

ORIGINAL

Decision No. 53474

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of R. E. BISNETT, doing business as BISNETT BROS., and GARDEN CITY TRANSPORTATION Co., LTD., for authority for the former to transfer, and the latter to acquire, certain operative rights and equipment, and for the latter to issue a promissory note and a chattel mortgage securing such note.

Application
No. 38024

O P I N I O N

This is an application for an order authorizing R. E. Bisnett to transfer highway common carrier operative rights and properties to Garden City Transportation Co., Ltd., and authorizing Garden City Transportation Co., Ltd., hereinafter referred to as Garden City, to execute a mortgage of chattels and to issue a note in the principal amount of \$90,000.

Both applicants are engaged in business as highway common carriers of property. Applicant Bisnett operates generally between Monterey and San Francisco and between Watsonville, Monterey, Pacific Grove, Carmel, and Salinas, on the one hand, and Los Angeles, on the other. Applicant Garden City operates generally between Bradley, Monterey, Santa Cruz, San Francisco, and Richmond, and between San Jose and Stockton and Sacramento, subject to the restrictions and conditions of the operative authority. Applicants have reported their results of operation during 1955 as follows:

	<u>Bisnett</u>	<u>Garden City</u>
Gross revenues	\$117,696	\$1,275,825
Operating expenses (exc. depreciation and income taxes)	<u>97,154</u>	<u>1,194,411</u>
Balance	20,542	81,414
Less -		
Depreciation	(8,214)	(28,639)
Income taxes	-	(3,300)
Net profit	<u>\$ 12,328</u>	<u>\$ 49,475</u>

It appears that applicants have entered into an agreement, dated April 28, 1956, whereby applicant Bisnett will transfer his operative rights, motor vehicle equipment and inventory of parts, materials, and supplies to Garden City for the sum of \$100,000, of which \$5,000 was paid upon execution of the agreement, \$5,000 will be paid within 5 days after the effective date of the Commission's approval of the transaction, and \$90,000 will be represented by a note payable at the rate of \$1,000 a month plus interest at the rate of 4% per annum, payment to be secured by a mortgage of chattels on motor vehicle equipment.

The operative rights proposed to be transferred are those acquired by applicant Bisnett pursuant to authorization granted by Decision No. 44518, dated July 11, 1950; Decision No. 52305, dated November 29, 1955; and Decision No. 52876, dated April 10, 1956. The motor vehicle equipment includes 7 tractors, 19 trailers, and 7 dollies, as set forth in Exhibit I attached to the agreement of sale. Of the total purchase price, \$57,500, said to represent the present value, is allocated to the equipment and inventory. By agreement between the parties \$37,500 is allocated to good will and going concern value and \$5,000 to the operative rights.

It is clear that the proposed purchase price is based in part on the going business which has been developed by applicant Bisnett. Such price is one the parties have reached by agreement

and represents the amount the seller is willing to accept and the purchaser is willing to pay.

It is not our practice to fix the price which may be paid by purchasers of public utility properties, and, in fact, it is doubtful whether the Public Utilities Code confers any such jurisdiction on the Commission, although, of course, the Commission may decline to approve a transfer of public utility properties if it appears that the purchaser does not have sufficient financial resources to meet the purchase price and to undertake the obligations of furnishing public utility service. In the present case, however, applicant Garden City not only is acquiring a profitable operation but is conducting successfully an extensive volume of business of its own and has for some time. Its financial statement filed with the Commission shows that its financial structure includes \$293,995 of long-term liabilities and common stock equity of \$248,939. The statement further shows a current position as of December 31, 1955, represented by current assets of \$117,574 and current liabilities of \$85,073. Moreover, the agreement of sale provides that R. E. Bisnett will continue to act as manager of the Monterey end of the operations at least for a period of five years.

A portion of the operative rights sought to be transferred were granted pursuant to Decision No. 50448 in Case No. 5478, sometimes referred to as the "policy decision".

Applicants for certificates under the said "policy decision" requested additional operative rights, and as a corollary thereof, assumed obligations to serve the public when and as certificates were granted by this Commission. Those to whom certificates have been granted pursuant to said "policy decision" will not be permitted to divest themselves of these rights and obligations without a clear and convincing showing that to do so would not be

adverse to the public interest.

After careful consideration of the pertinent facts and circumstances we are satisfied, and we so find, that the proposed sale and transfer will not be adverse to the public interest, that the money, property or labor to be procured or paid for by applicant Garden City by the issue of the note herein authorized 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.

The action taken herein shall not be construed to be a finding of the value of the operative 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 and that the application should be granted, as herein provided; therefore,

IT IS HEREBY ORDERED as follows:

1. R. E. Bisnett may transfer to Garden City Transportation Co., Ltd., the operative rights, motor vehicle equipment and inventory of parts, materials, and supplies referred to herein, such transfer to be made under the terms and conditions of the agreement of sale dated April 28, 1956.

2. Garden City Transportation Co., Ltd., in part payment for said properties, may issue a promissory note in the principal amount of \$90,000 and may execute a mortgage of chattels to secure its payment, which note and mortgage of chattels shall be in, or substantially in, the same form as those filed in this proceeding.

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 R. E. Bisnett has withdrawn or canceled and Garden City Transportation Co., Ltd., 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. Garden City Transportation Co., Ltd., 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 when Garden City Transportation Co., Ltd., has paid the fee prescribed by Section 1904(b) of the Public Utilities Code, which fee is \$90.

Dated at San Francisco, California, this 23rd day of July, 1956.

[Signature]
President

[Signature]

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Commissioners

