

Decision No. 37281

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
C. H. MCCARTY to sell and D. GARIBALDI)
JR., J. GARIBALDI, V. GARIBALDI and BUD)
G. HOOD, copartners doing business as)
C. H. MCCARTY TRUCKING CO. to purchase)
a certificate of public convenience and)
necessity authorizing operations as a)
highway common carrier.)

ORIGINAL

Application No. 26019

BY THE COMMISSION:

O P I N I O N

In this application, C. H. McCarty asks permission to sell his operative rights to D. Garibaldi, Jr., J. Garibaldi, V. Garibaldi and Bud G. Hood, in accordance with an agreement entered into between the parties providing for the sale of the assets of the trucking business heretofore operated by applicant C. H. McCarty. A copy of the agreement is filed in this application as Exhibit "A." The purchasers intend to continue the trucking business under a partnership form of organization and operate under the name of the C. H. McCarty Trucking Company.

The agreement to which reference has been made is dated September 30, 1943. It provides that no consideration is being paid to or received by C. H. McCarty for his operative rights and that his failure to transfer the same does not affect the agreement or any documents referred to therein, nor the obligations of the purchasers. The purchasers have agreed to pay C. H. McCarty \$95,000 for his trucking business and properties. The properties, aside from the operative rights, consist of Lots 109, 110, 111, 112, 113 and 114 of Tract No. 2818, city of and county of Los Angeles, as per map recorded in Book 31, page 7 of Maps, in the office of the County Recorder of said

county, buildings and improvements, four heavy-duty trucks, six trailers, machinery, shop and office equipment.

A Commission engineer has examined the tangible properties and reports that they have a present value of \$94,350. The books of C. H. McCarty show that the tangible properties cost \$99,751.50, and further show a depreciation reserve of \$38,381.18. The difference between the purchase price and the depreciated cost of the properties as shown by the books of the seller should, as properties are retired or earlier, be charged to the net profit from the operation of the properties and not included in operating expenses.

Of the purchase price \$27,500 is payable in cash, while \$67,500 is represented by a note secured by a deed of trust and chattel mortgage. The note is dated September 30, 1943. By its terms it is payable as follows:

In installments as herein stated, for value received, each of the undersigned promises to pay to C. H. McCarty and Ella M. McCarty, each as to an undivided one-half interest, as the sole and separate property of each of them, at San Pedro, California, the sum of Sixty-Seven Thousand Five Hundred and no/100 Dollars, (\$67,500.00) with interest on the sum of Twenty-Five Hundred Dollars (\$2,500.00) from date at the rate of two (2) per cent per annum, payable on the 5th day of January, 1944, and with interest on the sum of Sixty-Five Thousand Dollars (\$65,000.00) from date, and on the unpaid balances thereof, at the rate of five (5) per cent per annum, payable monthly beginning on the 15th day of February, 1944, and on the 15th day of each month thereafter; Principal payable in installments of Five Thousand Five Hundred Dollars (\$5,500.00) on the 5th day of January, 1944, and the balance of said principal payable in installments of One Thousand Dollars (\$1,000.00), on the 15th day of each month, beginning on the 15th day of February, 1944, and continuing until said principal and interest have been paid, hereby reserving the right to pay the sum of Two Thousand Five Hundred Dollars (\$2,500.00) during any month hereunder on and after the 15th day of February, 1944.

A copy of the deed of trust and the chattel mortgage were filed with the Commission on May 4, 1944.

The operative rights of C. H. McCarty are defined by Decision No. 23537 dated March 23, 1931 and Decision No. 28587, dated February 24, 1936. The application shows that the total revenue derived from operations under the operative rights during 1943 was about \$22,040.¹ The purchasers contemplate no change in the service as conducted by C. H. McCarty and propose no change in rates and will continue the use of the same equipment. Equipment according to the application has been and is now being used in the performance of service under the certificate of public convenience and necessity granted by the Commission and in other transportation under permits of the Railroad Commission and under a certificate of public convenience and necessity issued by the Interstate Commerce Commission. Applicant Bud G. Hood who has been employed by the seller for some years in the operation of the business will continue as the manager thereof.

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

D. Garibaldi, Jr., J. Garibaldi, V. Garibaldi and Bud G. Hood, partners doing business as C. H. McCarty Trucking Company, are placed upon notice that "operative rights" as such do not

¹ The annual reports of C. H. McCarty show the following results:

| | <u>1940</u> | <u>1941</u> | <u>1942</u> | <u>1943</u> |
|-------------------------|--------------------|--------------------|---------------------|---------------------|
| Transportation Revenue | \$88,278.03 | \$88,959.27 | \$142,664.17 | \$119,010.23 |
| Transportation Expenses | 85,216.87 | 85,194.84 | 125,639.94 | 100,992.83 |
| Net Operating Revenue | <u>\$ 3,061.16</u> | <u>\$ 3,764.43</u> | <u>\$ 17,028.23</u> | <u>\$ 18,017.40</u> |

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

The Commission has considered applicant's request and is of the opinion that this is not a matter on which a hearing is necessary, that the issue of the note by said members of the partnership herein authorized is reasonably necessary for the purpose of paying in part for said properties, and that this application should be granted subject to the provisions of this order, therefore,

IT IS HEREBY ORDERED as follows:

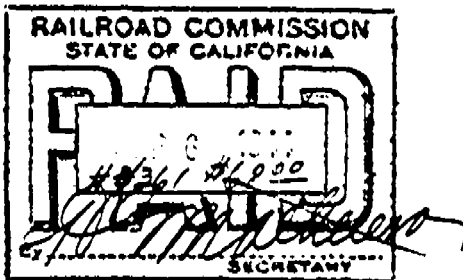
(1) C. H. McCarty is authorized to sell and transfer to D. Garibaldi, Jr., J. Garibaldi, V. Garibaldi and Bud G. Hood, partners, after the effective date hereof and on or before September 30, 1944, and said partners are authorized to purchase and acquire the operative rights and properties referred to in the foregoing Opinion and thereafter to operate thereunder, and said D. Garibaldi, Jr., J. Garibaldi, V. Garibaldi and Bud G. Hood, partners, may execute and deliver to C. H. McCarty their note, in the principal sum of not exceeding \$67,500, and execute a deed of trust and chattel mortgage to secure the payment of said note; the

note, deed of trust and chattel mortgage to be in the same form as the note, deed of trust, and chattel mortgage filed with the Commission on May 4, 1944.

(2) Applicants shall comply with the provisions of General Order No. 80 and Part IV of General Order No. 93-A by filing, in triplicate, and concurrently making effective, appropriate tarriffs and time tables within sixty (60) days from the effective date hereof, and on not less than one (1) day's notice to the Commission and the public.

(3) The authority herein granted will become effective when D. Garibaldi, Jr., J. Garibaldi, V. Garibaldi and Bud G. Hood, partners, or either of them pay the fee prescribed by Section 57 of the Public Utilities Act, which fee is \$68.00.

Dated at Los Angeles, California, this 18th day of August, 1944.



Richard Kachse
Justus F. Calmer
Ernest D. Haveman
[Signature]

Irish Rowlee
COMMISSIONERS