

Decision No. 51882

**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )  
GEORGE S. BUTLER, INC., a corporation, )  
for authority to issue certain shares )  
of its capital stock and assume )  
certain liabilities )

- and - )

In the Matter of the Application of )  
GEORGE S. BUTLER, INC., a corporation, )  
to acquire, and GEORGE S. BUTLER and )  
MARJORIE E. BUTLER, copartners doing )  
business as BUTLER FREIGHT SERVICE, )  
to transfer assets including certain )  
certificates of public convenience and )  
necessity to GEORGE S. BUTLER, INC., a )  
corporation, in exchange for capital )  
stock of GEORGE S. BUTLER, INC. )  
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) Application  
) No. 37124  
) (and Amendment)

O P I N I O N

In this proceeding, as amended, the Commission is asked to make an order authorizing George S. Butler and Marjorie E. Butler to transfer the Butler Freight Service to George S. Butler, Inc., a corporation, and authorizing said corporation to issue \$151,790 par value of its common stock.

The application shows that George S. Butler and Marjorie E. Butler, copartners doing business as Butler Freight Service, presently are engaged in the transportation of lumber and forest products over U. S. Highway 101 between Eureka and the Oregon-California border, serving all intermediate points and off route points within 15 miles laterally of the highway, under a certificate of public convenience and necessity granted by Decision No. 43424, dated October 18, 1949, in Application No. 29936, and Decision No. 50629, dated October 13, 1954, in Application No. 35836. They

now desire to conduct their operations by means of a corporate form of organization and they propose to transfer their operative rights, equipment and other assets at their book values to George S. Butler, Inc., a corporation they have caused to be organized, in consideration of the assumption by the corporation of outstanding indebtedness and the issue of shares of stock.

In the amended proceeding, applicants have filed a pro forma balance sheet of the corporation giving effect to its acquisition of the business. A summary of the statement is as follows:

<u>Assets</u>		
Current assets -		
Cash	\$10,000	
Inventories	21,306	
Prepaid expenses	12,227	
Total current assets		\$ 43,533
Property, less depreciated reserve		
Revenue equipment	\$159,943	
Shop equipment	3,669	
Office equipment	1,963	
Leasehold improvements	2,266	
Total property		<u>\$167,841</u>
	Total	<u>\$211,374</u>
<u>Liabilities and Capital</u>		
Notes and contracts payable		\$ 59,577
Equity capital		<u>151,797</u>
	Total	<u>\$211,374</u>

A summary account of the operating results of the business to be transferred to the corporation for the first three months of 1955 is as follows:

Revenues		
Lumber hauls		\$121,599
Mail contract		2,950
Contract and miscellaneous freight		2,602
Total revenues		<u>\$127,151</u>
Net income (before partners' salaries and income taxes but after depreciation charges of \$11,136)		\$ 17,973

A comparative income statement is not available for the reason that prior to 1955 the partnership was engaged in the transportation of general commodities under operating rights which it sold in the latter part of 1954.

Applicants report that the present partners will be the shareholders in the new corporation and will continue the business in corporate form in the same manner in which they presently are conducting operations. There will be no change in the equipment or in the rates and service as a result of the transaction. The pro forma balance sheet shows that the balances in the accounts of the partnership will be transferred to the books of the successor corporation.

Under the circumstances set forth in this proceeding we are of the opinion, and so find, that the proposed transfer will not be adverse to the public interest. Applicants are placed on 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 stock herein authorized is reasonably required by applicant corporation 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:

1. That George S. Butler and Marjorie E. Butler, copartners doing business as Butler Freight Service, may transfer their operative rights, equipment and other assets to George S. Butler, Inc., a corporation, on or before December 31, 1955, under the terms and conditions set forth in this application.
2. That George S. Butler, Inc., a corporation, in payment for such operative rights, equipment and other assets, may assume the payment of outstanding indebtedness, as set forth in the balance sheet appearing in the preceding opinion, and may issue not exceeding \$151,790 par value of common stock.
3. That 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 George S. Butler and Marjorie E. Butler, copartners doing business as Butler Freight Service, have withdrawn or canceled and George S. Butler, Inc., 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 construction and filing of tariffs set forth in the Commission's General Order No. 80.

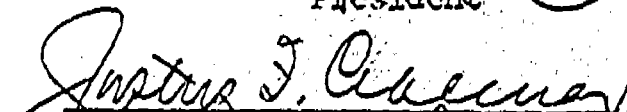

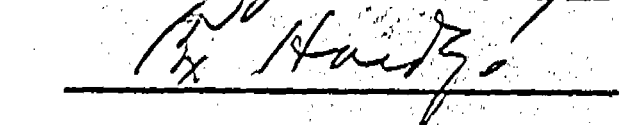
4. That George S. Butler, Inc. shall file with the Commission a report, or reports, as required by General Order No. 24-A, which order, insofar as applicable, is made a part of this order.

5. That George S. Butler, Inc. shall file with the Commission a copy of each journal entry used to record on its books the acquisition of the properties of George S. Butler and Marjorie E. Butler under the authorization herein granted, such filings to be made within 30 days after the date of such entries.

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

Dated at San Francisco, California, this 30<sup>th</sup> day of AUGUST, 1955.

  
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President

  
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Commissioners