

ORIGINAL

Decision No. 47955

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the application of)	
the Furniture Fast Freight, a)	
California corporation, and Melvin A.)	
Pixley, an individual, for authority)	
to sell and transfer certain property)	Application No. 33825
and operative rights, and A.T.L., Inc.,)	
a California corporation, Abe Blatt)	
and Nathan Kimmel, individuals, to)	
purchase and acquire said property)	
and rights.)	

O P I N I O N

Furniture Fast Freight, a corporation, and Melvin A. Pixley seek authority herein to transfer to A.T.L. Inc., a corporation, Abe Blatt and Nathan Kimmel certain real and personal property, good will, and a portion of the highway common carrier and express corporation rights possessed by Furniture Fast Freight. These rights pertain to the transportation of uncrated furniture and household appliances.

Melvin A. Pixley is the sole stockholder of Furniture Fast Freight. By Decision No. 42288 dated December 7, 1948, in Application No. 29810 he was authorized to transfer to the corporation all of his certificated operative rights. The present application alleges he is joined as a seller because he "may have some interest in said rights and properties proposed to be sold", although a copy of the bill of sale proposed to be issued if the application is granted is to be executed solely by Furniture Fast Freight, and conveys the property only to A.T.L. Inc. Abe Blatt and Nathan Kimmel will sign a proposed promissory note as individuals along with A.T.L. Inc., but the corporation is the sole grantee. The applicants herein, therefore, will be considered to be the two corporations.

The proposed transfer includes all of Furniture Fast Freight's operative rights north of Santa Barbara and the junction of U. S. Highway 99 and State Highway 126 (hereinafter referred to as Castaic Junction) and between such area and Los Angeles Territory. Furniture Fast Freight would retain its operative rights relative to all shipments having both origin and destination south of the north boundary of Santa Barbara and Castaic Junction. There would also be transferred certain real property in Berkeley with terminal facilities, personal property therein, 16 pieces of power equipment, 17 pieces of trailer equipment, the good will to the business transferred, including the names "Furniture Fast Freight" and "Furniture Freight Forwarders" (seller proposes to change its name to Pixley, Inc.) and a certificate of public convenience and necessity issued by the Interstate Commerce Commission. The consideration to be furnished by A.T.L. Inc. is \$200,000 and the good will to that portion of its business under permits issued by this Commission in the area in southern California south of the north boundary of Santa Barbara and Castaic Junction.

The foregoing items are recited to show the nature and extent of the contemplated transfer, even though we possess no jurisdiction over some of them, such as the changes in corporate names and the transfer of the Interstate Commerce Commission certificate. Nor will we in this proceeding authorize a transfer of a portion of the operative rights possessed by A.T.L. Inc. under its city, radial and contract permits.

The purchase price of \$200,000 is to be evidenced by a promissory note payable at the rate of five per cent per month of the gross receipts of the purchaser for the preceding calendar month, with interest at 2.75 per cent payable semiannually. All principal and interest payments are to be made on or before January 1, 1965.

Furniture Fast Freight desires to consummate the sale herein because its president, who has sole responsibility for conducting the business, cannot efficiently conduct the operations in both northern and southern California. It is believed that he can render a more efficient and satisfactory service by confining the operations to one main terminal. The corporation will retain nine tractors, seven 35-foot semitrailers, eight trucks and four service trucks. It is alleged that this equipment is adequate to conduct its business in the southern California area to be retained.

A.T.L. Inc. was incorporated in California in August, 1951, and a certified copy of its Articles of Incorporation has been filed herein. It is successor in interest to a transportation business started by Abe Blatt and Nathan Kimmel in 1934 and operated continuously since that time. The business consists of transporting new uncrated furniture as a contract carrier between Los Angeles and San Francisco and Sacramento, serving intermediate points, and of transporting lumber as a radial highway common carrier. A city carrier business is also conducted. A profit and loss statement for A.T.L. Inc. and its predecessor for the five-year period of 1947 through 1951 discloses the following:

<u>Year</u>	<u>Gross Income</u>	<u>Net Income</u>
1947	\$136,768	\$16,077
1948	140,749	14,402
1949	100,311	1,303
1950	161,173	17,354
1951	161,873	26,050

A.T.L. Inc. owns a new warehouse, dock and office building in Los Angeles and proposes herein to buy the Berkeley terminal of Furniture Fast Freight. It also owns three tractors and five trailers which it will devote to the business in addition to the 33 pieces of equipment to be acquired from the seller herein.

The certificated rights of Furniture Fast Freight are centered around San Francisco Territory and Los Angeles Territory. From San Francisco Territory shipments may be made to numerous northern California points and to Los Angeles Territory (nothing south or east of Los Angeles Territory is authorized). From Los Angeles Territory shipments may be made to most points between San Diego and Santa Rosa and North Sacramento. There are some local rights between North Sacramento and Bakersfield, and between Fresno and Bakersfield, and Los Angeles.

The division of this operating authority in the manner proposed would not involve any joint rates or through routes between the two carriers. Every point authorized to be served could be reached by one or the other carrier in a single line service, except points between Castaic Junction and Los Angeles on that portion of the service authorized from Fresno. In order that all of the operative rights of Furniture Fast Freight be either sold or retained, the proposal herein will be modified so that such points between Castaic Junction and Los Angeles will continue to be authorized points of service.

Under the circumstances presented, we find that the proposed transfer is not adverse to the public interest and therefore will be granted. No public hearing appears to be necessary.

We further find that the money, property, or labor to be procured or paid for by execution of the above-mentioned promissory note is reasonably required for the purposes specified herein.

In authorizing this transfer we are making no finding of the value of the properties or operative rights involved and hereby place the transferee 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 actual operative rights herein authorized to be transferred are as follows:

1. Highway common carrier rights, limited to operations as an underlying carrier for an express corporation under Decision No. 36933 dated March 14, 1944, as follows:
 - a. A portion of the authority granted by Decision No. 33814 dated January 10, 1941, in Application No. 23745, viz: (1) From Los Angeles Territory to North Sacramento, serving all intermediate points except those lying south of the north boundary of Castaic Junction, and serving all designated off-route points in the San Joaquin Valley; (2) From Los Angeles Territory to San Francisco and Richmond, serving all intermediate points except those lying south of the north boundary of Santa Barbara; (3) From Fresno to Los Angeles, serving all intermediate points.
 - b. All of the authority granted by Decision No. 35453 dated June 9, 1942, in Application No. 24483.
 - c. All of the authority transferred to Melvin A. Pixley by Decision No. 36204 dated March 9, 1943, in Application No. 25155.
2. Operative rights as an express corporation coextensive with the highway common carrier rights hereinabove set forth, being a portion of the express corporation rights conferred by Decision No. 36824 dated January 1, 1944, in Application No. 25830.
3. The interest of Furniture Fast Freight, a corporation, in the decisions referred to in paragraphs 1 and 2, by virtue of the transfer thereof to the corporation by Decision No. 42288 dated December 7, 1948, in Application No. 29810.
4. A portion of the highway common carrier rights transferred to Furniture Fast Freight by Decision No. 47624 dated August 26, 1952, in Application No. 33605, viz:

- a. From Los Angeles Territory to Bakersfield, Tulare, Hanford, Fowler, Porterville, Visalia, Reedley, Sanger, Fresno, Merced, Modesto, Stockton, Sacramento, North Sacramento, Tracy, San Francisco Territory, Vacaville, Napa, San Rafael, San Anselmo, Petaluma, Santa Rosa, Buellton, Lompoc, Orcutt, Santa Maria, San Luis Obispo, Paso Robles, King City, Salinas, Del Monte, Carmel, Monterey, Pacific Grove, Watsonville, Santa Cruz, Los Gatos and San Jose.
- b. Between Fresno and Bakersfield and all intermediate points, on the one hand, and Los Angeles Territory on the other.
- c. From North Sacramento, Sacramento, Stockton, Modesto, Merced, Madera, Herndon, and all intermediate points, to Fresno and Bakersfield.

O R D E R

An application having been filed and the Commission having found that the public interest would not be adversely affected,

IT IS ORDERED:

(1) That Furniture Fast Freight, a corporation, after the effective date hereof and on or before February 28, 1953, may sell and transfer to A.T.L. Inc., a corporation, the operative rights and property referred to herein, and the latter may acquire and thereafter operate the same, such sale and transfer to be made in accordance with the terms of the agreement annexed as Exhibit 2 to the application herein.

(2) That A.T.L. Inc. may incur an indebtedness of \$200,000 for the purposes specified herein payable in the manner provided in said agreement.

(3) That within thirty (30) days after completion of the transfer herein authorized, the transferee shall notify the Commission in writing of that fact and file with it a true copy of the promissory note and any bill of sale or other instrument of transfer executed to effect the same.

(4) That applicants shall file in triplicate, and concurrently make effective, appropriate tariffs within sixty (60) days after completion of the transfer herein authorized and on not less than five (5) days' notice to the Commission and the public.

(5) That the authority herein granted will become effective when A.T.L. Inc. has paid the fee prescribed by Section 1904(b) of the Public Utilities Code, which fee is two hundred dollars (\$200).

Dated at San Francisco, California, this 25th day of November, 1952.

R. J. Drummond
President

James F. Cramer
Harold Kula

Benjamin Patten
John E. Mitchell
Commissioners

