

ORIGINALDecision No. 48665

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 DANIEL C. FESSENDEN, as Executor of)
 the Last Will of WILLIAM E. FESSENDEN,)
 Deceased, doing business as CALIFORNIA)
 WAREHOUSE CO., to transfer, and) Application No. 34320
 DANIEL C. FESSENDEN, doing business as)
 CALIFORNIA WAREHOUSE CO., to acquire)
 operating authority, property and)
 business of a public warehouseman and)
 a highway common carrier.)

O P I N I O N

Daniel C. Fessenden, executor of the last will of William E. Fessenden, deceased, doing business as California Warehouse Co., seeks authority herein to transfer to Daniel C. Fessenden, doing business as California Warehouse Co., such operative rights as a public utility warehouseman, as were held by the said William E. Fessenden by reason of his operation of a public utility warehouse on and prior to August 2, 1927, and also such operative rights as a highway common carrier as the said William E. Fessenden may have had under a prescriptive operating right recognized by this Commission in Decision No. 14404, dated December 27, 1924, in Application No. 9584, and transferred to William E. Fessenden under authority of Decision No. 25530, dated January 9, 1933, in Application No. 18613.

The application alleges that William E. Fessenden died on April 25, 1951, leaving a will under the terms of which the warehouse and highway common carrier operating authorities and

the properties and business in connection therewith were bequeathed to Daniel C. Fessenden, who was also appointed the executor of the estate. The probate proceedings were held by the Los Angeles County Superior Court under No. 317492, and on June 27, 1952, that court made its Decree of Distribution, a certified copy of which is attached to the application. This decree provides that the warehouse and trucking business shall be distributed to Daniel C. Fessenden.

The application further alleges that Daniel C. Fessenden is the brother of the decedent William C. Fessenden, and since the death of the decedent has operated the warehouse and common carrier services under a court order made in the afore-mentioned court proceeding. Daniel C. Fessenden proposes to continue the operations with the same equipment and facilities and with no change in personnel or management.

After a full consideration of this matter we hereby find that the proposed transfer of the operative rights and properties and business in connection therewith by Daniel C. Fessenden, executor of the last will of William E. Fessenden, deceased, doing business as California Warehouse Co., to Daniel C. Fessenden, doing business as California Warehouse Co., is not adverse to the public interest, and accordingly it will be authorized. A public hearing is not necessary.

In authorizing this transfer we are making no finding of value of the operative rights, and hereby place the transferee upon notice that operative rights, as such, do not constitute a class of property which may be 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 as above entitled having been made, the Commission being fully advised in the premises and having found that the requested transfer will not be adverse to the public interest,

IT IS ORDERED:

(1) That Daniel C. Fessenden, executor of the last will of William E. Fessenden, deceased, doing business as California Warehouse Co., after the effective date hereof, may transfer to Daniel C. Fessenden, doing business as California Warehouse Co., the operative rights as a public utility warehouseman acquired by William E. Fessenden by reason of his operation of such warehouse on or prior to August 2, 1927, and the operative rights as a highway common carrier recognized by this Commission in Decision No. 14404, dated December 27, 1924, in Application No. 9584, and transferred to William E. Fessenden by Decision No. 25530, dated January 9, 1933, in Application No. 18613.

(2) That Daniel C. Fessenden, doing business as California Warehouse Co., should this transfer be effected, shall file in

triplicate and concurrently make effective, tariffs and time schedules satisfactory to this Commission.

(3) That Daniel C. Fessenden, doing business as California Warehouse Co., within thirty days after making the transfer hereinabove authorized, shall file with this Commission a statement showing the journal entries used to record on its books the purchase of the operating authorities and the property and business herein authorized to be transferred.

The effective date of this order shall be twenty days after the date hereof.

Dated at SAN FRANCISCO, California, this 1st day of JUNE, 1953.

R. J. [Signature]
President

Justice J. [Signature]

Harold P. [Signature]

[Signature]

[Signature]
Commissioners