

ORIGINAL

Decision No. 46858

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )  
BANKS AND OGLE to transfer and SCHULTZ)  
TRUCKING SERVICE and OGLE BROS. to )  
acquire operating rights and property.)

Application No. 32833  
As amended

O P I N I O N

By Decision No. 42938, dated June 1, 1949, in Application No. 30211, Arnold W. Ogle, Vard A. Ogle and John W. Banks, doing business as Banks and Ogle, were granted a certificate of public convenience and necessity to operate as a highway common carrier for the transportation of (1) livestock from Covelo and a 30-mile radius thereof to South San Francisco, and (2) general commodities, including livestock and liquid petroleum products (in tank trucks) but excluding uncrated household goods and office equipment, from Petaluma and Santa Rosa to Covelo.

By the original application, filed October 19, 1951, Arnold W. Ogle, Vard A. Ogle and John W. Banks, a copartnership, sought authority to sell and William H. Schultz, an individual, to purchase that portion of the highway common carrier rights granted by Decision No. 42938, authorizing the transportation of livestock from Covelo and vicinity to South San Francisco, and general commodities, including livestock, from Petaluma and Santa Rosa to Covelo (the remainder of said operative right, authorizing the transportation of liquid petroleum products, in tank trucks, from Petaluma and Santa Rosa to Covelo, to be retained by the copartnership of Banks and Ogle).

By said application it is also proposed to transfer to William H. Schultz one 1947 G.M.C. truck, and one 1944 Utility

stake trailer. The purchase price to be paid for the operative rights and truck and trailer is \$7,000, of which \$1,000 is to be paid as down payment and the balance in 35 monthly installments of \$166.66 each, with a final payment of \$166.90, plus interest at the rate of five per cent per annum on the unpaid balance.

A copy of the sales agreement, identified as Exhibit "D", is attached to the application. It appears that such agreement is an evidence of indebtedness providing, in part, for payments later than twelve months after its date. In the opinion of the Commission the money, property or labor to be procured or paid for through the execution of the same is reasonably required by said Schultz for the purpose specified herein, and such purpose is not, in whole or in part, reasonably chargeable to operating expense or income.

By amendment to the application, filed March 3, 1952, it is revealed that since the filing of the original application on October 19, 1951, John W. Banks has become inactive in the copartnership of Banks and Ogle and that Arnold W. Ogle and Vard A. Ogle constitute the existing copartnership which is now doing business as Ogle Bros. It is requested therefore that Ogle Bros. be made parties to the application and that the operative rights intended originally to be retained by the copartnership of Banks and Ogle be instead transferred to the new copartnership of Ogle Bros. by the granting of an appropriate certificate.

It is the opinion of this Commission that Arnold W. Ogle and Vard A. Ogle, copartners doing business as Ogle Bros. are proper parties to this application.

The Commission in several instances has refused to sanction the splitting of a single operative right; however, it has approved

such a step where it appears in the public interest to do so. The circumstances indicate that such would be the case here. It appears from this application as amended that John W. Banks has withdrawn from the partnership, thereby leaving the remaining partners unable to provide the entire transportation service authorized by Decision No. 42938. It is alleged that under the proposed change it will be possible for schedules and services to be maintained at their present level. It is stated that no changes in schedules or service provided is contemplated by either Ogle Bros. or Schultz Trucking Service.

No protests against the granting of the application have been received.

The Commission has considered this matter and is of the opinion and finds that a public hearing is not necessary, that the proposed transfers will not be adverse to the public interest and should be authorized. To avoid uncertainty, the operative rights acquired by William H. Schultz and Ogle Bros. will be redefined in the order which follows. Accordingly, new highway common carrier certificates will be issued, one to William H. Schultz authorizing the transportation of livestock from Covelo and a 30-mile radius thereof to South San Francisco and general commodities (including livestock, but excluding uncrated household goods and office equipment) from Petaluma and Santa Rosa to Covelo, and another to Ogle Bros. authorizing the transportation of liquid petroleum products in tank trucks from Petaluma and Santa Rosa to Covelo.

William H. Schultz, Arnold W. Ogle and Vard A. Ogle 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

Application having been made, the Commission being fully advised in the premises, and it appearing that public convenience and necessity so require,

IT IS ORDERED:

(1) That Arnold W. Ogle, Vard A. Ogle and John W. Banks, a copartnership, doing business as Banks and Ogle, be and they are hereby authorized to sell to William H. Schultz, an individual, doing business as Schultz Trucking Service, the operative rights and trucking equipment, such sale to be made in accordance with the terms of the agreement filed in this proceeding as Exhibit "D", which agreement applicants are authorized to execute.

(2) That a certificate of public convenience and necessity be, and it hereby is, granted to William H. Schultz, doing business as Schultz Trucking Service, authorizing the establishment and operation of service as a highway common carrier (as defined by Section 213 of the Public Utilities Code) for the transportation of (1) livestock from Covelo and a 30-mile radius thereof to South San Francisco; and, (2) of general commodities (including livestock, but excluding uncrated household goods and office equipment) from Petaluma and Santa Rosa to Covelo.

(3) That the authority to transfer granted in the preceding ordering paragraph will become effective when William H. Schultz has paid the minimum fee prescribed by Section 1904(b) of the Public Utilities Code, which fee is \$25.

(4) That the above copartnership of Banks and Ogle be further authorized to transfer the balance of its operative rights and trucking equipment to the remaining active partners, Arnold W. Ogle and Vard A. Ogle, copartners now doing business as Ogle Bros.

(5) That a certificate of public convenience and necessity be, and it hereby is granted to Arnold W. Ogle and Vard A. Ogle, copartners doing business as Ogle Bros. authorizing the establishment and operation of service as a highway common carrier (as defined by Section 213 of the Public Utilities Code) for the transportation of liquid petroleum products in tank trucks, from Petaluma and Santa Rosa to Covelo.

(6) That the certificate issued by said Decision No. 42938 be, and it hereby is, cancelled and annulled.

(7) That in providing service pursuant to the certificates herein granted, applicants shall comply with and observe the following service regulations:

- a. Applicants shall file a written acceptance of the certificates herein granted within a period of not to exceed 30 days after the effective date hereof.
- b. Within 60 days after the effective date hereof, and on not less than 5 days' notice to the Commission and the public, applicants shall establish the services herein authorized and file in triplicate and concurrently make effective, appropriate tariffs and time tables.
- c. Subject to the authority of the Commission to change or modify them by further order, applicants shall conduct operations pursuant to the certificates herein granted over and along the following route:

Between Covelo and Longvale, Biggar Highway;  
and between Longvale and South San Francisco,  
U. S. Highway 101.

Except as herein otherwise provided, the effective date  
of this order shall be twenty (20) days after the date hereof.

Dated at San Francisco, California, this 17<sup>th</sup>  
day of March, 1952.

R. J. [Signature]  
President

Justin Z. [Signature]

Harold T. [Signature]

[Signature]

Commissioners

