

ORIGINAL

Decision No. 37433

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
WILLIAM M. SMITH and MAKIN H. SMITH, JR.)
to sell and V. FRED JAKOBSEN to purchase)
their interest in an automotive freight)
line (motorcycle-truck service) operated) Application No. 26363
between San Francisco and Alameda,)
Berkeley, Emeryville, Oakland and Pied-)
mont, California.)

BY THE COMMISSION:

O P I N I O N

Under certificates of public convenience and necessity granted by the Commission, the applicants, William M. Smith, Makin H. Smith, Jr. and V. Fred Jakobsen, partners doing business as Transbay Motor Express Co., are authorized to engage in the transportation of property by motorcycle, between San Francisco and Oakland, Alameda, Piedmont, Emeryville and Berkeley. Since

(1) A certificate of public convenience and necessity authorizing the operation of the service described, between San Francisco and Oakland, Berkeley, Alameda and Emeryville, was granted to William M. Smith and Makin H. Smith, Jr. by Decision No. 27975, dated May 20, 1935, as modified by Decision No. 29291, dated November 23, 1936, in Application No. 19893. Subsequently, the operation was extended to Piedmont (Decision No. 31863, rendered March 27, 1939, in Application No. 22497). By Decision No. 31972, rendered May 2, 1939, in Application No. 22709, V. Fred Jakobsen was authorized to acquire a one-fourth interest in this operation. The certificate was limited originally to the operation "...of a motorcycle-truck service as a common carrier for the transportation of property..." between the points mentioned. Subsequently, a restriction was added providing that, "No shipment of merchandise shall be transported which is destined for delivery to any person who is the consumer of such merchandise or who will not, in the normal course of business, resell or dispose of same." (Decision No. 33867, dated February 4, 1941, in Application No. 23980).

October 1942, due to the present war emergency, operation has been
(2)
suspended.

In this proceeding, William M. Smith and Makin H. Smith, Jr. seek authority to transfer the three-fourths interest in the operative rights and property, which they collectively own, to V. Fred Jakobsen, who thereafter would carry on the business individually. Upon the expiration of the period of suspension mentioned, Jakobsen plans to resume the operation of the service, conducting it under the trade name of Transbay Motor Express Co.

Under the terms of a contract between the parties dated September 16, 1944, a copy of which accompanies the application, William M. Smith and Makin H. Smith, Jr. (referred to hereafter as the sellers) have agreed to transfer to Jakobsen, and the latter has undertaken to purchase their interest in the operative rights and property, in consideration of the total purchase price of \$2,000. Of this sum \$100 has been paid to sellers, one-half to each of them, concurrently with the execution of the agreement; \$900 is payable, one-half to each of the sellers, upon approval of the transfer by the Commission; and the remainder, amounting to \$1,000 is payable, \$500 to each of the sellers, two years after such approval. The final installment shall be evidenced by two promissory notes for \$500 each, payable to the sellers, respectively; each note bearing interest at three per-cent per annum, and

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- (2) By Decision No. 35821, rendered October 6, 1942, in Application No. 25273, applicants herein were authorized to suspend operation until December 31, 1943. Subsequently, the period of suspension was extended until December 31, 1944 (Decision No. 36797, rendered January 4, 1944, in First Supplemental Application No. 25273). The suspension was occasioned by Jakobsen's anticipated entry into the service of the armed forces; by the employment of the remaining partners in war production work; and by applicants' inability to continue the service because of wartime regulations and manpower shortages.

falling due two years after date of the Commission's order approving the transfer. Of the purchase price mentioned, \$500 has been allocated to the operative rights and the good will of the business; and \$1,500 represents the value of the equipment and supplies. It appears that fees in the amount of \$150 have been paid the State of California. If the purchaser pays for the operative rights \$500, he must charge \$350 of such payment to Proprietorship Capital.

Following the suspension of operations, the sellers accepted full time employment elsewhere in war production work, and they propose to withdraw from the transportation business in which they formerly were engaged. Jakobsen, it appears, is qualified by experience and is financially able to carry on the operation.

The application contemplates the transfer of tangible property and equipment as well as operative rights. In general, the physical property comprises the following items:

	<u>AGREED VALUE</u>
Motor vehicle equipment (5 motorcycle side cars)	\$ 125.00
Office, shop and terminal equipment and furniture	575.00
Stationery and miscellaneous supplies	<u>800.00</u>
Total	\$1,500.00

The service, it was shown, has been conducted at a profit. During the period 1939 to 1942, inclusive, the annual transportation revenues and expenses, applicants' state, were as follows:

	<u>TRANSPORTATION REVENUE</u>	<u>TOTAL EXPENSE</u>	<u>PROFIT</u>
1939	\$ 9,995.45	\$12,458.50	(32,463.05) Loss
1940	\$32,694.92	\$32,477.95(a)	\$ 216.97
1941	\$47,043.19	\$45,535.50	\$1,507.69
1942	\$28,819.56	\$28,768.24	\$ 51.32

(a) This item includes non-operating expense, amounting to \$80.35. All other items shown under this heading include transportation expenses only.

In our judgment, the transfer of the operative rights and property should be authorized. Since the two promissory notes, aggregating \$1,000, to be executed by Jakobsen are payable more than twelve months after date and therefore constitute evidences of indebtedness within the meaning of Section 52, Public Utilities Act, they may be issued only with the Commission's approval. Under the circumstances shown, the execution of the notes will be authorized by the following order. The purchaser, however, will be required to pay the fee prescribed by Section 57, Public Utilities Act. This is not a matter requiring a public hearing.

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

V. Fred Jakobsen 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.

ORDER

Application having been made as above entitled; the Commission having considered applicants' request, and it being of the opinion that the money, property or labor to be procured or paid for by the purchaser through the issuance of promissory notes herein authorized, is reasonably required by him to pay in part for the properties herein authorized to be transferred; and good cause appearing,

IT IS ORDERED as follows:

(1) That William M. Smith and Makin H. Smith, Jr. be and they hereby are authorized, on or before January 31, 1945, to transfer to V. Fred Jakobsen, and the latter is hereby authorized to acquire from the former, the operative rights as a highway common carrier and the operative property described in the foregoing opinion, and V. Fred Jakobsen is authorized to operate as such highway common carrier pursuant to said operative rights.

(2) That V. Fred Jakobsen is hereby authorized, after the effective date hereof, and on or before January 31, 1945, to execute and deliver to William M. Smith and Makin H. Smith, Jr., respectively, in part payment for said operative rights and property, his two promissory notes in the principal sum of \$500 each, payable two years after the effective date of this order and bearing interest at the rate of three per-cent per annum.

(3) That applicants shall severally 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 schedules 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.

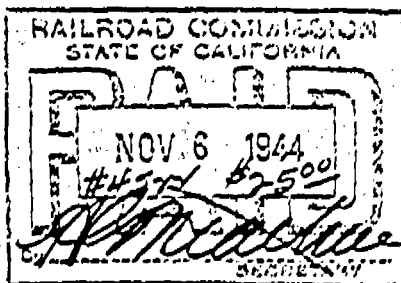
(4) That the authority herein granted shall become effective when V. Fred Jakobsen has paid the minimum fee prescribed by Section 57, Public Utilities Act, which minimum fee is \$25.

(5) That if V. Fred Jakobsen acquires said operative right and pays therefor the sum of \$500, he may charge to Intangible Capital \$150. The remaining \$350 should be written off by a charge to Proprietorship Capital.

(6) That within thirty days after the transfer of said properties, V. Fred Jakobsen shall file with the Commission copies of the promissory notes issued under the authority herein granted, and also copies of any bill of sale or other instrument executed for the purpose of effecting the transfer of said properties, pursuant to such authority.

Except as otherwise herein provided, the effective date of this order shall be the date hereof.

Dated at San Francisco, California, this 31st day of October, 1944.



Richard L. Lusk
Justice F. Coe
Frank D. Havens
Frank W. Brown
James H. Lawrence
COMMISSIONERS