

Decision No. 38522

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
JOE TESTO AND MIKE TESTO, doing business)
under the firm name and style of TESTO)
BROS., to sell, and WILBUR LILLIE and)
EVERETT LILLIE, a copartnership doing)
business under the firm name and style)
of LILLIE TRANSPORTATION CO. to pur-)
chase an automobile freight line operat-)
ed between Stockton, California, and Los)
Angeles.)

ORIGINAL

Application No. 27083

O P I N I O N

This is an application of Joe Testo and Mike Testo, partners doing business as Testo Brothers, and Wilbur Lillie and Everett Lillie, partners doing business as Lillie Transportation Co., the former to sell and the latter to buy a highway common carrier operative right created by Decision No. 34179, in Application No. 23796, authorizing the transportation of fresh fruits and vegetables from Stockton, and points within a radius of 20 miles thereof, to Los Angeles.

The Commission has heretofore authorized Joe Testo and Mike Testo temporarily to suspend operations under the above described operative right until June 30, 1946. (Decisions Nos. 36533, 37578 and 38455). The application states that if the transfer sought is authorized, the purchasers will immediately resume and continue highway common carrier operations heretofore conducted by the sellers.

The consideration involved in the transfer is \$2,000 payable in cash within five days after authorization by the Commission. No physical property is to be transferred.

The purchasers, if they acquire the above described property, may charge to intangible capital not more than \$50. The remainder of the purchase price shall be charged to deferred debits and written off by a charge to proprietor's investment during 1946.

The Commission has considered this matter and is of the opinion that a public hearing is not necessary and that the request of the applicants should be granted as herein provided. The action taken herein shall not be construed to be a finding of value for any purpose other than the proceeding herein involved.

Wilbur Lillie and Everett Lillie are 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.

O R D E R

IT IS ORDERED:

(1) That Joe Testo and Mike Testo, within 60 days from the date hereof, may transfer to Wilbur Lillie and Everett Lillie, partners, the operative right referred to in the foregoing opinion and thereafter to operate thereunder, such transfer to be in accordance with the terms of the agreement filed in this proceeding as Exhibit "A".

(2) That applicants 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 60 days from the effective date hereof, and on not less than 5 days notice to the Commission and the public.

(3) That if Wilbur Lillie and Everett Lillie acquire such operative right they may charge to intangible capital not more than \$50.. They shall charge the remainder of the purchase price to deferred debits and write it off by a charge to proprietor's investment, during 1946.

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

Dated at San Francisco, California, this 14th day of December, 1945.

Edward Rudman
Frank W. Clark
James T. Luff
Harold P. Hill
COMMISSIONERS