

ORIGINAL

Decision No. 50634

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application)
of)
ABBIE FREW McKOWN and IRENE MALCOLM,)
copartners doing business as JOE)
MANGINI DRAYING CO., to transfer to)
IRENE MALCOLM, an individual doing)
business as JOE MANGINI DRAYING CO.,)
an operative right covering an auto-)
motive freight line operated between)
San Francisco, Oakland and San Leandro.)
-----)

Application
No. 35812

O P I N I O N

This is an application for an order of the Commission authorizing the transfer of a partnership interest in the Joe Mangini Draying Co.

The application shows that formerly Isabella Mangini, Abbie Frew McKown and Irene Malcolm, as partners, were engaged in operating the Joe Mangini Draying Co. for the transportation of freight between San Francisco, Oakland and San Leandro, that Isabella Mangini died in June of 1953, and that her interests in the firm were distributed to the remaining partners under a decree of distribution issued by the Superior Court in and for the City and County of San Francisco. The application further shows that Abbie Frew McKown now desires to withdraw from the partnership and has made arrangements to transfer her interests to Irene Malcolm.

According to information contained in the application, Mrs. McKown's partnership interest amounted to \$3,622.49. Under the

agreement for the sale of the partnership interest, Irene Malcolm, in consideration for the transfer, has agreed to pay Abbie Frew McKown the sum of \$50 a month commencing September 1, 1953, the payments to terminate at any time if the Joe Mangini Draying Co. should suspend operations. The properties utilized by the Joe Mangini Draying Co. include operative rights acquired by the former partnership under authorization granted by the Commission by Decision No. 47437, dated July 8, 1952, in Application No. 33458, and carrier equipment, as shown in Exhibit B filed in this proceeding, consisting of ten trucks and office furniture and equipment.

From a review of the application it appears that there will be no change in the rates presently published and in effect as a result of the transfer. In our opinion, therefore, such transfer will not be adverse to the public interest and should be approved. We will authorize the execution of the agreement between the two parties evidencing the obligation of Irene Malcolm to make payments to Abbie Frew McKown in monthly installments, it being our opinion that the money, property or labor to be procured or paid for by the execution of such agreement is reasonably required by applicant Malcolm.

In making this 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 partnership interest herein authorized to be transferred.

Q 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. Abbie Frew McKown may sell and transfer her partnership interest in the Joe Mangini Draying Co. to Irene Malcolm, on or before December 31, 1954, under the terms and conditions of the agreement for the transfer of such interest filed in this proceeding as Exhibit A, which agreement applicants are authorized to execute. Irene Malcolm may undertake the payment of the indebtedness referred to therein.

2. 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 Abbie Frew McKown and Irene Malcolm, doing business as Joe Mangini Draying Co., have withdrawn or canceled and Irene Malcolm, doing business as Joe Mangini Draying Co., has adopted or established

as her own said rates, rules and regulations. The tariff filings made pursuant to this order shall comply in all respects with the regulations governing the construction and filing of tariffs set forth in the Commission's General Order No. 80.

3. The authority herein granted will become effective when Irene Malcolm has paid the minimum fee prescribed by Section 1904(b) of the Public Utilities Code, which fee is \$25.00.

Dated at Los Angeles, California, this 26th day of October, 1954.

John E. Wetcher
President

Justus F. Caswell

Kenneth Pottel

James Roggins

Paul H. Hester
Commissioners

