

Decision No. 22244

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application
of JOHN O. ERNST to transfer to
ERNST TRUCKING CO., INC. a California
corporation, certificate of public
convenience and necessity for opera-
tion of motor trucks, and to issue stock
therefor.

Application No. 22887

BY THE COMMISSION:

ORIGINAL

OPINION

By the application in this matter, John O. Ernst seeks authority to transfer to Ernst Trucking Company, Inc., a corporation, and the latter requests permission to acquire from the former the operative right created by the certificate of public convenience and necessity granted by Decision No. 8505, on Application No. 6187, dated January 3, 1921, together with the equipment and the good will of the transportation business conducted by Ernst. The applicant Ernst Trucking Company, Inc. in turn seeks authority to issue to Ernst certain shares of its capital stock.

By Decision No. 8505, a certificate was granted to Ernst authorizing him to operate an automobile truck line as a common carrier of certain commodities, viz: drugs and drug sundries and bicycles and motorcycles and accessories and supplies, between Los Angeles and Long Beach. This decision expressly provided that service could not be performed between Los Angeles and intermediate points, the authorization thereby granted being limited to a through service between the communities of Los Angeles and Long Beach.

Ernst Trucking Company, Inc. is a corporation organized under the laws of the State of California. It has an authorized stock issue of 1,000 shares without par value. It desires permission to issue 100 shares of such stock to John O. Ernst in payment for the four trucks described in Exhibit B filed in this proceeding, the certificate of public convenience and necessity, referred to in this opinion, and the good will of his business.

It appears that John O. Ernst has been engaged for a number of years in the operation of motor trucks for the transportation of property as a common carrier between Los Angeles and Long Beach. For 1937 he reported to the Commission operating revenues of \$16,637.87 and for 1938, \$17,261.06.

This appears to be a matter in which no public hearing is required; in our opinion the application should be granted.

Ernst Trucking Company, Inc. is hereby placed upon notice 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. 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

The Commission having considered the above-entitled application and being of the opinion that it should be granted, and good cause appearing,

IT IS HEREBY ORDERED that John O. Ernst be and he is hereby authorized to transfer and convey unto Ernst Trucking Company, Inc., a corporation, the operative right created by the certificate of public convenience and necessity granted to John O. Ernst by Decision No. 8505, on Application No. 6187, dated January 3, 1921, authorizing said John O. Ernst to transport certain commodities between certain points therein described, as a common carrier by motor truck.

IT IS HEREBY FURTHER ORDERED that said John O. Ernst be and he is hereby authorized to transfer and convey unto said Ernst Trucking Company, Inc. all of the motor vehicle equipment owned and used by said John O. Ernst in the operation of said transportation service conducted by him under said certificate of public convenience and necessity, more specifically described in Exhibit B annexed to and made a part of the application filed herein.

IT IS HEREBY FURTHER ORDERED, that Ernst Trucking Company, Inc., be, and it is hereby authorized to issue, on or before November 1, 1939, to John O. Ernst, 100 shares of its no par value common capital stock in full payment for the properties which he is, by this order, authorized to transfer to said Ernst Trucking Co., Inc.; said stock is reasonably required for the purpose for which it is authorized and is not authorized for the purpose of paying operating expenses.

IT IS HEREBY FURTHER ORDERED, that Ernst Trucking Company, Inc. shall, within thirty (30) days after the issue of said stock, file with the Railroad Commission a report showing the number of shares of stock issued under the authority herein granted, the consideration which it received for the issue of said stock and to whom said stock was issued.

Said authority is hereby granted subject to the following conditions:

1. The consideration to be paid for the property herein authorized to be transferred shall never be urged before this Commission, or any other rate fixing body, as a measure of value of said property for rate fixing, or for any purpose other than the transfer herein authorized.
2. Applicant John O. Ernst shall within twenty (20) days after the effective date of the order herein unite with applicant Ernst Trucking Company, Inc. in common supplement to the tariffs on file with the Commission, governing service given under the certificate herein authorized to be transferred, applicant John O. Ernst withdrawing and applicant Ernst Trucking Company, Inc. accepting and establishing such tariffs and all effective supplements thereto.
3. Applicant John O. Ernst shall within twenty (20) days after the effective date of the order herein withdraw all time schedules filed in his name with the Railroad Commission and applicant Ernst Trucking Company, Inc. shall within twenty (20) days after the effective date of the order herein file, in duplicate, in its own name time schedules covering service heretofore given by applicant John O. Ernst which time schedules shall be identical with the time schedules now on file with the Railroad Commission, in the name of applicant John O. Ernst or time schedules satisfactory to the Railroad Commission.
4. The rights and privileges herein authorized may not be sold, leased, transferred nor assigned, nor service thereunder discontinued, unless the written consent of the Railroad Commission to such sale, lease, transfer, assignment or discontinuance has first been obtained.
5. No vehicle may be operated by applicant Ernst Trucking Company, Inc. 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.
6. The authority herein granted to sell and transfer the rights and/or property 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. Applicant 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.

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

Dated at San Francisco, California, this 12th day of August, 1939.

Ray W. A. [unclear]
Frank [unclear]

[unclear]
Justus D. Coe
COMMISSIONERS