

Decision No. 37180

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
ABBIE M. SMITH to sell and transfer)
operative rights of L. L. SMITH and)
S. F. SMITH, doing business as SMITH)
BROS. TRUCK COMPANY, to CLARENCE J.)
SMITH.)

Application No. 25907

BY THE COMMISSION:

ORIGINAL

O P I N I O N

In the above entitled application Abbie M. Smith requests the authority of the Commission to transfer, and the partnership of Abbie M. Smith and Clarence J. Smith to acquire certain physical property and the highway common carrier operative right between Los Angeles and the Steamship wharves and docks at Wilmington and San Pedro as more particularly described in the Commission's Decision No. 12823, rendered November 14, 1923, in Case No. 1871 (24 C.R.C. 116). The physical property involved consists of rigging, garage and office equipment, and approximately forty units of automotive equipment. The consideration is love and affection.

The operative right involved in the proposed transfer is a prior right established by Stoughton F. Smith and Lisle L. Smith as determined by the Commission in the decision above referred to. According to the application herein Stoughton F. Smith died on or about July 13, 1926, and shortly thereafter his brother Lisle L. Smith succeeded to the interest of said S. F. Smith in the trucking business. This is evidenced by a certified copy of the Return of Sale of Personal Property and Petition for Order Confirming the Sale in the Matter of the Estate of Stoughton

F. Smith, Deceased, in the Superior Court of the State of California in and for the County of Los Angeles, No. 82845, together with a certified copy of the Order Confirming the Sale of Said Personal Property.

It is further stated in the application that Lisle L. Smith died on October 20, 1942, leaving a will under which all of his property was bequeathed to his widow Abbie M. Smith, one of the applicants herein. On October 4, 1943, by a decree of distribution of the Probate Court of Los Angeles, all of such property was distributed to Abbie M. Smith. This is evidenced by a certified copy of the Order Approving Final Report and for Distribution of the Estate of Lisle L. Smith, Deceased.

According to the application Abbie M. Smith on October 4, 1943, by a gift bill of sale in consideration of love and affection, transferred to her son, Clarence J. Smith, the other applicant herein, a one-half interest in and to all the equipment hereinbefore referred to. This bill of sale with an itemized list of such equipment is attached to the application.

A public hearing is not necessary, and the transfer will be authorized.

Abbie M. Smith, and Clarence J. Smith 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

Good cause appearing,

IT IS ORDERED as follows:

(1) That Abbie M. Smith is hereby authorized to inherit the highway common carrier operative right defined by the Commission's Decision No. 12823, rendered November 14, 1923, in Case No. 1871 (24 C.R.C. 116) and the physical property described in the foregoing opinion.

(2) That Abbie M. Smith is hereby authorized to transfer the operative right and property referred to in paragraph (1) of this order to Abbie M. Smith and Clarence J. Smith, partners. Abbie M. Smith and Clarence J. Smith are hereby authorized to acquire the foregoing described operative right and property and thereafter to operate thereunder.

(3) That Abbie M. Smith and Clarence J. Smith 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 appropriate tariffs and time tables 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 11th day of July, 1944.

Richard L. Schaefer
Justin D. Coe
Frank R. Havenner

Grant Russell
COMMISSIONERS