

Decision No. 31216

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Arthur E. Travis and R.M.Travis, individuals, doing business under the firm name and style of Liberty Van Lines, and Western Van & Storage Co., A.E.Maultby, an individual, doing business under the firm name and style of Senator Transfer, to sell, and Western Van & Storage Company, a corporation, to purchase certain operative rights, automotive equipment and other assets, and the application of Western Van & Storage Company, a corporation, to issue its stock in payment thereof.

ORIGINAL

Application No. 22109

Burl D. Lack, for applicants.
A. D. Allen, for Bekins Van and Storage,
an interested party.

BY THE COMMISSION:

O P I N I O N

This is an application for an order authorizing Arthur E, Travis and R.M.Travis, individuals doing business under the firm names and style of Liberty Van Lines and Western Van & Storage Co., and A.E.Maultby, an individual doing business under the firm name and style of Senator Transfer, to sell and transfer their operative rights, rolling equipment and other assets, subject to outstanding liabilities and obligations, to Western Van & Storage Company, a recently organized corporation, and authorizing Western Van & Storage Company to issue in payment therefor \$15,000. par value of its common capital stock or so much thereof as may be authorized by this Commission.

Arthur E. Travis and R.M.Travis are engaged in the business of public warehousing in Sacramento and in the general local and long distance hauling of new furniture and household goods between various

points in the State of California as hereinafter set forth. Said applicants now hold a city carrier permit No. 34-69, for the City of Sacramento, dated December 6, 1935, a radial carrier permit, No. 34-68, dated November 20, 1935, and operative rights, acquired pursuant to authority granted by Decision No. 28914, dated June 22, 1936, providing for the automotive transportation as a highway common carrier of household goods, furniture, pianos and similar personal effects, including trunks and baggage over routes and between terminals named and intermediate points as follows:-

Sacramento to San Francisco and Oakland via Vallejo
Sacramento to Redding via Woodland
Sacramento to Redding via Marysville
Sacramento to Nevada City and Colfax via Auburn
Sacramento to Placerville
Sacramento to San Francisco via Rio Vista
Sacramento to Fresno

The operating rights were created by Decision No. 13775, dated July 3, 1924, as amended by Decision No. 13902, dated August 8, 1924, in Application No. 9727, and by Decision No. 17916, dated July 18, 1927, in Application No. 11777 and are of course subject to the terms and conditions set out in those decisions. The rights originally were granted to Sarah S. Burger, but were transferred by her to the present owners, applicants herein, under the authority granted by said Decision No. 28914, dated June 22, 1936.

For the year ending December 31, 1937 Arthur E. Travis and R.M.Travis report from their automotive operations gross revenues of \$1,243.97 and net profit of \$156.40, and from their storage, draying and incidental operations, gross revenues of \$14,678.71 and net profit of \$4,777.61.

A. E. Maultby is engaged in the general transfer business in Sacramento. He now holds no permits from this Commission and has not been required to file annual financial reports of his operations.

Arthur E. Travis and R. M. Travis and A.E.Maultby have concluded that their business^{es} can be conducted more advantageously under one ownership by a corporate organization and they therefore have caused the formation of Western Van & Storage Company, one of the applicants herein, and propose and have made arrangements to sell and transfer to it their rights, properties and assets. The corporation was organized under the laws of the State of California on or about May 26, 1938 with an authorized capital stock of 2500 shares of the par value of \$10.00 each, all common.

A copy of the agreement of sale and transfer between the several parties, dated May 26, 1938, has been filed in this proceeding as Exhibit E. Under its terms the sellers agree to sell, transfer and assign to the new corporation all of the goodwill and assets of their businesses, subject to all liabilities and obligations thereof as of April 1, 1938, "in exchange for Fifteen Hundred (1500) shares of capital stock of second party (or so much thereof as is authorized by the Railroad Commission to be issued in pursuance of this application) of the par value of Ten (\$10.) Dollars per share and of the aggregate par value of Fifteen Thousand (\$15,000.) Dollars (or an aggregate par value equal to the number of shares authorized to be issued multiplied by Ten.)" In addition the corporation agrees to assume and discharge all liabilities of the sellers.

As of April 1, 1938, the date specified in the agreement of sale and transfer, applicants report the assets and liabilities of the sellers as follows:-

<u>ASSETS</u>	<u>TRAVIS</u>	<u>MAULTBY</u>	<u>TOTAL</u>
Warehouse and office equipment	\$1,000.00	\$ 100.00	\$1,100.00
Trucks	2,540.00	900.00	3,440.00
Cash	960.00	-	960.00
Notes receivable	745.02	644.30	1,389.32
Goodwill	2,500.00	1,000.00	3,500.00
Liberty franchise	5,000.00	-	5,000.00
Total	<u>\$12,745.02</u>	<u>\$2,644.30</u>	<u>\$ 15,389.32</u>

<u>LIABILITIES</u>	<u>TRAVIS</u>	<u>MAULTBY</u>	<u>TOTAL</u>
Notes payable	\$ 745.02	\$ 644.30	\$ 1,389.32
Net worth	12,000.00	2,000.00	14,000.00
Total	<u>\$12,745.02</u>	<u>\$2,644.30</u>	<u>\$15,389.32</u>

It is of record that subsequent to April first applicants paid the note of A.E.Maultby in the amount of \$644.30. Moreover, a 1936 Dodge truck carried on the balance sheet at \$900. was turned in as part payment on an International Semi-Trailer Van costing about \$3,000. There is approximately \$1,640. due on this truck.

Applicants have assigned a value of \$5,000. to the certificate of public convenience and necessity acquired by Arthur E.Travis and R.M.Travis under the authority granted by Decision No. 28914 dated June 22, 1936. In this connection the attention of applicants is directed to Section 52 (b) of the Public Utilities Act which provides, among other things, that the Commission shall have no power to authorize the capitalization of any franchise or permit whatsoever or the right to own, operate or enjoy any such franchise or permit, in excess of the amount actually paid to the State or to a political subdivision thereof as the consideration for the grant of such franchise, permit or right. Further, the Commission stated in its Decision No. 28914, referred to above, that operative rights do not constitute a class of property which should be capitalized or used as an element of value in determining reasonable rates.

The testimony shows that about \$1,100. was expended in connection with proceedings before the Commission involving the certificate of public convenience and necessity which the present owners thereof desire to transfer to Western Van & Storage Company. This amount, though it includes legal fees and witness fees, we will recognize for the purpose of the issue of stock.

The record does not warrant us to authorize the issue of any stock against the \$3,500. reported as "Goodwill".

After considering the record in this proceeding we believe that Western Van & Storage Company should not issue more than \$8,050. of stock in payment for the properties it intends to acquire from Arthur E. Travis, R. M. Travis and A.E.Maultby and assume their liabilities incident to the properties acquired by it.

In making the order we wish to place the purchaser upon notice that operating rights do not constitute a class of property to 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 to the number of rights which may be given.

The city carrier permit and the radial carrier permit now held by the sellers are not transferable and it will be necessary, if the new corporation desires to continue such operations, for it to file in its own name requests for similar permits.

Inasmuch as A.E.Maultby is not now operating under the jurisdiction of the Commission he may transfer his properties without permission from the Commission. So far as the transfer of properties is concerned this order, accordingly, will be limited^{to}/authorizing the transfer of the rights and properties of Arthur E. Travis and R.M.Travis.

O R D E R

Application having been made to the Railroad Commission for an order authorizing the transfer of operative rights and properties and the issue of stock, a public hearing having been held by Examiner

Fankhauser and the Commission having considered the matter and it being of the opinion that the application should be granted only as herein provided, and that the money, property or labor to be procured or paid for through the issue of \$8,050. of stock is reasonably required for the purpose specified herein, which purpose is not, in whole or in part, reasonably chargeable to operating expenses or to income,

IT IS HEREBY ORDERED that Arthur E. Travis and R.M.Travis, doing business under the firm name and style of Liberty Van Lines and Western Van & Storage Co., be, and they hereby are, authorized to sell and transfer on or before December 31, 1938 to Western Van & Storage Company, a corporation, the operative rights heretofore acquired by them pursuant to authority granted by Decision No. 28914, dated June 22, 1936, and their physical properties referred to in the foregoing opinion, such sale and transfer to be made in accordance with the terms and conditions of the agreement dated May 26, 1938 filed in this proceeding as Exhibit F.

IT IS HEREBY FURTHER ORDERED that Western Van & Storage Company, a corporation, be, and it hereby is, authorized to issue on or before December 31, 1938 not exceeding \$8,050. par value of its common capital stock and to assume the payment of indebtedness in payment for the properties of Arthur E. Travis and R.M.Travis and A.E.Maultby to be acquired, pursuant to said agreement.

The authority herein granted is subject to the following conditions:-

1. Arthur E. Travis and R.M.Travis and Western Van & Storage Company within twenty(20) days after the effective date of this order, shall join in common supplement to the tariffs now on file with the Railroad Commission covering the warehouse and automotive transporta-

tion service now given by the former, said Arthur E. Travis and R.M. Travis on the one hand withdrawing and said Western Van & Storage Company on the other hand adopting and establishing as its own such tariffs and all effective supplements thereto.

2. The rights and privileges herein authorized to be transferred may not be discontinued, sold, leased nor assigned hereafter, unless the written consent of the Railroad Commission to such action has first been secured.

3. No vehicle may be operated by Western Van & Storage Company unless such vehicle is owned by it or is leased by it under a contract or agreement on a basis satisfactory to the Railroad Commission.

4. Arthur E. Travis and R.M.Travis shall within twenty(20) days after the effective date of this order, withdraw all time schedules filed in their names with the Railroad Commission and Western Van & Storage Company shall, within twenty(20) days after the effective date of this order, file in duplicate in its own name, time schedules covering service heretofore given by Arthur E. Travis and R.M.Travis, which time schedules shall be identical with the time schedules now on file with the Commission, or time schedules satisfactory to the Commission.

5. The consideration to be paid for the properties herein authorized to be transferred shall never be urged before this Commission as a measure of the value of said property for rate fixing purposes.

6. The authority herein granted to sell and transfer properties shall lapse and be void if the parties hereto shall not have complied with all the conditions within the periods of time fixed herein, unless for good cause shown, the time shall be extended by

further order of the Commission.

7. Western Van & Storage Company shall, prior to the commencement of service authorized herein and continuously thereafter comply with all of the provisions of this Commission's General Order No. 91.

8. Western Van & Storage Company shall file with the Commission within thirty (30) days after the issue of the stock herein authorized, a verified report as required by the Railroad Commission's General Order No. 24-A, which order insofar as applicable, is made a part of this order.

IT IS HEREBY FURTHER ORDERED that the authority herein granted will become effective upon the date hereof.

DATED at San Francisco, California, this 22nd day of August, 1938.

Ray DeWahne
Leon Swickell
Frank Adams

Commissioners