

ORIGINAL

Decision No. 51965

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)

(a) SEARS TRUCKING, INC., for)
authority to issue shares of its)
stock pursuant to sections 816-830)
of the California Public Utilities)
Code; and)

(b) J. B. SEARS, an individual,)
doing business as SEARS TRUCKING,)
to sell, and SEARS TRUCKING, INC.,)
to purchase, a highway common carrier)
operating right for the transportation)
of property between the City of Los)
Angeles proper and steamship wharfs)
and docks located at Los Angeles Harbor,)
namely, Wilmington and San Pedro, pur-)
suant to Sections 851-853 of the)
California Public Utilities Code.)
-----)

Application
No. 37211

O P I N I O N

This is an application for an order authorizing J. B. Sears to transfer highway common carrier operative rights and equipment to Sears Trucking, Inc. and authorizing Sears Trucking, Inc. to assume the payment of indebtedness and to issue 60 shares of no par value common stock.

Under authorization granted by Decision No. 51160, dated March 1, 1955, applicant Sears acquired from Pacific Transportation and Warehouse Company, Inc. highway common carrier operative rights permitting the transportation of property between the City of Los Angeles and steamship wharves and docks located at Los Angeles harbor. It appears that he commenced his operations on or about March 3 of this year and that between that date and June 30 he realized revenues of \$11,772, with net profit of \$1,951, after making

provision for depreciation in the amount of \$1,386. The carrier's statement of assets and liabilities as of June 30, 1955, is summarized as follows:

<u>Assets</u>		
Current assets -		
Cash	\$1,547.75	
Accounts receivable	<u>2,538.67</u>	
Total current assets		\$ 4,086.42
Carrier operating equipment, less depreciation		15,253.19
Franchises		7,641.64
Deferred debits		<u>1,809.40</u>
	Total	<u>\$28,790.65</u>
<u>Liabilities and Capital</u>		
Current liabilities		\$ 2,503.40
Long-term obligations		12,326.25
Proprietorship capital		<u>13,961.00</u>
	Total	<u>\$28,790.65</u>

The application shows that said Sears now desires to conduct his operations by means of a corporate form of organization and that he has organized Sears Trucking, Inc. and proposes to transfer his operative rights and equipment to it, said corporation in consideration for such transfer to assume the payment of outstanding liabilities and to issue 60 shares of no par stock at a stated value per share of \$232.68 and an aggregate stated value of \$13,961. It is noted that the total stated value which has been assigned to the proposed shares of stock is equivalent to the proprietor's reported investment in the business and that his investment includes the sum of \$7,641.64 for operative rights, an amount, for the most part, consisting of \$7,500 representing the price applicant Sears paid Pacific Transportation and Warehouse Company, Inc. as the consideration for the transfer of such rights to him.

Section 820 of the Public Utilities Code reads in part as follows:

"820. 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 information is presented of any sums paid by J. B. Sears, or his predecessors, to the state, or to a political subdivision, for his operative rights and, in the absence of any showing on that point, the \$7,500 must be excluded from the property base upon which we can predicate an order authorizing the issue of stock. It therefore appears to us that the most we can accept in arriving at our determination of the shares to be issued is the sum of \$6,461.

Accepting applicants' assigned value of \$232.68 a share, we will authorize the corporation to issue 28 shares of stock and to assume outstanding liabilities. If the corporation desires to pay \$7,500 to J. B. Sears it must finance the same from some source other than securities requiring the approval of the Commission and it must charge the amount on its books to other intangible property.

Applicants are hereby 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 has considered the above entitled matter and is of the opinion, and so finds, 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 28 shares of stock is reasonably required by applicant corporation for the purpose specified herein, that such purpose is not, in whole or in part, reasonably chargeable to operating expenses or to income, and that the proposed transaction will not be adverse to the public interest, therefore,

IT IS HEREBY ORDERED as follows:

1. J. B. Sears may transfer to Sears Trucking, Inc., a corporation, on or before December 31, 1955, his highway common carrier operative rights and equipment.
2. Sears Trucking, Inc., in payment for such rights and equipment, may assume the payment of outstanding indebtedness and may issue not exceeding 28 shares of its no par value common stock.
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 J. B. Sears has withdrawn or canceled and Sears Trucking, 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. Sears Trucking, 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. The authority herein granted will become effective 20 days after the date hereof.

Dated at San Francisco, California, this 27th day of September, 1955.

John E. ...
President

Justin J. ...

Ronald ...

Michael ...

...
Commissioners