

ORIGINAL

Decision No. 43108

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
WAYNE WHITE, an individual to sell,) Application No. 30407
and CHARLES W. SCHENK, an individual)
to purchase certain certificate rights.)

O P I N I O N

In this proceeding, Wayne White seeks authority to sell and transfer to Charles W. Schenk, and the latter proposes to purchase and acquire from the former, a passenger stage operative right, together with the equipment and other property used in providing the service.

Under this operative right, White may engage in the transportation of passengers, baggage and express, as a passenger stage corporation, between Chico and Stirling City and intermediate points, including Magalia and Paradise - all situated in Butte County. The certificate authorizing this operation was granted originally to White's predecessor by Decision No. 5704, dated August 26, 1918. Following successive transfers, the operation was acquired by White pursuant to Decision No. 41239, rendered February 24, 1948, in Application No. 29035. In addition to the operative right, Schenk also would acquire certain equipment consisting of one 1937-Twin-Coach bus and one 1943-Dodge bus, as well as various tools and supplies.

The agreement between the parties is evidenced by the escrow instructions, directed to the Paradise Branch of Bank of America (National Trust and Savings Association), which they signed on May 9, 1949. These instructions contemplate the sale of the

operative right and property described, by White to Schenk, in consideration of the payment by the latter of \$9,000 as the purchase price, of which the sum of \$1,000 was deposited with the escrow holder when the instructions were signed, and the balance of \$8,000 will become payable upon the Commission's approval of the transfer.

White, it is stated, has acquired an interest in a business situated in Los Angeles to which he desires to devote his entire time and attention. Since acquiring the line, sought to be transferred, he continuously has operated over the certificated route without interruption, it is alleged. The application indicates that this operation has been conducted profitably.

Schenk, it appears, has had considerable experience in the transportation business. In 1944 he was employed as the operating manager of a taxicab business, located at Southgate, California. Since March, 1945, he has been engaged in, or connected with, a service devoted to the transportation of automobile parts and related articles between Los Angeles and nearby points. In August, 1946, a certificate authorizing such a service was issued to Schenk individually, which subsequently was transferred to Auto Parts Delivery, Inc., a corporation, of which he is president and general manager. Schenk will retain his Southern California

(1) Schenk was authorized to conduct the operation, described above, as a highway common carrier, by Decision No. 39312, rendered August 13, 1946, in Application No. 26933. Thereafter the business was incorporated and the operating properties were transferred to Auto Parts Delivery, Inc., pursuant to Decision No. 40433 rendered June 24, 1947, in Application No. 28513. Prior to January, 1947, when operation under the certificate was commenced, Schenk had operated under permits issued by the Commission.

operations. However, he plans to devote his personal time and attention to the development of the passenger stage service which he now proposes to acquire. A statement accompanying the application indicates that he is financially qualified to carry on this operation.

It appears that public interest would not be adversely affected by approval of the transfer of the operative right and property described above. The application, accordingly, will be granted. This is not a matter requiring a public hearing. The action taken herein shall not be construed to be a finding of value of the properties herein authorized to be transferred.

Charles W. Schenk 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

Application as above entitled having been filed, the matter having been considered, and the Commission being now fully advised,

IT IS ORDERED:

(1) That Wayne White be, and he is hereby, authorized

to sell and transfer to Charles W. Schenk, on or before August 15, 1949, and the latter is hereby authorized to purchase and acquire from the former, the operative right and property described in the foregoing opinion; and said Charles W. Schenk is hereby authorized to operate pursuant to said operative right.

(2) That within 30 days after consummation of the transfer herein authorized, said Charles W. Schenk shall notify the Commission in writing of that fact, and within said period shall file with the Commission a true copy of any bill of sale or other instrument which may be executed to effect said transfer.

(3) That after the effective date hereof, and or before August 15, 1949, applicants shall severally comply with the provisions of General Orders Nos. 79 and 93-A, by filing in triplicate and concurrently making effective appropriate tariffs and time tables, on not less than 3 days' notice to the Commission and the public.

The effective date of this order shall be 20 days after the date hereof.

Dated at San Francisco, California, this 6th day of July, 1949.

A. Z. Johnson

Joseph F. Russell

Harold P. Kider

Wesley H. Potter
COMMISSIONERS