

Decision No. 41064

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
 A. B. and KENNETH C. CLARK, a copartner-
 ship doing business as CLARK BROS. MOTOR
 TRANSPORT SYSTEM, Sellers, and CLARK BROS.
 MOTOR TRANSPORT, INC., a corporation,
 Buyer, for an order of the Commission
 authorizing (a) the sale and transfer of
 the operative properties and rights herein
 described and (b) the letter to issue shares
 of its capital stock in payment thereof.

Application
No. 28930

O P I N I O N

In this application the Public Utilities Commission is asked to make an order authorizing A. B. and Kenneth C. Clark to transfer highway common carrier rights and properties to Clark Bros. Motor Transport, Inc., a corporation, and authorizing said corporation to issue 10,000 shares of its no par capital stock.

The application shows that A. B. and Kenneth C. Clark are partners doing business under the firm name and style of Clark Bros. Motor Transport System and as such are engaged, as highway common carriers, in the transportation of general commodities between points in the Counties of San Francisco, Santa Cruz, Monterey, San Benito, Alameda and Santa Clara. Their annual reports filed with the Commission show operating revenues of \$328,318 in 1944, of \$373,617 in 1945 and of \$417,777 in 1946, with net income before income taxes, of \$8,918 in 1944 and of \$13,870 in 1945, and a net loss of \$5,427 in 1946. The net income for the ten months ending October 31, 1947, is reported at \$20,587.18.

In Exhibit "A" attached to the present application the partners report their assets and liabilities, as of October 31, 1947, as follows:

Assets

Current assets -		
Cash and deposits	\$ 7,621.55	
Accounts receivable	24,780.13	
Materials and supplies	<u>4,447.72</u>	
Total current assets		\$ 36,849.40
Franchise		350.00
Land		18,048.00
Equipment-less depreciation reserve of \$117,912.36		149,286.51
Advances		321.60
Deferred Debits		<u>2,618.80</u>
	Total	<u>\$208,474.31</u>

Liabilities

Current liabilities -		
Notes and accounts payable	\$61,460.53	
Accrued liabilities	7,044.87	
C.O.D. charges unremitted	196.16	
Federal transportation tax	<u>1,837.72</u>	
Total current liabilities		\$ 70,839.28
Deferred credits		235.37
Partners' capital accounts		<u>137,399.66</u>
	Total	<u>\$208,474.31</u>

During November, 1947, three additional units of equipment were acquired at a total cost of \$16,043.09.

It appears that A. E. and Kenneth C. Clark desire to incorporate their business and to that end have made arrangements to transfer their operative rights and properties to Clark Bros. Motor Transport, Inc., a corporation they have caused to be organized for the purpose of acquiring such rights and properties and of thereafter conducting the operations. The new corporation, in payment for the rights and properties will assume the payment of the outstanding liabilities of Clark Bros. Motor Transport System and will issue to the partners 10,000 shares

of its no par capital stock. It is reported that A. E. and Kenneth C. Clark will continue to manage and operate the business and that there will be no change in the transportation service to be given the public.

The operative rights to be transferred were acquired by A. E. and Kenneth C. Clark pursuant to authority granted by Decision No. 22276, dated April 1, 1930, as amended by Decision No. 29360, dated December 15, 1936, in Application No. 16368; by Decision No. 25288, dated October 24, 1932, in Application No. 18455, and by Decision No. 34784, dated November 25, 1941, in Application No. 24477. The physical properties include fifteen trucks, nineteen truck-tractors, thirty-one semi-trailers, ten dollies, seven service cars and shop and garage equipment, office furniture and fixtures and miscellaneous equipment. The cost of the property and equipment, including the three units purchased in November 1947 is reported at \$283,241.96, without deduction for accrued depreciation. Applicants estimate present market value thereof at \$219,903.55, including therein the reported book cost of \$13,152.33 for improvements on leased property for which no present value figures are submitted.

In making the order herein, however, we are making no finding of the value of the operative rights and properties. Further, we wish to place applicants 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 to be a finding of the value of the properties herein authorized to be transferred.

O R D E R

Application having been made to the Public Utilities Commission for an order authorizing the transfer of operative rights and properties and the issue of stock, and the Commission having considered the matter and being of the opinion that a public hearing is not necessary, that the application should be granted, as herein provided, and that the money, property or labor to be procured or paid for through the issue of 10,000 shares of no par capital stock is reasonably required for the purpose specified herein, which purpose is not, in whole or in part, reasonably chargeable to operating expenses or to income, therefore,

IT IS HEREBY ORDERED as follows:

1. A. B. Clark and Kenneth C. Clark, after the effective date hereof and on or before February 28, 1948, may sell and transfer to Clark Bros. Motor Transport, Inc., the operative rights and the properties referred to in the preceding opinion.

2. Clark Bros. Motor Transport, Inc., after the effective date hereof and on or before February 28, 1948, in payment for such rights and properties, may assume the payment of the outstanding liabilities referred to in the preceding opinion and may issue not exceeding 10,000 shares of its no par capital stock.

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

4. Within thirty (30) days after the transfer of the rights and properties and the issue of said stock, Clark Bros. Motor Transport, Inc. shall file with the Commission a copy of each journal entry used to record the acquisition of the rights and properties on its books of account and a report as required by General Order No. 24-A, which order, insofar as applicable, is made a part of this order.

5. The authority herein granted will be effective on December 31, 1947.

Dated at San Francisco, California, this 22nd day of December, 1947.

Harold P. Hula
Justin J. ...
...
A. Z. ...

Commissioners