

Decision No. 37359

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
A-B-C TRANSFER & STORAGE CO., INC.,)
a corporation, to sell and CANTON)
TRANSBAY EXPRESS, INC., a corporation,)
to purchase an automobile freight line))
operated between San Francisco and)
Oakland, Alameda, Emeryville, and)
Berkeley, California.)

Application No. 26190

ORIGINAL

In the Matter of the Application of)
CANTON TRANSBAY EXPRESS, INC., a)
corporation, to issue shares of its)
capital stock.)

Application No. 26191

BEROL and HANDLER, by E. M. BEROL, for applicants
in Application No. 26190.

JACOBS, BLANCKENBURG & MAY, by A. L. MAY, for
applicants in Application No. 26191.

BY THE COMMISSION:

O P I N I O N

In these proceedings, which were consolidated for hearing and decision, authority is sought for the transfer of an operative right, and also for the issuance of securities. The matter was submitted at a public hearing, had before Examiner Austin at San Francisco, on July 14, 1944.

By Application No. 26190, Canton Transbay Express, Inc., a California corporation, seeks permission to acquire from A-B-C Transfer & Storage Co., Inc., a corporation, an operative right as a highway common carrier, under which general commodities may be transported between San Francisco and Oakland, Emeryville and

(1) For brevity, applicants A-B-C Transfer & Storage Co., Inc. and Canton Transbay Express, Inc. will be referred to as A-B-C Transfer and as Canton, respectively.

Berkeley, acquired by the latter pursuant to Decision No. 37016, rendered April 25, 1944, in Application No. 25182. This operative right arose under the "grandfather" provisions of the Auto Truck Transportation Act (Stats. 1917, Chap. 213, as amended). The agreement between the parties, dated May 24, 1944, specifies as the purchase price the sum of \$7,500 - an amount identical to that paid by A-B-C Transfer to Frank Wong Dun, from whom it in turn acquired the operation.

In Application No. 26191, Canton proposes to issue to Robertson Drayage Co., Inc., a corporation, 500 shares of its capital stock, at par, for a total consideration of \$50,000 payable in cash. The proceeds will be used for purposes presently to be discussed.

The applicants, it appears, are closely affiliated. A-B-C Transfer, a corporation, is controlled by Robertson Drayage Co., Inc., which, under the plan proposed, would own all of Canton's outstanding capital stock. The same interests also control Highway Transport, Inc., a highway common carrier operating between San Francisco, and peninsula and coast points.

A-B-C Transfer, it was shown, conducts a public warehouse in San Francisco, and also is engaged in the drayage business in that city under a city carrier's permit. The drayage service, however, is merely incidental to the warehouse operations. It holds a certificate of public convenience and necessity, issued by the Interstate Commerce Commission, authorizing interstate operation as a common carrier by motor vehicle between certain points in this State.

When Dun originally entered into the agreement with A-B-C Transfer to sell the operative right involved herein, he

planned to engage in a local drayage business in San Francisco and was therefore unwilling to part with any advantage inhering in the use of the trade name of Canton Express Company, under which the transbay operation had been conducted. Following the rendition of Decision No. 37016, Dun decided to withdraw from the local field, and he thereupon agreed to transfer the trade name and the good will of the business to A-B-C Transfer. He is now employed as the latter's agent in Chinatown, San Francisco.

Upon the consummation of this arrangement it was determined by those in control of Robertson Drayage Co., Inc. and A-B-C Transfer to form a new corporation, to be known as Canton Transbay Express, Inc., which would acquire and conduct the transbay operation. Substantial advantages, it was believed, would be gained from such a course. By adopting the name under which the service long had been conducted, the Chinese traffic could be attracted and developed. Moreover, it was believed preferable to separate the transbay operation from the warehouse and the local drayage business in which A-B-C Transfer was engaged.

Under this plan, Canton will confine its activities to the transbay operation. It will provide the line-haul service, using two tractors and semi-trailers for that purpose. At San Francisco the pickup and delivery service will be supplied by Robertson Drayage Co., Inc., and at Oakland, by Alta Express, under an arrangement with those carriers. Eventually, Canton itself will furnish this service. At San Francisco, Canton will use the terminal of Robertson Drayage Co., Inc., and at Oakland it will use that of Highway Transport, Inc. Ultimately, Canton contemplates the establishment of joint rates with Highway Transport, Inc., under which traffic would move between East Bay points and points served by the latter. Canton is qualified to conduct the service were the transfer approved.

The proceeds derived from the sale of the stock, it is stated, would be used for the following purposes:

"Reimbursement to A-B-C Transfer & Storage Co., Inc. - cost of acquiring operative rights	\$ 7,500.00
Expense incurred in establishing rights of Canton Express Co. in application for permit to transfer same to A-B-C Transfer & Storage Co., Inc.	1,000.00
Expense organization of new corporation known as Canton Transbay Express, Inc.	750.00
Cost of two truck tractors at \$3,200.00 each	6,400.00
Cost of two vans at \$2,325.00 each	4,650.00
Cost of four pickup trucks at \$2,000.00 each	8,000.00
Cost of platform operating hand gear	1,500.00
Cost of office equipment and supplies for new corporation	1,000.00
Working capital	<u>19,200.00</u>
Total	\$50,000.00"

The Commission's established policy will not permit the issuance of stock for all of the purposes enumerated. The cost incurred by A-B-C Transfer in acquiring the operative right from Dun, amounting to \$7,500, cannot form the basis of a stock issue. In Decision No. 37016, we pointed out that "... the \$7,500 paid for the operative right cannot be capitalized through the issue of securities and should not be permanently charged to Account 1511, Franchises." Accordingly, the order directed that this amount be charged to Account No. 1550, Other Intangible Property, and be written off during 1944 by a charge to Account No. 2946, Other Debits to Surplus. This disposition of the item will not be disturbed.

We cannot accept as a proper foundation for the issuance of stock the item of \$1,000 covering expenses incurred in establishing the operative right in the proceeding involving its transfer to A-B-C Transfer. This sum includes attorney's fees amounting to \$825. No part of this expense, it was shown, arose in connection with the establishment of the operative right by Dun, the original owner.

The expense incurred in the organization of Canton, amounting to \$750, properly may be allowed. Included in this item are counsel fees and costs.

The cost of acquiring two truck tractors at \$3,200 each and two vans at \$2,325 each, aggregating \$11,050, may be capitalized through the issuance of stock. This equipment, it appears, is necessary in the conduct of Canton's operations. The price is reasonable, and delivery is assured under outstanding priority orders. Canton has agreed to purchase four pickup trucks at \$2,000 each, but delivery of this equipment is not certain; in the meantime, pickup and delivery service will be provided as described above. The platform operating hand gear and the office equipment and supplies which Canton proposes to purchase at a cost of \$1,500 and \$1,000, respectively, were shown to be reasonably necessary in the conduct of the business and the price appears to be reasonable. Accordingly, stock may be issued for the purposes described.

Canton Transbay Express, Inc. asks permission to issue \$19,030 of stock for working capital. Data before us indicate a duplication in proposed expenditures for stationary, legal services and cash in the aggregate sum of \$7,029. This amount will be deducted from the \$19,030.

The items for which stock may be issued amount, in the aggregate, to \$34,301 or in round numbers \$34,300. The order will permit Canton to issue 343 shares of its capital stock, at par, to A-B-C Transfer; and it also will authorize Canton to acquire the operative right described.

Canton Transbay Express, Inc. is hereby 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 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.

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

O R D E R

Applications having been made as above entitled, a public hearing having been had, and the Commission now being fully advised,

IT IS ORDERED as follows:

(1) That A-B-C Transfer & Storage Co., Inc. be and it hereby is authorized, on or before December 31, 1944, to transfer to Canton Transbay Express, Inc., a corporation, the operative right

described in the foregoing opinion; and Canton Transbay Express, Inc. is hereby authorized to acquire said operative right, and thereafter to operate thereunder.

(2) That if applicant Canton Transbay Express, Inc. acquires said operative right, and pays therefor the sum of \$7,500, said sum shall be accounted for as provided by Decision No. 37016, rendered April 25, 1944, in Application No. 25182 and Case No. 4652.

(3) That 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 tariffs 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.

(4) That in the event that the authority to transfer is exercised, Canton Transbay Express, Inc. shall notify this Commission within ten (10) days of the actual date of transfer.

The Commission having considered the request of applicant Canton Transbay Express, Inc. for the issue of stock; and it now finding that the money, property or labor to be procured or paid for by the issue of shares of capital stock, herein authorized, is reasonably required by said applicant for the purpose herein stated; and that the expenditures for said purpose are not in whole or in part reasonably chargeable to operating expenses or to income; and good cause appearing therefor,

IT IS FURTHER ORDERED as follows:

(5) That Canton Transbay Express, Inc. may, after the effective date hereof and on or before December 31, 1944, issue and sell to A-B-C Transfer & Storage Co., Inc. at not less than par, 343

shares of its capital stock and use the proceeds thereof for the following purposes:

(a) To pay legal and organization expenses, not exceeding	\$ 750.00
(b) To purchase 2 truck tractors, not exceeding	6,400.00
(c) To purchase 2 vans, not exceeding	4,650.00
(d) To purchase 4 pickup trucks, not exceeding	8,000.00
(e) To purchase platform operating hand gear, not exceeding	1,500.00
(f) To purchase office equipment and supplies, not exceeding	1,000.00
(g) To provide working capital, not exceeding	<u>12,000.00</u>
Total	\$34,300.00

(6) That Canton Transbay Express, Inc. shall keep such record of the issue and sale of the stock as will enable it to file the reports required by General Order No. 24-A, which order, insofar as applicable, is made a part hereof.

(7) That Application No. 26191, insofar as it involves the issue of \$15,700 of shares of stock, is hereby dismissed without prejudice.

The effective date of this order shall be fifteen (15) days from the date hereof.

Dated at San Francisco California, this 26th day of September, 1944.

Justin J. Casper
Francis K. Havens
Francis J. [unclear]
Walter [unclear]
 COMMISSIONERS