

Decision No. 25908

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application)	
of C. E. KIMBROUGH to sell and)	
BARBARA R. WALTHERS and ALFRED W.)	
BELLOWS to purchase an automobile)	Application No. 25908
freight line operated between Los)	
Angeles, California and Riverside,)	
California, and intermediate points.)	

BY THE COMMISSION:

ORIGINAL

O P I N I O N

In this application the Commission is asked to enter its order: (a) authorizing C. E. Kimbrough, hereinafter sometimes referred to as Vendor, to transfer for \$12,500 to Barbara R. Walthers and Alfred W. Bellows, copartners, hereinafter sometimes referred to as Vendees, a certificate of public convenience and necessity granted by Decision No. 11285, dated June 28, 1923, in Application No. 9020, and by Decision No. 16120, dated March 8, 1926, permitting the former to transport motion picture films and advertising matter, and the truck equipment, office furniture, fixtures, supplies, tools, and the good will used in said transportation business, and (b) authorizing Vendees to acquire and operate said properties and issue in part payment therefor their promissory note for \$2,500, payable in monthly installments of \$100, with interest at the rate of 5% per annum on the deferred payments not paid at maturity.

Generally speaking, Decisions Nos. 11285 and 16120 authorize Vendor to transport motion picture film and advertising matter incidental to the use of such films between Los Angeles and San Bernardino, Riverside, Redlands and intermediate points designated in said decisions.

A copy of the contract between the parties is filed in this application as Exhibit "A." At the Commission's request, applicants have supplied certain additional information which we will consider supplementary to the statements contained in the application.

For 1942, Vendor reports operating revenues of \$15,509.80 and for 1943, operating revenues of \$18,522.69.

A description of the properties to be sold and the values assigned to the several items of property by applicants follows:

(a) 1 - 1930 G.M.C. Model T-25 Panel Truck, Engine No. 2544946, with 1941 California license No. BEV8588. (not in use)	\$ 500.00
(b) 1 - 1940 G.M.C. Model AC 252, Panel Truck, Engine No. B22846808, Serial No. 4380, bearing 1943 California license No. BEV8587	1,200.00
(c) 1 - 1940 G.M.C. Model AC102 Pick-up Truck, with panel body, Engine No. A22856845, Serial No. 12053, bearing 1943 California license No. BEU7632	750.00
(d) Unexpired fire and theft, public liability, property damage, collision and cargo insurance on the two G.M.C. trucks above described	224.22
(e) Lease on property at 1639 Cordova Street, Los Angeles (Los Angeles terminal)	325.00
(f) Office furniture and fixtures consisting generally of 2 large rolltop desks, 1 flat top desk, 1 filing cabinet, 3 office chairs, 1 typewriter and a metal strong box (small safe)	300.00
(g) Stationery and office supplies on hand	40.78
(h) Tools, parts, shop equipment, etc., on hand	<u>660.00</u>
	\$ 4,000.00
(i) Good will of said trucking business and agreement not to re-enter a like business over the routes involved	5,000.00
(j) Operative rights	<u>3,500.00</u>
	\$12,500.00

8,500
7,050
1,050

Associate Transportation Engineer Benn Porter of the Commission's staff, appraised the trucks, shop equipment, tools, parts, office furniture, fixtures and supplies at \$3,700.

Vendees have agreed to pay for the properties \$12,500. Of the purchase price, \$10,000 is to be paid in cash, on demand, upon the Railroad Commission's approving the transfer of the operating right. The balance of \$2,500 is payable in twenty-five equal monthly installments of \$100 each. The deferred payments bear interest at the rate of 5% per annum after maturity. Vendees may pay the note or any part thereof before due. A copy of the proposed note is filed in this application as Exhibit "B."

It will be noted that of the agreed-upon purchase price of \$12,500 only \$3,700 is represented by tangible property, according to the appraisal made by our engineer. The balance of \$8,800 is to be paid for so-called intangibles, said to consist of good will, the value of an agreement guarding against competition, and for operative rights. The intangibles amount to over 70 per cent of the total payment. According to the annual report of the seller for 1943, on file with the Commission, the total revenues were \$18,522.69 and the total expenses \$18,426.40, leaving a profit for the year of \$96.29. It is difficult to reconcile this showing with an alleged value of good will and operating rights of \$8,800.

The \$4,000 value assigned to the truck equipment, tools, office furniture, fixtures, stationery, unexpired insurance and leasehold interests will be written off through future operations by charges to depreciation and operating expense accounts. The value assigned to good will and operative right, except for the \$50 filing fee paid to the State of California, should be amortized by the Vendees within a period of five years after the effective date of this decision.

The Vendor, who for some months has been in failing health, seeks relief from the burdens incidental to the active management of the business. The Vendees, it appears, are qualified to continue

the service. Since March, 1943, Alfred W. Bellows, one of the Vendees, has assisted Vendor in managing the business and for several months, Donald A. Walthers, husband of Vendee, Barbara R. Walthers, has been employed by Vendor as a driver. Assertedly, he will represent his wife's interest should the transfer be authorized. Both Walthers and Bellows are familiar with the operations and well acquainted with the needs of customers. Vendees, it appears, are financially able to conduct the service.

Barbara R. Walthers and Alfred W. Bellows are hereby 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

The Commission having considered applicants' requests and it being of the opinion that this is not a matter on which a hearing is necessary; that the money, property or labor to be procured or paid for by Vendees through the issue of the note herein authorized is reasonably required by them to pay in part for the properties herein authorized to be transferred, and that this application should be granted subject to the provisions of this Order, therefore,

IT IS ORDERED as follows:

(1) C. E. Kimbrough may, after the effective date hereof and on or before June 30, 1944, transfer to Barbara R. Walthers and Alfred W. Bellows, copartners, the certificate of public convenience and necessity granted by Decision No. 11285, dated June 28, 1923, and by Decision No. 16120, dated March 8, 1926, together with the truck equipment and other properties

described in Exhibit "A" on file in this application, said transfer to be made pursuant to the terms and conditions contained in said Exhibit "A."

(2) Barbara R. Walthers and Alfred W. Bellows, copartners, may, after the effective date hereof and on or before June 30, 1944, acquire from said C. E. Kimbrough the properties described in paragraph (1) of this Order, and issue in part payment for said properties their promissory note for the sum of \$2,500, payable in monthly installments of \$100 with interest from maturity on the unpaid principal at the rate of 5% per annum, said note to be in substantially the same form as the note on file in this application as Exhibit "B."

(3) Applicants shall severally comply with the provisions of 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 and the public.

(4) The authority herein granted will become effective when Barbara R. Walthers and Alfred W. Bellows have paid the minimum fee prescribed by Section 57 of the Public Utilities Act, which minimum fee is twenty-five (\$25.00) dollars.

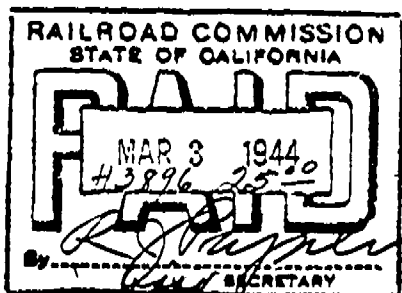
(5) The authority herein granted is subject to the following conditions:

- (a) If Barbara R. Walthers and Alfred W. Bellows, copartners, acquire said properties described in paragraph (1) of this Order, they shall amortize within five years after the effective date of this decision \$8,450 paid for said properties, said amortization to be distributed in equal annual amounts over said five-year period, or shall write off said amount in toto prior to or at the beginning of operation of said properties.

(6) The authority herein granted by the Commission to the parties to transfer and purchase the properties in question shall not be construed to be a finding by the Commission, or otherwise, of the value of said properties.

(7) Within thirty (30) days after the transfer of said properties, Barbara R. Walthers and Alfred W. Bellows shall file with the Commission a copy of the note issued under the authority herein granted, together with a copy of the bill of sale or other agreement executed for the purpose of effecting the transfer of said properties.

Dated at San Francisco, California, this 29th day of February, 1944.



Richard Lachre
Justus F. Coe
Frank R. Havens
James C. ...

COMMISSIONERS