

Decision No. 38414

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
NANCY RAMPONE SARMENTO to sell, and)
CHARLES MASKELL to purchase, an auto-)
mobile freight line operated between)
Sacramento and San Joaquin River)
Delta points and San Francisco and)
Oakland, California.)

ORIGINAL

Application No. 26929

O P I N I O N

This is an application of Nancy Rampone Sarmento and Charles Maskell, the former to sell and the latter to buy, a highway common carrier operative right between Sacramento and San Joaquin River Delta points and San Francisco and Oakland. Involved in the proposed transfer are operative rights, equipment, certain described parcels of real estate with improvements thereon, and furniture and fixtures. The operative rights herein involved were created by the following decisions of the Commission: Decisions Nos. 16521, 19474, 26894, 28313, 30287 and 30317.

The original operative right was granted to Tony Rampone and authorized the transportation of asparagus between Sherman Island and Oakland. Subsequently a half interest in this right was transferred by Tony Rampone to his brother Pete Rampone and the business was conducted under the name of Rampone Bros., as co-partners until the death of Tony Rampone, his interest going to his brother. In the meantime, the scope of the service was enlarged by the inclusion of other commodities to be transported and the addition of alternate routes.

In 1942 Pete Rampone died leaving the business to his widow, Nancy Rampone, who is the applicant herein. She acquired

all of the operative rights and equipment pursuant to a decree of final distribution made and entered by the Superior Court of the State of California on October 27, 1943, and the business was conducted by her under the name of Rampone Bros. A copy of said decree is attached to the application marked Exhibit "A". Attached also to the application is a Bill of Sale and Agreement to Purchase, designated as Exhibit "B", listing the various certificates of public convenience and necessity which are involved in the transfer transaction.

The value of the property to be transferred by the vendor to the vendee is estimated as follows:

	Value as of January 31, 1945
Land	\$ 9,500.00
Buildings and structures	12,000.00
Automotive equipment	116,000.00
Shop and garage equipment	2,074.31
Furniture and fixtures	500.00
Total	<u>\$140,074.31</u>

The consideration involved in the transaction is \$140,000. No value is assigned to the operative rights. The automotive equipment consists of 79 units, mostly tractors and trailers. Operating revenues and expenses for the calendar years 1940 to 1945, inclusive, are shown in the margin.

(1)

Year	Operating Revenue	Operating Expense	Net Operating Revenue
1940	\$176,663.60	\$130,975.95	\$ 45,687.65
1941	220,745.34	187,972.57	32,772.77
1942	268,894.86	254,499.20	14,395.66
1943	298,759.72	276,275.40	22,484.32
1944	330,100.00	309,129.46	20,970.54
1945 (1st 6 mo.)	61,402.03	103,107.86	<u>(41,705.83)*</u>

The operating loss is occasioned by the fact that the traffic handled during the year consists of fresh fruits and vegetables, which, for the most part, move during the second half of the year.

It is alleged in the application that Charles Maskell, the vendee, has, for approximately 23 years last past, operated motor trucks throughout northern and central California in connection with his business operations as a distributor of gasoline and other petroleum products, and for a period of two years he has operated for hire tank trucks as a radial highway common carrier. He plans to continue his business in the distribution of petroleum products entirely separate and apart from the operations which he seeks to acquire herein and which will be conducted under the name of Rampone Bros.

The reasons for the transfer are set out in the application as follows:

"The business of Rampone Bros. was conducted by Pete Rampone until his death. Applicant Nancy Rampone Sarmiento, who is Pete Rampone's widow, took no part in the operation of such business and is not in a position to operate it properly.

"The proper and efficient operation of said business is essential to meet the transportation requirements of producers, dealers and processors of a large volume of fresh fruits and vegetables. A large portion of the fruits and vegetables transported by said business known as Rampone Bros. goes to the armed forces of the United States either in the fresh form, or as canned goods after transportation by Rampone Bros. to various canneries, all of which food is essential to such armed forces. Applicant Charles Maskell is in a position to conduct the operations of said business properly and efficiently. Consequently, the transfer of said business, property, equipment and operating rights to Charles Maskell is in the public interest."

The application alleges that

"...the consideration for the transfer and sale of said business and all of the equipment, facilities, operating rights and other property included in said transfer was the sum of one hundred forty thousand dollars (\$140,000.00), all of which has been paid by applicant Charles Maskell to applicant Nancy Rampone Sarmiento."

The Bill of Sale, accompanying the application, provides that

"Vendees shall take possession of said business as of the 1st day of January, 1945, and continue thereafter to operate the same and in this connection they shall be operating it as the agent of the Vendor until the necessary approval of the Railroad Commission of the State of California ... has been obtained to this transfer."

Upon full consideration we are of the opinion, and so find, that the sale and transfer of operative rights and equipment as proposed is not adverse to the public interest, and the application will be granted. A public hearing is not necessary.

The action taken herein shall not be construed to be a finding of value for any purpose other than the proceeding herein involved.

Charles Maskell 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.

O R D E R

IT IS ORDERED:

(1) That Nancy Rampona Sarmento is hereby authorized to sell and transfer on or before January 15, 1946, and Charles Maskell to acquire, the operative rights and equipment referred to in the

foregoing opinion and thereafter to operate thereunder.

(2) That applicants shall 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, appropriate tariffs and time tables 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.

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

Dated at San Francisco, California, this 20th day of November, 1945.

Howard Rubin
Justus F. Coakley
Bruce D. ...
Joseph ...
Harold P. Hule
 COMMISSIONERS