

**ORIGINAL**

Decision No. 49732

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the application of: )  
 :  
 (a) Carl A. Miller and B. J. Mazzia, )  
 Copartners doing business under the )  
 firm name of Mission Drayage Service, )  
 for authority to sell and Carl A. )  
 Miller, doing business under the firm )  
 name of Mission Drayage Service, to )  
 purchase a certificate of public con- )  
 venience and necessity, pursuant to )  
 Sections 851-853 of the Public Utili- )  
 ties Code, )  
 :  
 (b) Carl A. Miller, doing business )  
 under the firm name of Mission Drayage )  
 Service, for authority to issue a )  
 promissory note pursuant to Sections )  
 816-830 and 851-853 of the Public )  
 Utilities Code. )  
 :  
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Application  
No. 35160

O P I N I O N

By Decision No. 46322, dated October 23, 1951, in Application No. 31856, Carl A. Miller and B. J. Mazzia, doing business as Mission Drayage Service, were granted a certificate of public convenience and necessity to operate as a highway common carrier between Paso Robles and Cambria, on the north, and Pt. Mugu, Camarillo, Moorpark and Fillmore, on the south, and intermediate points. The present application shows that they have undertaken the operations which were authorized by the Commission but that B. J. Mazzia now desires to retire from the business and to transfer his partnership interest to Carl A. Miller. The parties have filed this request for an order approving the transfer and authorizing the issue of a promissory note by Carl A. Miller.

By the terms of the agreement between the two parties, Carl A. Miller will acquire the interest of Mazzia in the certificate of

public convenience and necessity, the motor equipment, the accounts receivable, goodwill and all other assets, and thereafter will carry on the operations as a sole proprietor. The application shows that the business will be continued by the surviving partner without interruption in service or decrease in motor vehicle equipment now available to the public and with no change in rates.

The agreed price to be paid for the partnership interest is \$11,934.95. In financing the acquisition, Carl A. Miller proposes to borrow \$5,000 from Bank of America, said sum to be payable over a period of 18 months. The borrowing will be represented by a note in the total amount of \$5,340.96, of which \$5,000 represents the principal and \$340.96 represents the carrying charges for a period of 18 months at an interest rate of approximately 4-1/2% per annum.

The verified application shows that the operations of the business have been profitable. During 1953 the gross revenues amounted to \$97,122 and the net profit to \$14,414, after making provision of \$5,329 for depreciation. It appears that the earnings should be ample to enable applicant Miller to meet his obligations under the proposed borrowing.

In our opinion the transaction, as here proposed, will not be adverse to the public interest and should be authorized. In making our order 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 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 and properties herein authorized to be transferred.

O R D E R

The Commission having considered the above entitled matter and being of the opinion that a public hearing is not necessary, that the application should be granted, as herein provided, that the money, property or labor to be procured or paid for by the issue of the note herein authorized is reasonably required by applicant Miller for the purpose specified herein, and that such purpose, except as otherwise authorized, is not, in whole or in part, reasonably chargeable to operating expenses or to income; therefore,

IT IS HEREBY ORDERED as follows:

1. B. J. Mazzia, on and after the effective date hereof and on or before June 30, 1954, may transfer to Carl A. Miller his partnership interest in the certificate of public convenience and necessity and the operative properties referred to herein, such transfer to be made in accordance with the terms and conditions of the agreement between Carl A. Miller and B. J. Mazzia, dated January 2, 1954.

2. Carl A. Miller, on and after the effective date hereof and on or before June 30, 1954, may issue his promissory note in the face amount of not exceeding \$5,340.96, payable as indicated in this application, for the purpose of financing in part the purchase price of the partnership interest to be acquired from B. J. Mazzia.

3. Within 60 days after the effective date hereof and on not less than five days' notice to the Commission and to the public, applicants shall supplement or reissue the tariffs on file with the Commission naming rates, rules and regulations governing the common carrier operations here involved to show that Carl A. Miller and B. J. Mazzia have withdrawn or canceled and Carl A. Miller has adopted or established as his own said rates, rules and regulations. The tariff filings made pursuant to this order shall comply in all respects with the regulations governing the filing and construction of tariffs set forth in the Commission's General Order No. 80.

4. Carl A. Miller shall file with the Commission a report, or reports, 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 become effective when Carl A. Miller has paid the minimum fee prescribed by Section 1904(b) of the Public Utilities Code, which fee is \$25.00.

Dated at San Francisco, California, this 2<sup>nd</sup> day of March, 1954.

R. Z. [Signature]  
President

Justice J. Calmes  
Rosewith Pottel  
[Signature]  
Dennis Deagins  
Commissioners

