, clearly, was taken at the instance of Marin-Sonoma itself. Before Robert G. Anderson, the proprietor of Marin-Sonoma Fast Freight, entered the

field as a highway common carrier he had been engaged in business as an express corporation, using Northwestern Pacific Railroad Company and Petaluma and Santa Rosa Railroad Company as underlying carriers. In his application for operative authority as a highway common carrier, Anderson also sought permission to abandon the express operation which he then conducted. The decision in that proceeding, accordingly, authorized the establishment of a highway common carrier service between San Francisco and San Rafael, Santa Rosa and Sebastopol and intermediate points, and directed the abandonment of the express service between those points. (5)

Anderson testified, in the instant proceeding, that upon embarking in business as a highway common carrier he no longer desired to continue the express service which he previously had conducted over the rail lines mentioned, and consequently he sought permission to abandon it. The public need, formerly supplied by the express operation, he said, had been fully met by the highway common carrier service subsequently established.

The direction to abandon the express service, appearing

(5) Decision No. 33277, rendered July 3, 1940, in Application No. 20083 (42 C.R.C. 730) recites that:

"Applicant requests that the certificate be granted in lieu of, and not in addition to, his presently operated express corporation service which he proposes to concurrently abandon upon the establishment of the herein proposed highway common carrier service if authorized."

The order directs:

"...that applicant shall abandon his express corporation operations between the points herein certified concurrently with the establishment of the highway common carrier service as herein authorized and the operative right therefor is hereby revoked and annulled."

in Decision No. 33277, was limited to that operation alone. Inasmuch as this requirement has been fully observed by Marin-Sonoma, its purpose has been fulfilled, and this provision, therefore, has no bearing upon the present transaction. Moreover, the decision announced no general policy which would militate against the establishment, at some future time, of an express operation over the lines of Marin-Sonoma should such service appear to be consistent with the public interest.

5. Interstate Operations

Since the contract between Anderson and Sonoma Express contemplates the acquisition by the former of interstate, as well as intrastate, operating rights, this Commission, protestants contend, should not act upon the present application, in the absence of prior approval of the transfer by the Interstate Commerce Commission, even though the parties may contemplate the abandonment of the interstate operations.⁽⁶⁾

Anna Bezera, doing business as Sonoma Express Company, admittedly holds a certificate of public convenience and necessity issued by the Interstate Commerce Commission, authorizing operation as a common carrier by motor vehicle of general commodities over irregular routes between Santa Rosa, on the one hand, and Sebastopol, Penngrove, and Cotati, on the other hand, and between points and

(6) In support of this contention, protestants cite decisions of the Interstate Commerce Commission construing Section 5(11) of the Interstate Commerce Act, (49 U.S.C.A. Sec. 5(11)), viz.:

Wilson Storage & Transfer Co. - Purchase - Dakota Transportation, Inc., MC-F-1187, 36 M.C.C., 221, 226.

Buckingham Transp. Co. of Colo, Inc. - Purchase - Fast Freight Lines, Inc., MC-F-1068, 36 M.C.C. 313, 317.

Raymond Bros. Motor Transp. Inc. - Purchase - North American Creameries, Inc. MC-F-1320, 37 M.C.C. 431, 432.

places in San Francisco County, California. No application has ever been made to that Commission for approval of the transfer of this operative right, and applicants indicated that probably such interstate operations would be abandoned.

As stated, we shall not, in this proceeding, authorize the transfer of the operative right held by Sonoma Express as a highway common carrier, since it appears to have been abandoned. And clearly, any order rendered in the present proceeding, approving the transfer of the operative right of that applicant as an express corporation would be merely permissive. It cannot be presumed that applicants would consummate the transfer itself in such a manner as to violate the provisions of the Interstate Commerce Act. Under the circumstances we are not called upon to determine whether such a violation would occur.

6. Kellogg Operations

In conjunction with Sonoma Express, Kellogg handles traffic moving between East Bay points and points served by the former under joint rates established between them. That carrier rests its protest upon the ground that Anderson might favor a competing transbay highway common carrier with whom Marin-Sonoma had entered into joint rates applicable to traffic of this character. At present, traffic moving to and from East Bay points is interchanged between Kellogg and Sonoma Express at San Francisco, under joint rates which they have published. Upon similar traffic Marin-Sonoma has established joint rates with Haslett, a competitor of Kellogg. The latter is apprehensive that were the proposed transfer approved Anderson might discontinue the existing arrangement between Sonoma Express and Kellogg. Witness Robert G. Anderson, however, testified that this concurrence would not be

disturbed; on the contrary, he said, it would remain in effect. In the present proceeding no contention is made, as in Application No. 24925, that the traffic originated by Haslett would be delivered earlier than that of Kellogg; the traffic of both carriers, it was shown, would be treated alike.

It appears, therefore, that Kellogg's objection has been met by Anderson's engagement to adopt the concurrence now existing between Kellogg and Sonoma Express. The Commission will expect Sonoma Express to observe this commitment.

7. General Consideration of Public Interest

Protestants' contentions, we have found, are not sufficient to warrant the denial of the transfer of the express operative right. This brings us, therefore, to a consideration of the application, from the general standpoint of its consistency with the public interest.

The transferees, it was shown, are qualified by experience and are financially able to provide an adequate service. The public witnesses produced by protestants, at the Santa Rosa hearing, established no facts warranting a denial of the application. None of the three shippers called, all of whom were engaged in business at Santa Rosa, was familiar with or had recently used the service of Sonoma Express, nor did any of them complain of any deficiency in the existing service between San Francisco and the territory involved. Upon consideration of the record, we believe that the transfer of the operative right of Sonoma Express, as an express corporation, as well as the transfer of the equipment and property described in the application, should be authorized. However, for the reasons mentioned, the proposal to transfer the

operative right of Sonoma Express as a highway common carrier, will not receive our approval.

In the agreement between the parties the consideration for the sale of the operative rights and property sought to be transferred is fixed at \$10,000 payable in installments as prescribed therein. Of this, \$2,000 represents the purchase price of the equipment, consisting of two motor trucks. 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.

Robert G. Anderson and John V. Anderson, individually and as co-partners, 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.

Since the agreement between the parties providing for the purchase and acquisition of the operative rights and other property, by its terms contemplates the payment of the purchase

price in installments throughout a period extending more than 12 months after the date of the agreement, it constitutes an evidence of indebtedness within the meaning of Section 52(b), Public Utilities Act. The execution of the agreement will be authorized, subject to the payment of the minimum fee prescribed by Section 57 of that Act, amounting to \$25.00.

O R D E R

Application having been made as above entitled; public hearing having been had; the matter having been duly submitted; and the Commission now finding that the public interest would be subserved thereby,

IT IS ORDERED as follows:

(1) That Anna Bezera, an individual doing business as Sonoma Express Company, be and she hereby is, authorized to transfer to Robert G. Anderson and John V. Anderson, a co-partnership, the following:

- (a) An operative right as an express corporation, as defined by Section 2(k), Public Utilities Act, arising from operations conducted in good faith by said Anna Bezera on and prior to August 1, 1933, referred to in the foregoing opinion.

(b) Two motor trucks, described as follows:

One 1-ton 1937 International Truck,
Model DT; and

One 1½-ton 1935 Ford V-8 Truck, Model 51.

(c) All of the office equipment and supplies now owned
by Anna Bezera, doing business as Sonoma Express
Company, and used in the conduct of her business;

(d) The good will of the business conducted by Anna
Bezera, doing business as Sonoma Express Company,
as such express corporation, including the right to
use the name of Sonoma Express Company.

(2) That said Robert G. Anderson and John V. Anderson,
as co-partners, be, and they hereby are, authorized to acquire
from said Anna Bezera, doing business as Sonoma Express Company,
the operative right and property described in paragraph (1) hereof,
and thereafter to operate under said operative right.

(3) That the application herein, in so far as it seeks
authority for the transfer of the certificate of public convenience
and necessity, heretofore issued to Anna Bezera, doing business as
Sonoma Express Company, and authorizing operation as a highway
common carrier between Santa Rosa, Cotati, Sebastopol and Penngrove,
be, and it hereby is, denied.

(4) That said Robert G. Anderson and John V. Anderson,
as co-partners, be and they hereby are, authorized, within thirty
(30) days after the effective date hereof, to execute an agreement
substantially in the same form as the agreement dated November 23,
1942, a copy of which is attached to and made a part of the appli-
cation herein and marked Exhibit "A"; provided, however, that the

authority herein granted is for the purpose of this proceeding only, and is granted only in so far as this Commission has jurisdiction under the terms of the Public Utilities Act, and is not intended as an approval of said agreement as to such other legal requirements to which said agreement may be subject.

The authority herein granted is subject to the following conditions:

- (a) The authority herein granted will become effective when said Robert G. Anderson and John V. Anderson, as co-partners, have paid the minimum fee prescribed by Section 57, Public Utilities Act, which fee is \$25.00.
- (b) Within thirty (30) days after the execution of said agreement said Robert G. Anderson and John V. Anderson, as co-partners, shall file with the Commission a copy thereof.
- (c) The authority herein granted is subject to the provisions of Section 52(b), Public Utilities Act, and further to the condition that Robert G. Anderson and John V. Anderson, 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.

(5) That in connection with the transfer of said operative right pursuant to the authority herein granted, and in the operation by said Robert G. Anderson and John V. Anderson, as co-partners, of a service thereunder as an express corporation, the applicants herein shall severally comply with and observe the following service regulations:

- (a) Applicants shall comply with the provisions of Tariff Circular No. 2 by filing, in triplicate, and concurrently making effective, appropriate tariff withdrawal and adoption supplements 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.

(b) Applicants Robert G. Anderson and John V. Anderson, as such co-partners, shall file with the Commission, in triplicate, within thirty (30) days after the date of execution thereof, copies of any contract entered into between them, as an express corporation, and any common carrier, relating to the performance of any service, by the latter, as an underlying common carrier.

Except as herein otherwise expressly provided, the effective date of this order shall be twenty (20) days from the date hereof.

Dated at San Francisco, California, this 11th day of January, 1944.

ROAD COMMISSION
STATE OF CALIFORNIA
#25393 #2500
[Signature]
SECRETARY

[Signature]
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COMMISSIONERS