

Decision No. 37018

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)	
E. M. WOODARD to sell and W. C.)	
HODGES and SALLY M. HODGES to pur-)	
chase an automobile passenger line)	Application No. 25883
operated between Julian and San)	
Diego, California.)	

E. M. WOODARD, in Propria Persona.

J. D. RATTELLE, for Applicants W.C. and Sally M. Hodges.

DALE HARLAN, for San Diego Electric Railway Company, Interested Party.

BY THE COMMISSION:

O P I N I O N

Applicant Woodard operates a passenger stage and express service between San Diego and Julian and intermediate points. This operation is conducted pursuant to authority granted by the Commission in its Decision No. 23369, dated February 9, 1931, in Application No. 16990, which was modified as to route in the city of San Diego by the Commission's Decision No. 33560, dated October 1, 1940. In general, the certificate is subject to certain local restrictions on the transportation of passengers between San Diego and El Cajon and on the transportation of express shipments between San Diego and Ramona. No piece of baggage or express weighing in excess of 100 pounds may be transported and all such express must

be transported on passenger carrying vehicles. Woodard also transports United States mail between San Diego and Julian under a contract with the Post Office Department. Woodard is the only passenger stage carrier between San Diego and Julian, a distance of about 60 miles.

In this proceeding authority is sought to transfer the certificated rights together with the auto equipment used in the service, namely one 14-passenger bus and one 7-passenger sedan. The consideration to be paid is \$9,000, of which \$2,000 is to be paid when and if the Commission authorizes the transfer herein proposed.⁽¹⁾ The \$7,000 remaining would be paid either under a conditional sales contract or a transfer of title pursuant to the terms of a note and chattel mortgage.

A public hearing was conducted in this matter before Examiner Hunter, at San Diego, and it is now ready for decision.

The normal service consists of one round trip daily, Sundays excepted. For the most part the operation is conducted with one 14-passenger coach equipped with a baggage and express compartment. When the traffic requires, a second vehicle is operated which is a 7-passenger auto. The scheduled time consumed in making the round trip is four hours.

The route, for the most part, traverses a rather sparsely settled area, given largely to small ranches devoted to growing vegetables, deciduous fruits and citrus. Also, the dairy and poultry industry represents a considerable portion of the activities of the residents of this district.

(1) Following is a segregation of the \$9,000.

1 - 14-passenger bus (express and mail compartment, \$1,400.00 remodeled Lincoln car, 1928 model, 1930 engine)	
1 - 7-passenger sedan (1934 Lincoln)	600.00
Total physical property	<u>\$2,000.00</u>
Intangibles	<u>7,000.00</u>
TOTAL	\$9,000.00

The following shows the operating results that have obtained during the past four years:

	<u>1940</u>	<u>1941</u>	<u>1942</u>	<u>1943</u>
<u>Operating Revenue</u>				
Passenger	\$ 909.15	\$1114.45	\$2442.15	\$3599.60
Mail	290.00	290.00	354.96	426.46
Express	1000.11	1166.59	1041.86	1259.61
	<u>\$2199.26</u>	<u>\$2571.04</u>	<u>\$3838.97</u>	<u>\$5285.67</u>
<u>Operating Expenses</u>				
Exclusive of Drivers' Wages, Management and Overhead	\$ 944.21	\$ 932.94	\$1503.75	\$2094.31
Drivers' Wages, Management and Overhead	<u>1255.05</u>	<u>1638.10</u>	<u>2171.94</u>	<u>2650.00</u>
TOTAL	<u>\$2199.26</u>	<u>\$2571.04</u>	<u>\$3675.69</u>	<u>\$4744.31</u>
Operating Income	None	None	\$163.28	\$541.36

The expense item of drivers' wages, management and overhead, which consists largely of drivers' wages, is the charge against the operation by applicant Woodard and his wife as they drive the vehicles. Mr. Woodard drives the 14-passenger bus and Mrs. Woodard drives the 7-passenger auto when it is operated, normally two or three trips per week. In addition to driving, Mr. and Mrs. Woodard take care of the management matter of the operation. No allowance is made for depreciation of the passenger and express equipment as it is fully depreciated on the books. For the purpose of this proceeding it appears appropriate to consider the amounts shown above as Drivers' Wages, Management and Overhead together with the item of Operating Revenue, as the compensation to the Woodard family for their services in this business.

Mr. Woodard testified that his primary reasons for desiring to dispose of this operation were that the business placed too heavy a burden on him to continue from the standpoint of his health, and that he desired to devote his entire time to his ranch.

The record shows that the parties to the application are agreeable to executing either a conditional sales agreement or to transferring title subject to an appropriate note and mortgage. A conditional sales agreement, we believe, is inappropriate in that legal title would remain in the transferor until such time as the terms of the contract had been satisfied. Hence, the agreement would be inconsistent with a request to effect an immediate transfer of Woodard's title to the operating right and equipment. Under the alternative plan suggested, title would be immediately reposed in the transferee. It appears, however, that the indebtedness proposed to be created under either plan substantially exceeds the amount actually paid to the State as the consideration for the grant of the operative right, and that it would extend over a period of years. Under these circumstances, any authority that might be granted under Section 50-3/4 of the Public Utilities Act would be **unavailing**, in that under Section 52 we may not authorize the creation of an indebtedness in excess of the amount paid for such operative right. Here, the price being paid for the physical properties is \$2,000, which is the sum that would be immediately paid by the Hodges. The remaining \$7,000 is the amount apparently assigned as the price of the operative right and which would be the basis of the discussed indebtedness. The application will be denied without prejudice to any modified arrangement, falling within the terms of the regulatory laws administered by us, that may be worked out between Woodard and the Hodges.

O R D E R

Application having been made in the above-entitled matter, the Commission being duly advised and basing its order upon the foregoing opinion,

IT IS ORDERED that the above-entitled proceeding is hereby denied without prejudice to the filing of an amended application.

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

Dated at San Francisco, California, this 25th day of April, 1944.

Richard L. Lachis
Justus F. Casper
Francis D. Havener
Charles E. ...
Isaac H. ...
COMMISSIONERS