

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
FRANK CAUDANA and MAURICE LOVEY, co-
partners, d/b/a BESONE MOTOR EXPRESS
and FRANK CAUDANA, d/b/a BAKERSFIELD-
SHAFTER-WASCO AUTO TRUCK LINE, to sell,
and ROBERT GARDEN to purchase, the
automobile freight lines operated be-
tween Bakersfield and Wasco and
Bakersfield and Taft, Fellows, McKittrick,
Maricopa and intermediate points,
California.

ORIGINAL

Application No. 26079

A P P E A R A N C E S

Kendall, Howell and Deadrich, Attorneys, Bakersfield, Cal.,
by Donald G. Kendall, for Applicant, Sellers

Hugh Gordon, Attorney, Los Angeles
for Applicant, Buyer

Don E. Moore for Asbury Truck Company, Los Angeles
Interested Party

BY THE COMMISSION:

O P I N I O N

In the above-entitled application Frank Caudana and Maurice Lovey, partners, and Frank Caudana, an individual, hereinafter called sellers, request the authority of the Commission to sell and transfer to Robert Garden certain highway common carrier operative rights. The operative rights of Caudana and Lovey, partners, proposed to be transferred are in general between Bakersfield, Taft, Fellows, McKittrick, Maricopa, and intermediate points, including Buttonwillow, Rio Bravo, Panama and Old River with certain lateral rights and subject to certain restrictions as more particularly defined in Decision No. 33932, rendered February 18, 1941, as amended by Decision No. 34217, dated May 20, 1941, both in Application No. 23800, which created the operative right involved.⁽¹⁾ The operative right proposed to be transferred by Caudana, an individual, is in general between Bakersfield and Wasco and intermediate points via Rosedale, Rio Bravo and Shafter. This right was created

⁽¹⁾The decisions cited granted a new certificate in lieu of certain operative rights these applicants had acquired from their predecessors.

by the Commission's Decision No. 19976, rendered May 23, 1928, in Application No. 14353. Thereafter, three transfers of the right were authorized, Caudana acquiring it under the authority of the Commission's Decision No. 28128, dated July 18, 1935, in Application No. 20054.

A public hearing in this matter was held before Examiner Chiesa at Los Angeles on June 27, 1944, at which time it was duly submitted and is now ready for decision.

By the terms of an agreement between the sellers and the buyer, attached to the application as Exhibit "A", the buyer agrees to pay the sellers the sum of \$20,000 for the operative rights and equipment. Of the purchase price \$2,500 has been deposited in escrow. The remainder, \$17,500, will likewise be deposited with said escrow holder by the buyer when there has been deposited with said escrow holder by the sellers a certified copy of an order of the Railroad Commission authorizing the transfer of the operative rights and equipment together with a bill of sale conveying to the buyer all right, title, and interest of the sellers in and to the properties involved. According to the application, \$2,150 of the purchase price represents the value of the equipment, and the remainder, \$17,850, represents the value of the operative rights. The equipment consists of:

- 1 - Chevrolet truck, stake body, 1936 model
- 1 - Chevrolet truck, stake body, 1937 model
- 1 - GMC truck, stake body, 1941 model

The action taken herein shall not be construed to be a finding or determination of value by this Commission for any purpose.

A financial statement of the buyer is shown in the margin. (2)

Mrs. Caudana, manager of both businesses, testified that the net operating income of the two companies for the past twelve years was \$45,893.89. (3) This is an average of \$3,824.49 per year. There was evidence indicating that this figure could have been materially increased if Mr. Caudana had been in good health. The principal reason for the sale of said operative rights is that Mr. Caudana has not been physically able to take care of the business.

As required by the law, \$300 in filing fees have been paid for filing applications in connection with the operative rights involved herein. If the buyer acquires such operative rights and pays therefor the sum of \$17,850, he may charge to Intangible Capital a sum not in excess of \$300. The remainder, \$17,550, should be charged to Proprietor's Investment Account.

The evidence also shows that the purchaser, Robert Garden, is financially able to continue the operations and that he proposes to offer the public satisfactory service. Tentative arrangements have been made with L. M. Duntley, (4) his brother-in-law, for managerial assistance, use of terminals and telephones, etc., at a cost

(2) Balance Sheet as of May 1, 1944:

Assets:

Cash in Bank		\$27,422.04
Real Estate		6,500.00

Liabilities:

Note secured by mortgage of real estate	\$ 2,537.00	
Current accounts payable	250.00	
Surplus Net Worth	<u>31,135.04</u>	
	<u>\$33,922.04</u>	<u>\$33,922.04</u>

(3)	1932 - \$ 273.85	1936 - \$5,708.88	1940 - \$2,462.72
	1933 - 529.78	1937 - 6,119.92	1941 - 3,758.34
	1934 - 2,715.18	1938 - 6,106.84	1942 - 4,785.15
	1935 - 6,164.80	1939 - 5,513.72	1943 - 1,754.71

(4) Vice-President of Pacific Freight Lines. This company also operates in that territory.

of approximately sixty (\$60) dollars per month. Garden believes he can raise the volume of business and he is willing to invest additional capital should it become necessary. Nevertheless, Garden is buying said businesses on a temporary basis, or as an accommodation purchase, as he intends to resell the operative rights and equipment. He does not, however, propose to make a speculative profit by said resale. The testimony indicates that Pacific Freight Lines desires to purchase said rights and will soon offer to do so. As the latter company is an interstate operator, a direct sale to it could not be consummated within the period specified in the contract⁽⁵⁾ because of the time required to obtain approval of the Interstate Commerce Commission. Pending consummation of a resale, Garden proposes to continue said operations in a satisfactory and businesslike manner.

Robert Garden is 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.

(5)

The said agreement (Exhibit "A") is dated March 31, 1944, and provides for the forfeiture of the \$2,500 deposit in the event of failure to consummate the sale and obtain consent of the California Railroad Commission within ninety (90) days from said date (June 29, 1944). By mutual agreement the expiration date has been extended for a short period.

O R D E R

IT IS ORDERED as follows:

(1) That Frank Caudana and Maurice Lovey, partners, and Frank Caudana, an individual, are hereby authorized to sell and transfer on or before December 31, 1944, and Robert Garden is hereby authorized to purchase and acquire, and hereafter to operate thereunder, the operative rights created by Decision No. 33932, rendered February 18, 1941, as amended by Decision No. 34217, rendered May 20, 1941, in Application No. 23800, in the name of Frank Caudana and Maurice Lovey, as partners, and the operative right acquired by Frank Caudana, an individual, under the authority of the Commission's Decision No. 28128, rendered July 18, 1935, in Application No. 20054, and the equipment described in Exhibit "A" attached to the application herein.

(2) That if Robert Garden acquires the operative rights and property referred to in paragraph (1) of this order, he may charge to Intangible Capital not more than \$300 of the purchase price of the operative rights, the remainder of the payment for such operative rights to be charged to Proprietor's Investment Account.

(3) 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 appropriate tariffs and time tables within 60 days from the effective date hereof and on not less than 5 days' notice to the Commission and the public.

(4) That within 30 days after the transfer of the properties, as herein authorized, Robert Garden shall file with the Railroad Commission a copy of the bill of sale executed under the authority herein granted.

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

Dated at San Francisco, California, this 20th day
of July, 1944.

Justice D. Crocker

Francis D. ...

... ..

COMMISSIONERS