

ORIGINAL

Decision No 40231

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of	)	
D. GARIBALDI, JR., J. GARIBALDI,	)	
V. GARIBALDI and BUD GEORGE HOOD, dba	)	
C. H. McCARTY TRUCKING COMPANY, a co-	)	Application
partnership, to sell, and EDGAR W.	)	No. 28238
HOLYOKE to purchase the business known	)	
as C. H. McCARTY TRUCKING COMPANY	)	
operating from 503 Harker Street, San	)	
Pedro, California.	)	
-----	)	

G. R. Larwill, for Sellers.  
Lee A. Solomon, for Buyer.

O P I N I O N

In this application applicants D. Garibaldi, Jr., J. Garibaldi, V. Garibaldi and Bud George Hood, who are presently engaged in the operation of a trucking business under the firm name and style of C. H. McCarty Trucking Company, herein sometimes referred to as Sellers, ask permission to sell, and applicant Edgar W. Holyoke, herein sometimes referred to as Buyer, to acquire, the operative rights and equipment used in said trucking business.

The consideration to be paid for said properties is \$125,000, as provided in the agreement on file in this application as Exhibit "A". The agreement of sale, which is dated December 2, 1946, provides for the payment of \$40,000 on or before January 2, 1947, while the balance, to wit, \$85,000, is payable at the rate of \$2,000 per month beginning February 2, 1947, the said sum to include interest on the unpaid portions of the purchase price, which interest shall be first deducted and the balance of the

monthly payment shall be credited to principal. Interest is payable at the rate of 5% per annum. Buyer has the privilege of paying additional sums, in units of \$1,000, of the purchase price. In the event of an unforeseen calamity resulting in the destruction of three or more trucks, or in the event of a complete strike of employees, the monthly payments are reduced to \$1,000. All payments due under the contract have been made.

Buyer will issue to Sellers his promissory note covering the deferred payments and execute a mortgage of chattels to secure the payment of the note. A copy of the note and a copy of the mortgage of chattels are on file in this application as Exhibit numbers 8 and 9 respectively.

The operative right being transferred was granted by Decision No. 23537, dated March 23, 1931, to C. H. McCarty and Ernest Smith. It was thereafter transferred to C. H. McCarty pursuant to the authority granted by Decision No. 28587, dated February 24, 1936, and by him transferred to Sellers pursuant to Decision No. 37284, dated August 18, 1944. Sellers also hold a certificate of public convenience and necessity issued by the Interstate Commerce Commission. The transfer of that certificate has recently been authorized by the Interstate Commerce Commission. Sellers further hold City Carrier Permit No. 19-27469, Radial Highway Common Carrier Permit No. 19-27467 and Highway Contract Carrier Permit No. 19-27468. These several permits are not transferable.

Sellers have agreed to transfer eight tractors or trucks, seven trailers, work shop equipment, parts and office equipment. Exhibit "B" shows the undepreciated cost of the trucks and other equipment, parts and office equipment at \$117,258.25, whereas the

books of the Sellers show the cost to be \$80,105.44. In Exhibit "B" the reserve for depreciation is reported at \$46,948.71 and on the books of Sellers at \$9,795.90. Buyer should, if he acquires said properties, record the price paid therefor in the manner prescribed in the uniform system of accounts. The record does not warrant the conclusion that he is making no payment for operative rights.

Buyer 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 as a finding of the value of the properties herein authorized to be transferred.

O R D E R

The Commission having considered the evidence submitted at the hearing had on this application by Examiner Chiesa and it being of the opinion that the money, property or labor to be procured or paid for by the issue of the note herein authorized is reasonably required by Buyer for the purpose herein stated, and that this application should be granted as herein provided, therefore,

IT IS HEREBY ORDERED as follows:

1. D. Garibaldi, Jr., J. Garibaldi, V. Garibaldi and Bud George Hood doing business as C. H. McCarty Trucking Company may, after the effective date hereof and on or before August 1, 1947, sell, and Edgar W. Holyoke may purchase, the operative rights and properties referred to in the foregoing opinion and more particularly described in the agreement on file in this application as Exhibit "A", said sale and purchase to be made in accordance with the terms of said agreement.

2. Edgar W. Holyoke may, after the effective date hereof and on or before August 1, 1947, issue in part payment for said properties his 5% installment promissory note for not exceeding \$85,000, and execute a mortgage of chattels to secure the payment of said note, said note and mortgage to be in form similar to the note and mortgage on file in this application as Exhibit numbers 8 and 9 respectively.

3. Edgar W. Holyoke 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 to the public.

4. The authority herein granted will become effective when applicants, or either of them, have paid the fee prescribed by Section 57 of the Public Utilities Act, which fee is Eighty-five (\$85.00) Dollars.

Dated at San Francisco, California, this 6<sup>th</sup> day  
of May 1947.

Harold P. Kule

Walter Powell

R. B. Johnson

Kenneth Potter

Commissioners

