

ORIGINAL

Decision No. 49194

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)	
EDWARD GREEN, doing business as Los	:	
Angeles City Express and L. A. City)	
Express, for authority to transfer his	:	Application
highway common carrier operations and cer-)	No. 34375
tificate to LOS ANGELES CITY EXPRESS, INC.,	:	(and Amendment)
and for the latter to issue stock.)	
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O P I N I O N

In this proceeding the Commission is asked to make an order authorizing Edward Green to transfer highway common carrier operative rights and properties to Los Angeles City Express, Inc., and authorizing Los Angeles City Express, Inc. to issue 620 shares of its common stock of the par value of \$50 each and of the aggregate par value of \$31,000.

The application shows that Edward Green, doing business as Los Angeles City Express and L. A. City Express, has been operating as a highway common carrier of property in and about the City of Los Angeles and that he holds a certificate of public convenience and necessity acquired by him pursuant to authorization granted by Decision No. 45391, dated February 27, 1951, and also permits to operate as a radial highway common carrier, a city carrier, a highway contract carrier and a household goods carrier. This applicant has reported his revenues and expenses for 1952 and for the first six months of 1953 as follows:

1/ This application involves the transfer of the highway common carrier operative rights. Applicant Green has filed a separate application for approval of the transfer of the radial, city and highway contract permits.

	<u>1952</u>	<u>1953</u> Jan.-June
Revenues	\$167,268.66	\$92,138.89
Expenses	<u>163,782.59</u>	<u>87,897.20</u>
Net profit	<u>\$ 3,486.07</u>	<u>\$ 4,241.69</u>

Applicant Green's balance sheet showing his financial position as of June 30, 1953, is summarized as follows:

Assets

Current assets -		
Cash	\$ 5,006.74	
Accounts receivable	3,483.95	
Materials and supplies	<u>1,122.32</u>	
Total current assets		\$ 9,613.01
Fixed assets -		
Cost	62,696.02	
Less: accumulated depreciation	<u>27,588.90</u>	
Net book value		35,107.12
Franchise		7,500.00
Other assets		<u>2,445.65</u>
Total		<u>\$54,665.78</u>

Liabilities and Capital

Liabilities -		
Accounts payable	\$ 2,337.26	
Loan payable-M. Sidell	10,000.00	
Accrued taxes	2,710.31	
Contracts payable	<u>8,604.30</u>	
Total liabilities		\$23,651.87
Capital-Edward Green		<u>31,013.91</u>
Total		<u>\$54,665.78</u>

It appears that Edward Green now desires to transfer his certificate of public convenience and necessity and his properties and assets to a corporation which he has organized to take over and continue the operations. It is intended for the corporation to issue 620 shares of stock of the par value of \$31,000 to Edward Green in payment for his interest in the business and properties.

It is noted that the amount of stock proposed to be issued to applicant Green is measured by his reported capital investment as reflected by his books and as set forth in the balance sheet

appearing in this decision. On this point it appears that in arriving at the amount now to be capitalized through the issue of stock, applicants have included among the assets an allowance for franchise in the amount of \$7,500 which, according to our records, represents the purchase price paid by applicant Green for the certificate of public convenience and necessity he now holds.^{2/} In effect, applicants now are seeking to capitalize, through the issue of stock by the new corporation, the operative rights referred to in this proceeding at their agreed sale and purchase price at the time the present owner acquired them.

Section 820 of the Public Utilities Code reads as follows:

"The Commission shall have no power to authorize the capitalization of the right to be a corporation, or the capitalization of any franchise or permit, or the right to own, operate, or enjoy any such franchise or permit, in excess of the amount (exclusive of any tax or annual charge) actually paid to the State or to a political subdivision thereof as the consideration for the grant of such franchise, permit, or right. No contract for consolidation or lease shall be capitalized, nor shall any public utility issue any bonds, notes, or other evidences of indebtedness against or as a lien upon any contract for consolidation or merger."

In our opinion, because of this provision of the Public Utilities Code, we cannot recognize the \$7,500 item as a proper base for an order authorizing the issue of stock. Accordingly, we will authorize the corporation to issue not exceeding \$23,500 of stock in acquiring applicant Green's interest in the properties and business referred to in this proceeding. If it is intended for the corporation to pay said sum of \$7,500 to applicant Green, it must finance the same from some source other than securities requiring the Commission's

^{2/}

It appears that the operative rights represented by the certificate originally were established by E. R. Ketchum by reason of operations prior to May 1, 1917, that thereafter they were transferred to a partnership composed of D. E. Ketchum and E. E. Ketchum, that they were sold for \$2,000 to Edward R. Poole under authority granted by Decision No. 41553, dated May 4, 1948, and that they were resold by Poole to Green for \$7,500 under Decision No. 45391.

authorization.

It appears that the new corporation intends to serve the same territory now being served by Edward Green with no change in the rates and service and in our opinion the proposed transfer will not be adverse to the public interest. Los Angeles City Express, Inc. 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 as 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 rights, properties and assets herein authorized to be transferred.

ORDER

The Commission having considered the application of Edward Green and Los Angeles City Express, Inc. for an order authorizing the transfer of property and the issue of \$31,000 par value of stock and being of the opinion that a public hearing is not necessary, that the money, property or labor to be procured or paid for by the issue of the \$23,500 of stock herein authorized is reasonably required by Los Angeles City Express, Inc. for the purpose specified herein, and that such purpose is not, in whole or in part, reasonably chargeable to operating expenses or to income; therefore,

IT IS HEREBY ORDERED as follows:

1. Edward Green may transfer to Los Angeles City Express, Inc., on or before February 28, 1954, his certificate of public convenience and necessity and properties and assets.

2. Los Angeles City Express, Inc. may issue, on or before February 28, 1954, not exceeding \$23,500 par value of its common stock in payment for said certificate of public convenience and necessity and properties and assets and may assume the payment of outstanding indebtedness.

3. The request of Los Angeles City Express, Inc. to issue \$7,500 par value of stock is denied without prejudice.

4. Within 60 days after the effective date hereof and on not less than five days' notice to the Commission and to the public, Los Angeles City Express, Inc. shall file, in triplicate, and concurrently make effective, appropriate tariffs and time tables.

5. Los Angeles City Express, Inc. shall file with the Commission monthly reports as required by General Order No. 24-A, which order, insofar as applicable, is made a part of this order.

6. The authority herein granted will become effective 20 days after the date hereof.

Dated at San Francisco, California, this 13th day of October, 1953.

[Signature]
 President

Justus J. Wallace

[Signature]

[Signature]

Commissioners