

Decision No. 52098**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
 A. M. GRIGGS to sell and ARTHUR
 MOSQUIERA, SR., A. B. MOSQUIERA, and
 MAXINE THOMAS to purchase an automotive
 (New, Used Furniture) Van Line operated
 between Los Angeles and Santa Barbara,
 California.

Application No. 37024

A. M. Griggs and Arthur Mosquiera, Sr., for
 applicants.

Jackson W. Kendall, for Bekins Van Lines, Inc.,
 Bekins Van and Storage, Inc., Bekins Van and Storage Co.,
 Lyon Van Lines, Inc., Floyd M. Shook, doing business as
 Shook's Van and Storage Co., and Griggs Van and Storage
 Co., protestants.

Theodore Stein, for the Commission's staff.

O P I N I O N

Applicant A. M. Griggs has authority from this Commission to transport uncrated and unboxed household goods, furniture (including antiques), office fixtures and furniture between Los Angeles and Santa Barbara and intermediate points, via Ventura Highway and State Highway (now U. S. Highway 101) with the right to detour for pickup or delivery 30 miles on either side of said highway at all points between the north limits of the City of Los Angeles and the west limits of the City of Santa Barbara. (1)

(1) Decision No. 23611, dated April 20, 1931, in Application No. 17161 (36 C.R.C. 183).

By the application herein, filed on June 6, 1955, A. M. Griggs, hereinafter referred to as seller, seeks authority to sell, and Arthur Mosquiera, Sr., A. B. Mosquiera (the wife of Arthur Mosquiera, Sr.) and Maxine Thomas (now Maxine Mosquiera), hereinafter referred to as purchasers; seek authority to purchase the above-described operative right together with certain trucks and equipment used by the seller in rendering service pursuant to that right, and to incur an indebtedness to the seller for the purchase of said operative right and property:

A public hearing was held in Los Angeles, before Examiner Kent C. Rogers, on August 30, 1955, evidence was presented and the matter was submitted. It is ready for decision.

Evidence in support of the application was presented by the seller and Mr. Arthur Mosquiera, Sr., one of the purchasers. Upon this evidence we find the following facts to be true:

The seller received the described certificate of public convenience and necessity from this Commission in 1931; and rendered service pursuant thereto until September 15, 1954. On September 15, 1954 the seller had a 1-1/2-ton and a 2-ton van truck, both paid for and valued by him at \$6,600. The seller also had a terminal, which he owned in Santa Barbara, and a terminal in Los Angeles, which he rented on a month-to-month basis. On September 15, 1954, the seller also had an interstate carrier right resulting from the registration of the described highway common carrier certificate, and radial highway common carrier, highway contract carrier, city carrier, and household goods carrier permits issued by this Commission.

In 1954, because of ill health and age, the seller decided to retire:

On September 10, 1954, the seller and the purchasers executed an agreement ⁽²⁾ whereby the seller agreed to sell, and the purchasers agreed to purchase, the above-described certificate, the two trucks, including the incidental equipment thereon such as pads, the interstate right, and the permits for the sum of \$9,000, \$2,500 of which was payable forthwith, and \$6,500 of which was to be paid at the rate of \$100 or more per month plus interest on the unpaid balance at the rate of 6 percent per annum. On September 15, 1954, the purchasers delivered to the seller a promissory note for \$6,500, ⁽³⁾ paid the seller \$2,500 in cash, and the transfer was effected. As of August 30, 1955, all payments had been made according to the tenor of the note. On December 8, 1954, the permits were transferred to Arthur Mosquiera, Sr., and A. B. Mosquiera. The interstate rights will be transferred when the herein requested authority is granted.

On September 15, 1954, the purchasers commenced rendering service pursuant to the said certificate. They are using the trucks and equipment sold by the seller. They rent the seller's Santa Barbara terminal. In Los Angeles they rent a terminal. The records of this Commission reflect that the seller made an annual report for the calendar year 1954, which, on the face thereof, covers the entire year. The evidence shows, however, that this report covers the period January 1 to September 14, 1954, only. Thereafter all records were kept by the purchasers. As of December 31, 1954, the purchasers appeared to be solvent (Exhibit A on the application).

(2) Exhibit No. 2.

(3) Exhibit No. 1.

Arthur Mosquiera, Sr., and A. B. Mosquiera have owned Art's Van and Storage Co. for thirty years. This is a permitted carrier carrying used household goods, baggage and office furniture between points in California pursuant to radial highway common carrier, city carrier, and household goods carrier permits issued by this Commission. This company, at the hearing, filed its financial statement dated as of May 31, 1955, (Exhibit No. 3) from which this Commission concludes that it is solvent and possesses the required financial responsibility to perform the services under the certificate originally issued to the seller.

The proposed transfer is not adverse to the public interest and it is our conclusion that the authority sought, including the authority for the purchasers to incur an indebtedness in the sum of \$6,500, and issue a promissory note therefor, should be granted, that the money, property, or labor to be procured or paid for by the incurrence of the indebtedness herein authorized is reasonably required by the purchasers for the purposes specified herein, and that such purposes are not, in whole or in part, reasonably chargeable to operating expenses or to income.

The action taken herein shall not be construed to be a finding of value of the property herein authorized to be transferred.

Arthur Mosquiera, Sr., A. B. Mosquiera, and Maxine Thomas (now Maxine Mosquiera) 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 representative of the protestants argued that (1) as the transfer was made without the applicants first having secured the permission of this Commission, and (2) the record does not show that after the permits were transferred on December 8, 1954 any new furniture was carried, the certificate should be cancelled for dormancy. The record herein, however, does show that prior to September 15, 1954, the seller carried new household goods as well as mixed loads of new and used household goods, and there is nothing in the record to indicate that after September 15, 1954, the character of the traffic carried changed. As service was and still is being rendered, it would appear that the public has suffered no detriment by reason of the unauthorized transfer. In our opinion no reason has been presented by the protestants which would require that the application be denied.

O R D E R

The Commission having considered the above-entitled matter and having found that the application should be granted.

IT IS ORDERED:

(1) That A. M. Griggs be, and he hereby is, authorized to sell and transfer to Arthur Mosquiera, Sr., A. B. Mosquiera, and Maxine Thomas, also known as Maxine Mosquiera, the certificate of public convenience and necessity, equipment and trucks referred to above, and Arthur Mosquiera, Sr., A. B. Mosquiera, and Maxine Thomas, also known as Maxine Mosquiera, are hereby authorized to purchase and acquire said certificate, equipment and trucks, and may pay therefor the sum of \$2,500 in cash, and the sum of \$6,500, together with interest thereon at 6 percent per annum as provided in the agreement dated September 10, 1954, a copy of which is in the file herein as Exhibit No. 2, and the promissory note dated September 15, 1954, a copy of which is in the file herein as Exhibit No. 1.

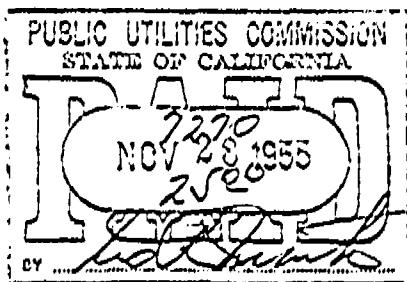
(2) That Arthur Mosquiera, Sr., A. B. Mosquiera, and Maxine Thomas, also known as Maxine Mosquiera, may issue their promissory note in the principal sum of \$6,500 for the purpose of financing, in part, the cost of the operative right, equipment and trucks to be acquired from A. M. Griggs.

(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 and schedules governing the common carrier operations here involved to show that the seller has withdrawn or cancelled and Arthur Mosquiera, Sr., A. B. Mosquiera, and Maxine Thomas, also known as Maxine Mosquiera, have adopted or established as their own said rates, rules, regulations and schedules. 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 Arthur Mosquiera, Sr., A. B. Mosquiera, and Maxine Thomas, also known as Maxine Mosquiera, shall file with the Commission a report, or reports, as required by General Order No. 24-A, which order, in so far as applicable, is made a part of this order.

(5) That the authority herein granted will become effective when Arthur Mosquiera, Sr., A. B. Mosquiera, and Maxine Thomas, also known as Maxine Mosquiera, have paid the minimum fee prescribed by Section 1904 (b) of the Public Utilities Code, which fee is \$25.

Dated at San Francisco, California,
this 18th day of October, 1955.



[Handwritten signatures and names]
President
Commissioners