

ORIGINAL

Decision No. 52703

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of:

(a) SYLVIA N. McCOOK, as Executrix of the Estate of EDWARD L. McCOOK, Deceased, CHARLES A. ARRASMITE and JOHN C. WENTZ, copartners doing business as AUTOMOBILE TRANSPORT COMPANY OF CALIFORNIA, to sell and AUTOMOBILE TRANSPORT COMPANY OF CALIFORNIA, a corporation, to purchase, a certificate of public convenience and necessity for the transportation of motor vehicles, trailers, certain component parts thereof, and various other commodities, pursuant to Sections 851-853 of the California Public Utilities Code.

Application
No. 37603

(b) AUTOMOBILE TRANSPORT COMPANY OF CALIFORNIA, a corporation, to issue shares of its common capital stock pursuant to Sections 816-830 of the California Public Utilities Code.

Glanz & Russell, by R. Y. Schureman, and George Kurtz for applicants.

O P I N I O N

This application was filed on December 16, 1955, for an order of the Commission authorizing Sylvia N. McCook, as Executrix of the Estate of Edward L. McCook, Deceased,^{1/} and Charles A. Arrasmith and John C. Wentz, copartners doing business as Automobile Transport Company of California, to sell operative rights and equipment to Automobile Transport Company of California, a corporation, and authorizing said corporation to assume outstanding indebtedness and to issue 7,528 shares of stock of the aggregate par value of \$75,280.

A public hearing was held before Examiner Coleman in Los Angeles on February 1, 1956, at which time the matter was taken under

^{1/} Mrs. McCook was appointed Executrix of the Will of Edward L. McCook, Deceased, and she will hereafter be so referred to.

submission. The Commission has received no protests in the proceeding.

The application shows that in the latter part of 1953 Edward L. McCook, Charles A. Arrasmith, and John C. Wentz formed a partnership to engage in certain highway carrier activities. Under authorization granted by Decision No. 50154, dated June 29, 1954, in Application No. 35397, they acquired operative rights for the transportation, as a highway common carrier, of motor vehicles, trailers, certain component parts, and other specified commodities between all points and places in California. They also acquired city carrier, radial highway common carrier, and highway contract carrier permits in California, and, in addition, interstate highway common carrier rights under a certificate issued by the Interstate Commerce Commission.

It is reported that on June 8, 1955, E. L. McCook died and that on or about July 25, 1955, Sylvia N. McCook, as Executrix of his Will, reached an agreement for the sale of the McCook one-third interest in the partnership properties and business to the surviving partners for the sum of \$42,687.95. The surviving partners, however, subsequently determined that it would be to their best interests to incorporate the business and to have said one-third interest, under a new agreement, transferred directly to a new corporation, applicant herein, which they have set up to acquire the properties and business formerly owned and operated by the partnership and to continue the operations. The Superior Court of the State of California in and for the County of Los Angeles has approved the transfer by the Executrix of the estate's share in the enterprise.

The properties to be acquired by the new corporation include the operative rights, the equipment and office and shop facilities,

together with current accounts. The book values as of September 30, 1955, and the values assigned for the purpose of the transfer are shown in the following tabulation:

	<u>Per Books</u> <u>Sep. 30, 1955</u>	<u>Giving</u> <u>Effect</u> <u>Statement</u>	<u>Increase</u>
<u>Assets</u>			
Current assets -			
Cash & deposits	\$ 9,517	\$ 9,517	\$ -
Accounts receivable	13,844	13,844	-
Prepayments	1,444	1,444	-
Materials & supplies	2,204	2,204	-
Total current assets	<u>27,009</u>	<u>27,009</u>	-
Tangible property - net	11,561	49,946	38,385
Intangible property - net	72,043	66,743	(5,300)
Deferred debits	<u>3,959</u>	<u>3,959</u>	-
Total	<u>\$114,572</u>	<u>\$147,657</u>	<u>\$33,085</u>
<u>Liabilities</u>			
Current liabilities	\$ 6,409	\$ 6,499	\$ 90
Advances	5,700	5,700	-
Long-term debt	59,130	59,130	-
Reserves	1,030	1,030	-
Proprietary capital	<u>42,303</u>	<u>75,298</u>	<u>32,995</u>
Total	<u>\$114,572</u>	<u>\$147,657</u>	<u>\$33,085</u>

Upon acquiring the assets the new corporation, as stated, will assume the payment of the outstanding debt and will issue \$75,280 par value of stock.

The tangible properties to be transferred consisted, on the date of the balance sheet, of nine tractors, one truck, eight trailers, and one service car, together with miscellaneous equipment, furniture, and fixtures. The total costs of such properties are recorded at \$47,072 and the accumulated reserve at \$35,511, resulting in the net balance of \$11,561 shown on the balance sheet. The record shows that all the rolling stock is fully depreciated on the books except three 1955 trailers and one tractor, but that all of the equipment is being utilized and is in good operating condition.

Testimony shows that it was the operators' practice, upon acquiring equipment, to convert the same to meet the specialized nature of the business, which consists primarily of moving repossessed and damaged cars. The testimony further shows that in the past the cost of converting the equipment had been charged to expense accounts instead of to property accounts and that, in addition, short lives had been used for accumulating depreciation, three years for tractors and trucks and five for trailers, with the result that the book values are understated.

In order that the equipment might more nearly be stated on the books at its true value, applicants engaged a consulting engineer to make an appraisal. The appraisal, a copy of which is filed as Exhibit 10, shows the estimated replacement costs, new, at \$87,704, and the sound value as of September 30, 1955, at \$49,946. The engineering witness testified that in his determination he took into consideration, among other things, the past and future use of the equipment, the operating condition, maintenance practices, observed depreciation for wear and obsolescence, and the remaining life to a going, continuing operation. His conclusions do not necessarily represent the present market value.

The intangible property accounts are made up of the following:

	<u>Books</u>	<u>Pro Forma</u>
Organization expense	\$ 400	\$ 400
California P.U.C. permits	5,500	200
Other intangible properties	<u>66,143</u>	<u>66,143</u>
Total	<u>\$72,043</u>	<u>\$66,743</u>

The applicant corporation proposes to write the California rights down to a figure which is said to represent actual cost.

The other intangible properties arise from the acquisition of the interstate operating rights. These rights were acquired by the partnership, by purchase, on April 16, 1954, for the sum of \$93,377.81 pursuant to an order of the Interstate Commerce Commission in Docket No. MC-FC-56416. The order of the Interstate Commerce Commission permitted the corporation to state the purchase price on the books but required the partnership to amortize the same over a five-year period. It is reported that from April 16, 1954, to September 30, 1955, the partnership had amortized the interstate operating authority in the sum of \$27,235.06, thus reducing the book value to \$66,142.72. It is the applicant corporation's intention to record such interstate operating authority at its present book value and to continue with the amortization of the same.

The partnership commenced its operations on or about April 15, 1954. A statement of the revenues and expenses during 1954 and 1955 as reported in financial statements filed with the Commission is as follows:

	<u>1954</u>	<u>1955 Jan. - Sept.</u>
Operating revenues	\$218,589	\$229,129
Operating expenses	<u>198,746</u>	<u>202,723</u>
Operating profit	<u>19,843</u>	<u>26,406</u>
Deductions -		
Interest	2,968	2,740
Amortization	14,088	13,312
Other	<u>1,257</u>	<u>3,374</u>
Total	<u>18,313</u>	<u>19,426</u>
Net profit	<u>\$ 1,530</u>	<u>\$ 6,980</u>

The operating expenses include salaries of the partners and exclude any allowance for income taxes. Analysis of the

statements indicates available cash developed by the operation, after payment of partners' salaries, as follows:

	<u>1954</u>	<u>1955</u>
Net income	\$ 1,530	\$ 6,980
Add back non-cash items -		
Depreciation	1,046	903
Amortization	14,088	13,312
Total cash	<u>\$16,664</u>	<u>\$21,195</u>

It is the corporation's intention, if the proposed transfer be approved, to continue the present operations under the rates, rules and regulations now in effect and to utilize the same facilities and personnel.

Upon reviewing this matter it is apparent that, should the proposed transfer be approved and carried into effect, the new corporation would enter upon its operations with a favorable current position and with a volume of working capital which should be adequate. It would be acquiring a business which has been successful and which, upon the basis of past performance, should generate internal funds in amounts sufficient to take care of its obligations.

It appears that the book values assigned to the tangible properties do not reflect the true costs nor the accrued depreciation, and it therefore seems desirable for the new corporation, upon acquiring such properties, to record them at the appraised figures of record in this proceeding. It is true that the corporation will have on its books at the outset a substantial balance in its intangible property accounts which is associated with its interstate operations, but such balance is being written off over a short life by reservations of income, which action, of course, will result in the retention of cash in the business and improvement in the equity position.

Under the circumstances set forth in the proceeding we are of the opinion, and so find, that the transfer will not be adverse to the public interest, that the money, property or labor to be procured or paid for through the issue of \$75,280 par value of stock is reasonably required for the purpose specified herein, and that such purpose is not, in whole or in part, reasonably chargeable to operating expenses or to income, and that the application should be granted.

In making this order we place the applicant corporation 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 properties herein authorized to be transferred nor as indicative of amounts to be included in a future rate base for the purpose of determining reasonable rates.

O R D E R

A public hearing having been held upon the above entitled matter and the Commission having considered the evidence and being of the opinion that the application should be granted, therefore,

IT IS HEREBY ORDERED as follows:

1. Sylvia N. McCook, as Executrix of the Will of Edward L. McCook, Deceased, and Charles A. Arrasmith and John C. Wentz, copartners doing business as Automobile Transport Company of California, may sell and transfer to Automobile Transport Company of California, a corporation, on or before December 31, 1956, the certificate of public convenience and necessity acquired by said copartners under authorization granted by Decision No. 50154 and the operative equipment and assets referred to herein.

2. Automobile Transport Company of California, a corporation, in payment for said certificate and operative equipment and assets may assume the outstanding indebtedness of the partnership as of the date of transfer and may issue not exceeding 7,528 shares of its common stock of the aggregate par value of \$75,280.

3. Automobile Transport Company of California, a corporation, in acquiring said rights and properties may record the tangible properties on its books in accordance with the figures developed in the appraisal filed in this proceeding as Exhibit 10 and the intangible properties in accordance with the "Giving Effect Balance Sheet" filed as Exhibit H.

4. 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 Sylvia N. McCook, as Executrix of the Will of Edward L. McCook, Deceased, Charles A. Arrasmith, and John C. Wentz have withdrawn or canceled and that Automobile Transport Company of California, 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.

5. Automobile Transport Company of California, a corporation, 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, and a report containing a copy of the journal entries used to record on its books the acquisition of the rights and properties herein authorized to be transferred.

6. The authority herein granted will become effective twenty days after the date hereof.

Dated at San Francisco, California, this 6th day of March, 1956.

[Signature]
President

Justus F. Cracumel

Paul Wintermeyer

William L. Stolen

R. Hardy

Commissioners