

Decision No. 37164

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)  
VINCENT J. PHILIPPI to sell and )  
LEON R. MEEKS to purchase motor ) Application No. 26089  
freight line. )

BY THE COMMISSION:

O P I N I O N

Vincent J. Philippi, by application filed April 7, 1944 requests authority to sell to Leon R. Meeks his operative rights for the transportation of milk, cream and dairy products in general between Los Angeles and nearby communities including, among others San Bernardino and points in the Pomona valley district, and also to sell to said Leon R. Meeks certain automotive equipment. The latter seeks authority to purchase said rights and equipment and, by amended application filed May 17, 1944, to issue his promissory note for eighteen thousand (\$18,000) dollars and encumber, by mortgage of chattels, the same and additional automotive equipment.

The operative rights proposed to be transferred were created by the Commission's Decision No. 22428, dated May 13, 1930, on Application No. 16174, as amended by Decision No. 31434, dated November 5, 1938, on Application No. 22233. Through successive transfers, said operative rights were eventually acquired by Vincent J. Philippi under authority of Decision No. 35109, dated March 10, 1942, on Application No. 24772.

Leon R. Meeks is now operating as a highway common carrier for the transportation of milk, cream, dairy products and supplies, between Los Angeles, Pasadena, El Monte and San

Bernardino, on the one hand, and Riverside, Colton, and other points, on the other hand. <sup>(1)</sup> It is proposed to consolidate both rights and operate them as one. It is alleged that the operation of the two businesses under one ownership will result in economies due to the centralization of headquarters, and elimination of dual services in the same areas. It is believed that a more efficient service will be rendered.

The equipment proposed to be transferred consists of fourteen trucks and trailers, as more particularly described in Exhibit "A" of the application, valued by the owner at eighteen thousand (\$18,000) dollars. A Commission engineer has inspected the equipment and believes it to be fairly valued. The purchase price of said automotive equipment and operative rights is twenty thousand (\$20,000) dollars which sum includes two thousand (\$2,000) dollars for the rights.

The financial condition of Leon R. Meeks as of March 31, 1944 was as follows: tangible assets, \$39,874.19; liabilities, \$2,174.92; depreciation reserve, \$6,988.92; leaving a net worth of \$30,710.35. Included in the assets was real estate of an alleged value of \$17,000 not used in his transportation business. For the three months ending March 31, 1944, Leon R. Meeks reported a net operating profit of \$1,801.78. The business proposed to be purchased from Vincent J. Philippi, from approximately November,

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(1) Meek's present rights were created by Decision No. 23290, dated January 19, 1931, on Application No. 16692, and through successive transfers were finally acquired by him under authority of Decision No. 36704, dated November 9, 1943, on Application No. 25853.

(2)  
1941 to March 1944, has shown a monthly net operating income of approximately one thousand (\$1,000) dollars, according to statements filed in support of this application.

The purchase price is payable in cash. To place himself in a position to make such payment, Leon R. Meeks proposes to borrow eighteen thousand (\$18,000) dollars from the First National Bank of Ontario, California. He asks permission to issue to the bank his promissory note for eighteen thousand (\$18,000) dollars. The principal of the note is payable at the rate of seven hundred fifty (\$750) dollars a month with a payment of three thousand (\$3,000) dollars on or before July 1, 1944. The note bears interest at the rate of 6 per cent per annum, payable monthly. The payment of the note will be secured by a mortgage of chattels which will be a lien on two tractors, four truck tractors, seven trucks, twelve trailers, and one semi-trailer. A copy of the note and a copy of the mortgage are attached to the amended application.

Section 52 of the Public Utilities Act reads, in part, as follows:

"The Commission shall have no power to authorize the capitalization of the right to be a corporation, or 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 (exclusive of any tax or annual charge) actually paid to the State or to a political subdivision thereof as the consideration for the grant of such franchise, permit or right. ...."

As required by law, two hundred fifty (\$250) dollars in filing fees have been paid for filing applications in connection

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(2) Decision No. 34705, dated October 28, 1941 authorized the transfer of certain equipment and operative rights from California Milk Transport, Inc., a corporation, to Vincent J. Philippi and Mario Pastrone, a partnership, doing business as Pomona Valley Milk Transport, and Decision No. 35109, dated March 10, 1942, authorized the transfer of the partnership property and rights from the said partnership to Vincent J. Philippi.

with operative rights involved herein. If Leon R. Meeks acquires said operative rights and pays therefor the sum of two thousand (\$2,000) dollars, he may charge to intangible capital not more than two hundred fifty (\$250) dollars of said two thousand (\$2,000) dollars. The remainder should be charged to Proprietor's Investment account.

After full consideration of this matter, the Commission is of the opinion and finds that the proposed transfer and encumbrance is in the public interest; that the issue of the note herein authorized is reasonably necessary to enable Leon R. Meeks to acquire said automotive equipment; that a public hearing is not necessary, and that this application should be granted.

Leon R. Meeks is 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 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

IT IS ORDERED:

(1) That Vincent J. Philippi be, and he is hereby authorized to transfer to Leon R. Meeks the operative rights acquired under authority of Decision No. 35109 and the automotive equipment referred to in the foregoing opinion, and that

Leon R. Meeks be, and he is hereby authorized to purchase and acquire said equipment and rights and that said rights shall be operated as an extension and part of the operative rights heretofore acquired by him in Decision No. 36704, dated November 9, 1943, on Application No. 25853.

(2) That Leon R. Meeks be, and he is hereby, authorized to issue, after the effective date hereof and on or before October 1, 1944, at not less than the face value thereof, his promissory note for the sum of eighteen thousand (\$18,000) dollars for the purpose of purchasing automotive equipment, and to execute as security for the payment of said note, a mortgage of chattels, said note and mortgage of chattels to be in substantially the same form as the mortgage of chattels attached to the amended application filed May 17, 1944.

(3) That within thirty (30) days after the execution of said promissory note and mortgage of chattels, Leon R. Meeks shall file with the Railroad Commission a true and complete copy of said promissory note and mortgage of chattels, together with a statement showing the purpose for which said eighteen thousand (\$18,000) dollars was expended by him.

(4) That if Leon R. Meeks acquires the operative rights and property referred to in paragraph (1) of this Order, he may charge to Intangible Capital account not more than two hundred fifty (\$250) dollars of the purchase price of the operative rights, the remainder of the payment for such operative rights is to be charged to Proprietor's Investment account.

(5) That the action taken herein shall not be construed to be a finding of value for any purpose other than the proceeding herein involved.

(6) That Leon R. Meeks shall comply with the rules of the Commission's 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 five (5) days' notice to the Commission and the public.

(7) That the authority herein granted will become effective when Leon R. Meeks has paid the minimum fee prescribed by Section 57 of the Public Utilities Act, which minimum fee is twenty-five (\$25) dollars.

Dated at San Francisco, California, this 27<sup>th</sup> day of June, 1944.

Richard Backe  
Justus F. Gaenen

Franklin

Justus F. Gaenen  
COMMISSIONERS

