

Decision No. 38183

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
CITY TRANSFER AND STORAGE COMPANY,)
a corporation, to sell, and of READER)
TRUCK LINES, a corporation, to purchase)
the highway common carrier operations)
of the seller in Southern California.)

ORIGINAL

Application No. 26727

ARTEUR H. GLANZ, for applicant Reader Truck Lines

HUGH GORDON, for Pacific Freight Lines, Pacific
Freight Lines Express and Valley Express,
interested parties

BY THE COMMISSION:

O P I N I O N

City Transfer and Storage Company, a corporation, hereinafter called "City Transfer", requests authority to sell and transfer to Reader Truck Lines, a corporation, hereinafter called "Reader", and the latter proposes to acquire and operate certain highway common carrier operative rights heretofore acquired by City Transfer pursuant to Decisions Nos. 7571, 12692, 17594, and 32281⁽¹⁾. In general, the operative rights extend between Los Angeles and various points in Los Angeles and Orange Counties. No equipment or other tangible property is involved.

(1) The agreement of sale (Exhibit "A" of the application) declares that City Transfer agrees to sell "Generally all operative rights, certificates, or other evidences of authority held by SELLER or claimed by SELLER authorizing the transportation of property for hire as a common carrier by motor vehicle as defined in the Public Utilities Act of the State of California, including all prescriptive rights; and generally all operative rights, certificates or other evidences of authority, including claimed rights by prescription or otherwise, rates on which operations are published in City Transfer and Storage Company's Local Freight Tariff No. 11, C.R.C. No. 12."

This matter, together with Applications Nos. 26597 and 26741, was heard before Examiner Chiesa at Los Angeles on July 12, 1945. It was stipulated that evidence submitted be considered in support of all three matters but that the applications be disposed of in separate decisions.

The agreement of sale provides " * * * that the BUYER would not buy any portion of the operative rights above described at and for the consideration mentioned unless said operative rights authorize the transportation of property for hire as a highway common carrier as defined in the Public Utilities Act of the State of California to the full extent indicated and set forth in City Transfer and Storage Company's Local Freight Tariff No. 11, C.R.C. No. 12." A. R. Reader, president of Reader Truck Lines, testified that the sole purpose of the provision was to protect his company in the event the Commission determined in this proceeding that the seller was not the owner of some of the rights described in the agreement of sale. As the provision indicates some doubt concerning the nature and extent of the service which City Transfer may provide, it should be clearly understood that this Commission is not herein determining the scope and limits of seller's operative rights.

The total purchase price for said operative rights and goodwill is \$15,000, the goodwill being valued at \$5,000 and operative rights at \$10,000. The amount is payable within ten days of the effective date of this order.

Operating revenues and expenses of City Transfer's highway common carrier business since 1941 are reported as follows:

	1941	1942	1943	1944	1945 Jan-Mar
Operating Revenue	\$66,219.59	\$90,588.01	\$96,887.25	\$113,517.08	\$30,933.52
Equip. Main. & Garage Exp.	\$ 2,554.85	\$ 5,978.65	\$ 4,476.62	\$ 5,705.17	\$ 895.00
Transp. Exp.	32,556.10	49,568.47	50,241.16	55,484.77	16,145.66
Terminal Exp.	8,390.53	11,572.79	15,404.00	18,537.53	5,513.79
Sales, Tariff & Adv. Exp.	2,349.80	2,424.00	3,449.60	3,425.04	1,080.26
Ins. & Safety Exp.	2,634.53	4,281.77	6,098.08	6,330.80	1,321.11
Adm. & Gen. Exp.	6,530.55	7,296.47	8,434.21	10,496.79	1,819.69
Deprac. Exp.	3,101.76	3,321.43	3,442.80	5,118.50	1,176.93
Oper. Taxes & Licenses	4,950.47	6,115.35	7,126.79	7,730.57	1,824.89
Rent Exp.	1,020.00	975.00	1,080.00	1,415.00	450.00
Total Exp.	\$64,088.59	\$91,563.93	\$99,753.26	\$114,244.17	\$30,227.33
Profit	\$ 2,131.00	\$ 975.92*	\$ 2,866.01*	727.09*	706.19

*Indicates a loss.

City Transfer has covenanted that so long as Reader or any one deriving title from the latter to the operative rights may conduct a highway common carrier service in the territory covered by these certificates, the former will refrain from engaging in any intrastate highway common carrier service between the points included in such operations. Assertedly, City Transfer and its predecessors continuously have been engaged in the operation of a highway common carrier service under these certificates or operative rights ever since the service was authorized or commenced.

The seller is disposing of his highway common carrier business in order to give more attention to his permitted carrier operations and A. R. Reader testified that his company is purchasing said rights to further expand its carrier operations (2).

(2) In Application No. 26741 Reader requests authority to sell an operative right for the transportation of property as a common carrier, generally, between Los Angeles and Los Angeles Harbor District (Wilmington and San Pedro). A. R. Reader testified that he is selling said operation because similar and more extensive rights would be acquired from City Transfer, and to avoid some duplication.

A. R. Reader has been in the trucking business in Los Angeles and vicinity since 1928. The evidence indicates Reader will have the resources to render a satisfactory service.

The evidence of record shows that Reader is an experienced operator, financially responsible, and adequately equipped to continue the highway common carrier business he seeks to acquire, and, therefore, we find that the proposed sale and transfer is in the public interest.

There is nothing in the record to warrant a finding that any part of the agreed purchase price (\$15,000) should be permanently charged to intangible property accounts. It should be charged to Account 1550 - "Other Intangible Property," as provided in the Uniform System of Accounts prescribed for Class I Common and Contract Motor Carriers of Property and written off within five years after the date hereof by charges to Account 7500 - "Other Deductions." In issuing this order we are making no finding of the value of the operative right or goodwill, and will not in the future, if called upon to do so, recognize the purchase price as a capital charge, or the amounts of amortization as an operating expense for the purpose of fixing rates or for other purposes.

The application will be granted.

Reader Truck Lines is hereby placed upon notice that

(3) The financial condition of Reader Truck Lines as of May 31, 1945, was as follows:

Current Assets	\$17,172.47	
Tangible Property	26,399.92	
(Intangible Property		
(Organization, Franchises	5,250.00	
Life Insurance	1,250.00	
Deferred Debits	6,118.30	
Total Assets		<u>\$56,190.69</u>
Current Liabilities	\$11,702.06	
Equipment, Long Term		
Obligations	13,862.50	
Deferred Credits	4,698.33	
Reserves	482.24	
Capital Stock	12,188.94	
Surplus	13,256.62	
Total Liabilities, Capital & Surplus		<u>\$56,190.69</u>

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.

O R D E R

Based upon the evidence of record and the conclusions and findings set forth in the foregoing opinion,

IT IS ORDERED as follows:

(1) That City Transfer and Storage Company, a corporation, be and it hereby is authorized on or before October 31, 1945, to transfer to Reader Truck Lines, a corporation, and the latter is hereby authorized to acquire from the former the operative rights as a highway common carrier, as defined by Section 2-3/4, Public Utilities Act, which the former acquired pursuant to Decisions Nos. 7571, 12692, 17594, and 32281, referred to in the foregoing opinion; and Reader Truck Lines is authorized thereafter to operate under said operative rights.

(2) That if Reader Truck Lines acquires the operative rights referred to in Paragraph (1) of this order, and pays therefor and for goodwill the sum of \$15,000, it shall charge said \$15,000 to Account 1550 - "Other Intangible Property," and shall thereafter amortize said sum over a period of not more than five years by charges to Account 7500 - "Other Deductions."

(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 satisfactory to the Commission 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 such authority to transfer is exercised, Reader Truck Lines shall notify the Commission thereof within thirty (30) days after the actual date of transfer and shall file with the Commission a copy of any bill of sale, or any other instrument of transfer, executed under the authority herein granted.

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

Dated at San Francisco, California, this 28th
day of August, 1945.

Harold Anderson
Justus F. Craven

Irving S. Powell
COMMISSIONERS

DISSENT IN APPLICATION NO. 26727

I dissent.

As indicated in the majority opinion, this Application was one of three⁽¹⁾ heard at the same time and today before us for decision. The Commission now disposes of the three applications in the following manner:

(a) In No. 26597 (decision No. 38180) Kagarise desires to sell for \$7,500 certain operative rights to Reader (intrastate rights valued at \$6,000; prospective interstate rights valued at \$1,500; no tangible property is involved) and Reader testified he would not consummate the transaction unless this Commission first determined the validity of such intrastate operative rights. The Commission declines to make such determination and dismisses the application ^{without prejudice.} with this decision I am in accord.

(b) In No. 26741 (decision No. 38162) Reader desires to sell to Kagarise, who desires to buy, a certain operative right for \$3,500. No tangible property is involved. The validity of the right to be transferred is not in question. The Commission authorizes the transfer with appropriate conditions concerning amortization of the amount to be paid by Kagarise. I am in accord with that decision.

(c) In the instant application, No. 26727, City Transfer desires to sell, and Reader desires to buy, certain operative rights for \$15,000. No tangible property is involved. The agreement of sale, which is in evidence, provides that Reader "would not buy any portion of the operative rights above described at and for the consideration mentioned unless said operative rights authorize the transportation of property for hire as a highway common carrier as defined in the Public Utilities Act of the State of California to the full extent indicated and set forth in City Transfer and Storage

(1)

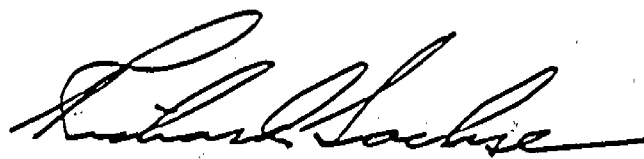
The other two are Application 26597 (decision No. 38180) and Application 26741 (decision No. 38162).

Company's Local Freight Tariff No. 11, C.R.C. No. 12." Reader testified the sole purpose of that provision was to protect his company in the event the Commission determined in this proceeding that the seller was not the owner of some of the rights described in the agreement of sale.

The Commission in Application 26727, as in case (a) above, declines to make a determination of the scope or validity of the operative rights to be transferred, but here, contrary to its decision in (a), the majority authorizes the transfer and permits the payment of \$15,000 for these doubtful and indeterminate operative rights.

Such inconsistent action appears to me arbitrary and devoid of guiding principle and, consequently, adverse to the public interest (see Sec. 50-3/4(c) of the Public Utilities Act). In decision No. 38130, supra, under precisely similar circumstances, the Commission said "The question [of the validity and scope of the operative rights] is not at issue on the pleadings in this proceeding and, therefore, determination of said rights will be left for future consideration when the question may be properly raised. In view of the position taken by applicant Reader Truck Lines, the application will be dismissed."

For similar reasons the instant application should also be dismissed.


Richard Sachse, Commissioner.