

Decision No. 50312

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Frank Spingolo, an individual doing business as Frank Spingolo Trucking Company to sell and transfer, and Frank Spingolo Trucking Company, a corporation, to purchase and acquire the operative rights, equipment and other assets of Seller, and to assume certain liabilities of Seller.)	
-----)	
)	Application
)	No. 35531

O P I N I O N

Frank Spingolo, applicant herein, is engaged in operating the Frank Spingolo Trucking Company as a highway common carrier of property. In this application he seeks authorization to sell and transfer his operative rights and properties to Frank Spingolo Trucking Company, a corporation.

The operative rights to be transferred are represented by a certificate of public convenience and necessity granted by the Commission by Decision No. 44517, dated July 11, 1950. In general, they permit the transportation of fresh fruits and vegetables between Stockton and other points, on the one hand, and San Francisco, Oakland, Berkeley, Alameda, Emeryville and Albany and intermediate points, on the other hand, subject to the restrictions set forth in the decision. The tangible properties to be included in the transaction consist of all the assets used in the operations, as more fully set forth in exhibits attached to the application.

Financial reports filed with the Commission by applicant Spingolo show his operating revenues and net income for the last three calendar years as follows:

	<u>Operating Revenues</u>	<u>Net Income</u>
1951	\$270,136	\$26,819
1952	307,526	25,447
1953	273,395	21,444

Appendix A attached to the application indicates applicant Spingolo's financial condition as of December 31, 1953, a summary being as follows:

<u>Assets</u>		
Current assets		\$ 29,874
Fixed assets -		
Tangible properties	\$273,532	
Less-depreciation reserve	<u>130,364</u>	
Net fixed assets		<u>143,168</u>
Total		<u>\$173,042</u>
<u>Liabilities and Capital</u>		
Liabilities -		
Current liabilities	\$ 28,866	
Long-term obligations	<u>64,991</u>	
Total liabilities		\$ 93,857
Proprietorship capital		<u>79,185</u>
Total		<u>\$173,042</u>

Applicant Spingolo desires to incorporate his business and he proposes to transfer all his properties to Frank Spingolo Trucking Company, a corporation. It appears that the corporation was organized several years ago but is inactive. It has outstanding two shares of stock, both of which are held by applicant Spingolo, and it does not seek at this time authorization to issue any additional shares. The corporation will take over the assets of the present operator and in return will assume all the liabilities.

According to the application, there will be no change in the rates or service and therefore in our opinion the transaction will not be adverse to the public interest and should be authorized.

Applicants 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 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 and that the application should be granted, as herein provided; therefore,

IT IS HEREBY ORDERED as follows:

1. Frank Spingolo may transfer his operative rights and properties to Frank Spingolo Trucking Company, a corporation, on or before November 30, 1954.

2. Frank Spingolo Trucking Company, a corporation, in acquiring such rights and properties, may assume the outstanding liabilities of Frank Spingolo, as set forth in the preceding opinion.

3. 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 Frank Spingolo has withdrawn or canceled and Frank Spingolo Trucking Company, a corporation, has adopted or established as its 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. The authority herein granted will become effective 20 days after the date hereof.

Dated at Los Angeles, California, this 27th day of July, 1954.

Robert E. Mitchell
President
Justus F. Callaway
Samuel D. Pottel
Gene Deegins

Commissioners