

Decision No. 39222

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 ALPHONSE PASTERIS, an individual)
 doing business as East Bay Drayage)
 and Warehouse Company, to sell and)
 convey and of J. M. ATTHOWE to pur-)
 chase a motor vehicle freight line)
 operated between San Francisco and)
 Oakland, Berkeley, Alameda, Piedmont,)
 Emeryville, Albany, Fruitvale and)
 Melrose, California, and between)
 Alameda, Albany, Berkeley, Emeryville,)
 Oakland and Piedmont.)

Application
No. 27633

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O P I N I O N

This is an application for an order of the Railroad Commission authorizing Alphonse Pasteris to sell and convey certain highway common carrier operative rights and properties to J. M. Atthowe, and authorizing J. M. Atthowe to execute a chattel mortgage and to issue a note in the principal amount of \$25,000.

The application shows that Alphonse Pasteris, doing business under the name of East Bay Drayage and Warehouse Company, is engaged as a highway common carrier in the transportation of freight between San Francisco and Oakland, Berkeley, Albany, Alameda, Piedmont, Emeryville, Fruitvale and Melrose and between Alameda, Albany, Berkeley, Emeryville, Oakland and Piedmont. He has reported his operating revenues at \$66,178 during 1943, at \$78,517 during 1944, at \$65,372 during 1945 and at \$20,626 during the first five months of 1946, and his net profit before income taxes at \$14,189 during 1943, at \$21,334 during 1944, at \$10,361

during 1945, and at \$1,726 during the first five months of 1946.

It appears that Alphonse Pasteris desires to retire from business and that he has entered into an agreement, dated June 24, 1946, to sell and convey his operative rights and properties to J. M. Atthowe for the sum of \$60,000. A copy of the agreement of sale is on file in this proceeding as Exhibit "A".

The operative rights to be transferred were acquired by Pasteris pursuant to authority granted by the Commission by Decision No. 11957, dated April 24, 1923; Decision No. 21981, dated January 3, 1930; Decision No. 24935, dated June 27, 1932, and Decision No. 29196, dated October 19, 1936. The physical properties include certain real property in Berkeley, together with improvements thereon, three trucks, nine tractors, fifteen trailers, and tools, shop and garage equipment and office furniture and fixtures. The appraised values are set forth in the application as follows:

Land and improvements	\$14,909
Tools and equipment	3,085
Office equipment	1,371
Trucks	2,243
Tractors	12,984
Trailers	16,373
Franchises	6,535
Good-will	<u>2,500</u>
Total	<u>\$60,000</u>

The values assigned to the trucks, tractors and trailers are said to represent the estimates, made by independent appraisers, of the present market value of the particular units of equipment. The \$6,535 assigned as franchise value, appears to represent the price paid by Pasteris of operative rights purchased by him in 1923 from Hull-Werder Company. The \$2,500

claimed for good-will is said to be a token value established for the purpose of sale of the business.

The agreement of sale provides for the payment in cash of \$5,000 of the purchase price upon execution of said agreement and of \$30,000 in cash within ten days after receipt of the approval of the Railroad Commission. The balance of the purchase price, namely \$25,000, will be represented by a note payable in thirty-six equal successive monthly installments with interest at the rate of 4 percent per annum on the unpaid balance, payment to be secured by a chattel mortgage covering the trucks, tractors and trailers.

The Commission has considered this matter and is of the opinion that a public hearing is not necessary and that an order should be entered granting applicants' requests. In making this order the Commission is not making a finding of the value of the rights and properties herein authorized to be transferred. Under the uniform system of accounts prescribed for Class II motor carriers, the portion of the purchase price represented by values assigned to franchises and good-will should be charged to Account 155, Other Intangible Property. Thereafter it should, in our opinion, be written off by charges to income Account 720, Other Income Deductions, over a period of not exceeding four years from the effective date of this order.

J. M. Atthowe 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.

ORDER

Application having been made to the Railroad Commission for an order authorizing the sale of highway common carrier operative rights and properties, the execution of a chattel mortgage and the issue of a note, and the Commission having considered the matter and being of the opinion that the money, property or labor to be procured or paid for through the issue of said note is reasonably required for the purpose specified herein,

IT IS HEREBY ORDERED as follows:

1. Alphonse Pasteris, after the effective date hereof and on or before October 31, 1946, may sell and convey to J. M. Atthowe the operative rights and properties referred to in the preceding opinion, such sale and conveyance to be in accordance with the terms and conditions of the agreement of sale dated June 24, 1946, filed in this proceeding as Exhibit "A".

2. J. M. Atthowe, after the effective date hereof and on or before October 31, 1946, may execute a chattel mortgage and issue a note in the principal amount of \$25,000 in, or substantially in, the same form as the chattel mortgage and note attached to said Exhibit "A" in this proceeding, for the purpose of financing in part the purchase price of the properties herein authorized to be transferred.

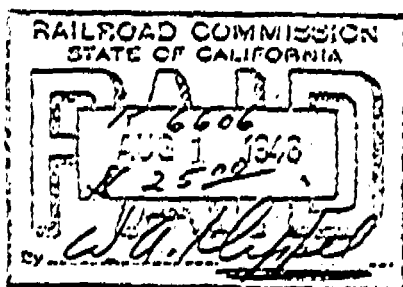
3. Applicants shall comply with the provisions of General Order No. 80 and Part IV of General Order No. 93-A by filing, in triplicate, and concurrently making effective, appropriate tariffs and time tables within sixty (60) days from the effective date hereof and on not less than one (1) day's notice to the Commission and to the public.

4. The authority herein granted will become effective when J. M. Atthowe has paid the fee prescribed by Section 57 of the Public Utilities Act, which fee is Twenty-five (\$25.00) Dollars.

5. Within thirty (30) days after the issue of the note herein authorized, J. M. Atthowe shall file with the Commission a report as required by the Commission's General Order No. 24-A and a copy of the journal entries used to record the acquisition of the properties on his books of account, which entries shall be in line with the comments in the foregoing opinion.

6. J. M. Atthowe shall amortize the \$9,035.00 charged to his accounts as franchises and good-will by charges to income Account 720, Other Income Deductions, over a period of four (4) years after the effective date of this order.

Dated at San Francisco, California, this 30th day of July, 1946.



David Culham
Justus F. Craven
Frank W. Clark
Robert H. Knepp
Harold P. Hula
 Commissioners