

ORIGINAL

Decision No. 39044

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 GEORGE S. BUTLER to sell and HAROLD)
 M. HAYS and ALAN G. McLENEGAN to)
 purchase the one-half interest of)
 GEORGE S. BUTLER in and to the EUREKA-)
 GARBERVILLE TRUCK LINE, operated be-)
 tween Eureka and Garberville, Cali-)
 fornia; and of CUTLER S. McLENEGAN,)
 ALAN G. McLENEGAN and HAROLD M. HAYS)
 as proposed co-partners, doing busi-)
 ness as Eureka-Garberville Truck Line)
 to issue promissory notes payable at)
 periods of more than twelve months)
 from the date of issuance.)
 -----)

Application
No. 27475

O P I N I O N

This application shows that George S. Butler, Cutler S. McLenegan and Harold M. Hays are co-partners doing business as Eureka-Garberville Truck Line, hereinafter referred to as the old co-partnership, and as such are engaged in transporting freight by trucks. The operative rights under which they conduct their operations were acquired by them pursuant to authority granted by the Commission by Decision No. 31836, dated March 20, 1939, as modified by Decision No. 33045, dated April 30, 1940, and Decision No. 33160, dated May 28, 1940. These rights, in general, authorize highway common carrier service between Eureka and Garberville and intermediate points subject to certain restrictions as more particularly set forth in the decisions creating such rights. It is reported that George S. Butler owns a one-half interest and Cutler S. McLenegan and Harold M. Hays a one-quarter interest each in the business and properties.

For the past three years the co-partnership has reported its revenues and expenses as follows:

| | <u>1943</u> | <u>1944</u> | <u>1945</u> |
|-------------------------|--------------------|--------------------|------------------|
| Operating revenues | \$44,356.10 | \$55,689.76 | \$57,472.82 |
| Less-operating expenses | 26,235.39 | 36,120.33 | 40,951.36 |
| -depreciation | 544.99 | 313.07 | 256.66 |
| -taxes | 2,283.98 | 2,980.09 | 2,949.95 |
| Total | <u>29,064.36</u> | <u>39,413.49</u> | <u>44,157.97</u> |
| Balance | 15,291.74 | 16,276.27 | 13,314.85 |
| Rent for leased cars | <u>9,121.14</u> | <u>11,542.20</u> | <u>12,337.94</u> |
| Net operating revenues | <u>\$ 6,170.60</u> | <u>\$ 4,734.07</u> | <u>\$ 976.91</u> |

It appears that in the conduct of the business the co-partnership operates, under lease arrangement, three tractors and three trailers owned by George S. Butler. It is reported that the cost of these six units of equipment to George S. Butler was \$40,192.83 and that their present value is \$26,620.00.

The application shows that George S. Butler desires to devote his time to other business and activities in which he is interested and accordingly has agreed to sell his interest in the Eureka-Garberville Truck Line and the six units of equipment referred to above, to Cutler S. McLenegan, Harold M. Hays and Alan G. McLenegan for the sum of \$42,500.00, which amount was determined as follows:

| | |
|--|--------------------|
| A. One-half interest of George S. Butler in Eureka-Garberville Truck Line | |
| (1) Net worth as per balance sheet of December 31, 1945 | \$ 5,785.24 |
| (2) Reasonable value of motor truck equipment fully depreciated | 800.00 |
| (3) Good will | <u>9,294.76</u> |
| Sub-total | <u>15,880.00</u> |
| B. Value of tractors and semi-trailers owned by George S. Butler | <u>26,620.00</u> |
| Total consideration | <u>\$42,500.00</u> |

At the conclusion of the transaction the old co-partnership will be replaced by a new co-partnership consisting of Cutler S. McLenegan, Harold M. Hays and Alan G. McLenegan. Said co-partners have agreed to pay George S. Butler \$25,000 in cash or its equivalent and deliver to him their unsecured note for \$17,500, payable in consecutive monthly installments of \$486.11 beginning three years after the date of the note, with interest at the rate of 5% per annum on the deferred payments. Said co-partners ask permission to issue said note and issue to the Bank of America National Trust and Savings Association their note for \$18,000, payable in consecutive monthly installments of \$575 and interest at the rate of 5% per annum. The payment of the \$18,000 note will be secured by a mortgage of chattels which will be a lien on the equipment acquired from George S. Butler. The \$18,000 constitutes part of the \$25,000 cash payment to George S. Butler.

The new co-partnership will acquire not only the one-half interest which George S. Butler had in the old co-partnership but there will also be transferred to it the interest of Cutler S. McLenegan and Harold M. Hays. The new co-partnership will assume all of the liabilities of the old co-partnership.

Any amount which the new co-partnership pays for good will should be charged to Account 155 "Other Intangible Property" and amortized through Account 720 "Other Income Deductions" within five years after the purchase of said properties.

The Commission has considered this matter and is of the opinion that a public hearing is not necessary and that the requests of applicants should be granted, as provided in the

following order. However, the action taken herein shall not be construed to be a finding of value of the properties herein authorized to be transferred. Cutler S. McLenegan, Harold M. Hays and Alan G. McLenegan 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.

ORDER

Application having been made to the Railroad Commission for an order authorizing the transfer of property, the execution of a mortgage of chattels and the issue of notes, and the Commission being of the opinion that the money, property or labor to be procured or paid for through the issue of said notes is reasonably required for the purpose specified herein, therefore,

IT IS HEREBY ORDERED as follows:

1. George S. Butler, after the effective date hereof and on or before September 30, 1946, may sell and transfer to Cutler S. McLenegan, Harold M. Hays and Alan G. McLenegan his interest in the operative rights, property and equipment of the Eureka-Garberville Truck Line, to which properties reference is made in this application. Cutler S. McLenegan and Harold M. Hays

may transfer, after the effective date hereof and on or before September 30, 1946, their interest in the old co-partnership to Cutler S. McLenegan, Harold M. Hays and Alan G. McLenegan.

2. Cutler S. McLenegan, Harold M. Hays and Alan G. McLenegan, after the effective date hereof and on or before July 31, 1946, may execute a mortgage of chattels in, or substantially in, the same form as the mortgage of chattels filed in this proceeding on May 13, 1946, and may issue two notes, one for \$17,500 and one for \$18,000 in, or substantially in, the same form as the notes filed in this proceeding as Exhibit "B", for the purpose of paying in part the cost of the properties and equipment acquired from George S. Butler.

3. 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 date hereof and on not less than one (1) day's notice to the Commission and to the public.

4. The authority herein granted will become effective when applicants Cutler S. McLenegan, Harold M. Hays and Alan G. McLenegan, or any of them, have paid the fee prescribed by Section 57 of the Public Utilities Act, which fee is Thirty-six (\$36.00) Dollars.

5. Said applicants, or any of them, shall file with the Commission a copy of each note and a copy of the mortgage of chattels executed under the authority herein granted.

6. Said applicants shall submit for approval their proposed book entries by which they intend to record the purchase of said properties.

Dated at San Francisco, California, this 5th day of June, 1946.

Harold C. Adams
Justin J. Cramer
Francis W. Brown
Grant L. Russell
Harold P. Kula
 Commissioners

