

Decision No. 28310

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of  
HIGHWAY TRANSPORT COMPANY,  
a corporation, to sell, and Joseph  
Robertson and Elmer J. Brown to  
purchase an automobile freight line  
between San Francisco on the one  
hand, and Soledad, Pacific Grove,  
Hollister and intermediate points  
on the other hand.

Application No. 20181

ORIGINAL

In the Matter of the Application of  
HIGWAY TRANSPORT, INC.,  
a corporation, for an order auth-  
orizing issue of three hundred and  
fifty(350) shares of said corporation.

Application No. 20182

R. M. Wright, for Highway Transport Company.  
Jacobs, Blanckenburg & May, by C. B. Blanckenburg, and  
A. L. May, for Joseph Robertson and Elmer J. Brown,  
and Highway Transport, Inc.

BY THE COMMISSION:

## O P I N I O N

In these proceedings the Railroad Commission is asked to make its orders authorizing Highway Transport Company, a corporation, to transfer operating rights and certain truck equipment and other properties to Highway Transport, Inc., a corporation, and authorizing Highway Transport, Inc. to issue 350 shares of its capital stock of the aggregate par value of \$35,000.

It appears that Highway Transport Company is engaged in the business of transporting property by auto trucks between San Francisco, San Jose, Soledad, Pacific Grove, Hollister and intermediate points, operating pursuant to authority granted by Decision No. 15328, dated August 24, 1925, in Application No. 10932. (Vol. 26, Opinions and Orders of the Railroad Commission of California, page 942.)

The record indicates that those in control of the affairs of the corporation desire to retire from the operations and to that end have caused the corporation to enter into an agreement, dated September 9, 1935 (Exhibit "A" in Application No. 20181) granting an option providing for the sale of the operating rights, good will, right to use a firm style or corporate name similar to Highway Transport Company and automotive equipment, to Joseph Robertson and Elmer J. Brown for the sum of \$28,800. payable in the amount of \$600. upon the signing of the agreement, \$1,000. upon the exercise of the option, \$6,500. upon delivery of the bill of sale and \$20,700. in twenty-four equal monthly installments thereafter to be evidenced by promissory notes to be issued by Joseph Robertson and Elmer J. Brown.

It appears that the option has been exercised and that Joseph Robertson and Elmer J. Brown have nominated Highway Transport, Inc., a new corporation, to take delivery of the properties to be transferred, under the agreement, by Highway Transport Company.

The new corporation proposes to issue \$28,800. par value of its common capital stock in payment for the properties to be acquired by it and to sell, in addition, \$6,200. par value of stock at par for cash to provide working capital. It is of record that Highway Transport, Inc. will acquire the properties referred to free and clear of all liens, indebtedness and other encumbrances, and that Messrs. Robertson and Brown will retain the responsibility of completing the payment of the \$20,700. of notes they propose to issue. The new corporation will not assume the payment of these notes.

The applications, particularly Exhibit "1" filed at the hearing, show that the physical properties include twenty-six trucks, seventeen trailers, two Ford donkeys and one two-wheeled dolly. The testimony given in support of the two applications indicates that for the purpose of the transfer outlined herein the proposed issue by

the new corporation of \$28,800. of stock is not unreasonable. In making the order herein, however, we wish to place Highway Transport, Inc., upon notice that certificates of public convenience and necessity granting operating rights do not constitute a class of property which should be capitalized or used as an element of value in determining reasonable rates. 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 in the number of rights which may be given.

#### O R D E R

Applications having been made to the Railroad Commission for authority to transfer automotive operating rights and properties and to issue stock, a public hearing having been held before Examiner Fankhauser and the Railroad Commission being of the opinion that the applications should be granted, as herein provided, and that the money, property or labor to be procured or paid for through the issue of the stock herein authorized is reasonably required for the purposes specified herein, which purposes are not, in whole or in part, reasonably chargeable to operating expenses or to income,

IT IS HEREBY ORDERED that Highway Transport Company, a corporation, be, and it hereby is, authorized to transfer to Highway Transport, Inc., a corporation, the certificate of public convenience and necessity heretofore granted to it by Decision No. 15328 dated August 24, 1925, and the properties referred to in the agreement filed as Exhibit "A" in Application No. 20181, as amended by the revised schedule of equipment filed as Exhibit "1" at the hearing.

IT IS HEREBY FURTHER ORDERED that Highway Transport, Inc. be, and it hereby is, authorized to issue, on or before December 31, 1935, not exceeding \$35,000. par value of its common capital stock, and to deliver not exceeding \$28,800. thereof in full payment for the properties herein authorized to be transferred to it, such transfer to be made free and clear of liens and indebtedness, and to sell the remaining \$6,200. thereof at par for cash for the purpose of providing working capital.

IT IS HEREBY FURTHER ORDERED that the authority herein granted is subject to the following conditions:-

1. Highway Transport Company and Highway Transport, Inc. shall join immediately in common supplement to be filed in triplicate, to the tariffs on file with the Commission in the name of the transferrer, Highway Transport Company on the one hand withdrawing and Highway Transport, Inc. on the other hand accepting and establishing such tariffs and all effective supplements thereto.
2. Highway Transport Company shall withdraw immediately time schedules filed in its name with the Railroad Commission and Highway Transport, Inc. shall file, in duplicate, in its own name, new time schedules which shall be identical with those now on file in the name of Highway Transport Company, or time schedules satisfactory to the Commission.
3. The rights and privileges herein authorized to be transferred may not hereafter be sold, leased, transferred nor assigned, nor service thereunder discontinued, increased or changed by Highway Transport, Inc. unless the written consent of the Railroad Commission has first been secured.

4. No vehicle may be operated by Highway Transport, Inc. under the authority granted, unless such vehicle is owned by said applicant or is leased by it under a contract or agreement on a basis satisfactory to the Railroad Commission.
5. Highway Transport, Inc. shall keep such record of the issue of the stock herein authorized as will enable it to file, within thirty (30) days thereafter, a verified report, as required by the Railroad Commission's General Order No. 24, which order, insofar as applicable, is made a part of this order.
6. The authority herein granted will become effective upon the date hereof.

DATED at San Francisco, California, this 4th day of November, 1935.

John A. White  
M. G. Carr  
M. B. Harris  
W. H. Harrison  
W. R. Kelly  
COMMISSIONERS.