

Decision No. 53025

**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of  
FRANK C. WINANS and GRANT A.  
WINANS, copartners doing business  
as WINANS BROTHERS, to transfer  
certificates of public convenience and  
necessity, permits, and property to  
WINANS BROS. TRUCKING CO., a  
corporation, and to issue stock and  
assume certain obligations.

Application  
No. 37866

O P I N I O N

This is an application for an order of the Commission (1) authorizing Frank C. Winans and Grant A. Winans, copartners doing business as Winans Brothers, to transfer operative rights to Winans Bros. Trucking Co., a corporation, and (2) authorizing said corporation to assume the payment of liabilities and to issue \$5,000 par value of common stock.

The application shows that Frank C. Winans and Grant A. Winans possess certificates of public convenience and necessity granted by the Commission by Decision No. 43424, dated October 18, 1949, and Decision No. 45016, dated November 21, 1950, authorizing the transportation of lumber and forest products, generally, between all points in California, and that in addition they have permits to operate as a radial highway common carrier, a highway contract carrier, and a petroleum contract carrier. They have reported results of operations during 1955, as follows:

	<u>Lumber Transportation</u>	<u>Oil Transportation</u>	<u>Total</u>
Revenues	\$570,038	\$109,340	\$679,378
Expenses	<u>524,834</u>	<u>83,914</u>	<u>608,748</u>
Net Profit	<u>\$ 45,204</u>	<u>\$ 25,426</u>	<u>\$ 70,630</u>

According to Exhibit C, the partners' investment in fixed assets, at December 31, 1955, amounted to the following:

	<u>Cost</u>	<u>Depreciation</u>	<u>Net</u>
Land	\$135,118	\$ -	\$135,118
Structures	42,187	6,750	35,437
Revenue equip.-lumber	299,851	284,169	15,682
Service cars	16,502	9,944	6,258
Shop & garage equip.	1,235	1,216	19
Furniture & office equip.	3,452	2,399	1,053
Misc. equip.	14,842	12,858	1,984
Revenue equip.-oil	<u>70,824</u>	<u>62,829</u>	<u>8,055</u>
Total	<u>\$583,771</u>	<u>\$380,165</u>	<u>\$203,606</u>

It appears that the partners now desire to conduct their operations by means of two corporate organizations. They propose to transfer to Winans Bros. Trucking Co., applicant herein, their highway common carrier operative rights and their radial highway common carrier and highway contract carrier permits and to transfer to a second corporation, named Winans Bros. Tanker Division, their petroleum contract carrier operations, retaining for themselves the ownership of the land, structures, operative equipment, shop and garage equipment, and service cars.

The transfer of the petroleum contract carrier business is not before us in this proceeding. With respect to the transfer of the highway common carrier operative rights the application shows that only current assets will be acquired by the new corporation at the inception of its operations. A pro forma balance sheet as of January 1, 1956, is as follows:

Assets

Current assets	
Cash on hand and in bank	\$ 1,000.00
Accounts receivable - customers	28,346.27
Advances to employees	<u>221.53</u>
Total current assets	\$29,567.80
Other assets	
Liability insurance deposit	\$ 4,195.50
Workmen's compensation insurance deposit	<u>251.73</u>
Total other assets	<u>4,447.23</u>
Total assets	<u>\$34,015.03</u>

Liabilities and Capital

Current liabilities	
Accounts payable	\$24,899.29
Payroll taxes payable	1,386.80
Board of Equalization taxes payable	1,182.11
P. U. C. taxes payable	363.93
Federal Transportation taxes payable	<u>1,182.90</u>
Total current liabilities	\$29,015.03
Capital	<u>5,000.00</u>
Total liabilities and capital	<u>\$34,015.03</u>

The partners propose to lease the physical structures and equipment to the operating corporation. They assert that their program will provide substantial tax savings. Although the new highway common carrier corporation thus will undertake operations at the outset with only current assets it is to be noted that the present equipment has been almost fully depreciated and it is contemplated that any future acquisitions of equipment will be made by the new corporation rather than the partnership, so that in time the fleet again will be owned by the operator.

As to the ownership of the land and structures, it is said that more land is owned by the partners than is needed for terminal

facilities and that it is more desirable for the partners to administer all land sales and leases than it would be for the transportation corporations.

Upon a review of this matter, and especially in considering the substantial volume of business and favorable results of operations, we are of the opinion that the transfer of the business under the terms outlined in the application will not be adverse to the public interest.

In making our order in this proceeding we place applicants 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 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 for the purposes

specified herein, and that such purposes are not, in whole or in part, reasonably chargeable to operating expenses or to income; therefore,

IT IS HEREBY ORDERED as follows:

1. Frank C. Winans and Grant A. Winans may transfer to Winans Bros. Trucking Co., a corporation, their highway common carrier operative rights and the current assets as set forth in this application, such transfer to be made on or before December 31, 1956.

2. Winans Bros. Trucking Co., in payment for such operative rights and the current assets, may assume the payment of outstanding liabilities and may issue not exceeding \$5,000 par value of its common stock.

3. On not less than five days' notice to the Commission and to the public, effective concurrently with the consummation of such transfer, 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 Frank C. Winans and Grant A. Winans, copartners doing business as Winans Brothers, have withdrawn or canceled and Winans Bros. Trucking Co., 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. 20.

4. Winans Bros. Trucking Co., 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.

5. The authority herein granted will become effective on the date hereof.

Dated at San Francisco, California, this 8<sup>th</sup> day of May, 1956.

*Robert E. Mitchell*  
President

*Justin J. Casper*

*Paul L. Lister*

*William J. Dool*

*R. H. Hardy*  
Commissioners