

ORIGINAL

Decision No. 54257

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of HARVEY W. KRUEGER doing business as GEORGETOWN EXPRESS to sell and transfer and MELVIN CRAIL, FRED BECKER and THOMAS STEVENS, as copartners, to acquire and exercise an operative right as a highway common carrier, and assume certain obligations.

Application No. 38505
(As Amended)

O P I N I O N

This application, as amended, of Harvey W. Krueger, doing business as Georgetown Express, requests that the Commission issue an order authorizing him to transfer highway common carrier operative rights and property to Melvin Crail, Fred Becker and Thomas Stevens, a copartnership, and authorizing the copartnership to assume certain indebtedness of seller and to execute a chattel mortgage and an agreement of sale, which agreement of sale provides for the payment of a portion of the purchase price over a period of approximately ten years.

Harvey W. Krueger, hereinafter sometimes referred to as "seller", is engaged in business as a highway common carrier of property operating generally over U. S. Highway No. 40 between Sacramento, Citrus Heights, Rocklin, Loomis, Penryn, Newcastle and Auburn and over State Highway No. 49 between Auburn and Coloma and over unnumbered highways in the vicinity thereof, subject to the restriction and conditions of the operative authority.

Applicant Krueger reports his results of operation during the nine-months' period ended September 30, 1956, as follows:

Gross revenues	\$16,551.47	
Less: Operating expenses excluding depreciation	<u>13,229.21</u>	
Remainder		3,322.26
Less: Depreciation	<u>1,295.09</u>	
Net profit before fixed charges		\$ 2,027.17

The assets and liabilities, as shown on the October 1, 1956 balance sheet of Harvey W. Krueger, doing business as Georgetown Express, are as follows:

Assets

Fixed assets -			
Trucks	\$6,871.62		
Furniture and fixtures	<u>825.50</u>	\$7,697.12	
Less: Reserve for depreciation		<u>3,259.68</u>	\$4,437.44
Current assets -			
Cash		535.32	
Accounts receivable		1,325.95	
Other current assets		<u>223.40</u>	<u>2,084.67</u>
Total			<u>\$6,522.11</u>

Liabilities and Capital

Current liabilities -			
Accounts payable		\$ 290.15	
Contracts payable		1,326.65	
Accrued taxes		<u>279.09</u>	\$1,895.89
Proprietorship net worth			<u>4,626.22</u>
Total			<u>\$6,522.11</u>

It now appears that Applicant Krueger, because of age and other business interests, desires to dispose of his highway common carrier business. To accomplish this objective, Krueger, as seller, and the copartnership of Crail, Becker, and Stevens, as buyers, have entered into an agreement whereby the seller will transfer his operative rights, motor vehicle equipment and

material and supplies to buyers for \$20,000 plus the assumption by buyers of an unpaid balance of \$1,326.65 on an equipment contract or for a total consideration of \$21,326.65. Of the \$20,000 purchase price, \$200 is to be paid upon execution of the sales agreement, \$4,466 on or before the effective date of the Commission's order in this proceeding, \$2,000 on or before March 1, 1957, and the balance of \$13,334 in monthly installments of \$100 or more starting March 1, 1957, with the total amount being due and payable by March 1, 1967. Interest on the declining balance is to be computed at the rate of 2% per annum. As security for the payment of the purchase price buyers are to execute in favor of seller a chattel mortgage on the assets to be transferred.

The open transferred are those acquired by App. authorization granted by Decision No. 51 Application No. 36331. Tangible transferred include four units of motor vehicle and material and supplies having an value of \$7,500. Of \$20,000, applicants state that \$7,500 represent the value assigned to tangible property and that the balance of \$12,500 represents the amount of consideration to be paid for intangibles including goodwill, permits, certificates and the potential earning power of the business heretofore conducted as Georgetown Express.

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

CORRECTION

CORRECTION

THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY

material and supplies to buyers for \$20,000 plus the assumption by buyers of an unpaid balance of \$1,326.65 on an equipment contract or for a total consideration of \$21,326.65. Of the \$20,000 purchase price, \$200 is to be paid upon execution of the sales agreement, \$4,466 on or before the effective date of the Commission's order in this proceeding, \$2,000 on or before March 1, 1957, and the balance of \$13,334 in monthly installments of \$100 or more starting March 1, 1957, with the total amount being due and payable by March 1, 1967. Interest on the declining balance is to be computed at the rate of 2% per annum. As security for the payment of the purchase price buyers are to execute in favor of seller a chattel mortgage or mortgages on the assets to be transferred.

The operative rights proposed to be transferred are those acquired by Applicant Krueger pursuant to authorization granted by Decision No. 51966, dated September 27, 1955 in Application No. 36331. Tangible properties to be transferred include four units of motor vehicle equipment, office equipment and material and supplies having an original cost of \$9,923.84 and a present book value of \$7,500. Of the purchase price of \$20,000, applicants state that \$7,500 represent the value assigned to tangible property and that the balance of \$12,500 represents the amount of consideration to be paid for intangibles including goodwill, permits, certificates and the potential earning power of the business heretofore conducted as Georgetown Express.

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

and represents the amount the seller is willing to accept and the buyers are willing to pay.

It is not our practice to fix the price which may be paid by purchasers of public utility properties, although, of course, the Commission may decline to approve a transfer of public utility properties if it appears that the purchasers do 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, it appears that the operations will generate sufficient funds to enable the buyers to liquidate the obligations they will incur in connection with the acquisition of the operative rights and properties. It also appears that two of the buyers are local businessmen in Georgetown and apparently are in a financial position to adequately conduct the highway common carrier business. The third partner, Stevens, is currently employed by Krueger as a driver and under the proposed partnership will be placed in responsible charge of the operations.

The operative rights sought to be transferred herein were acquired by Krueger in what has sometimes been referred to as a "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.

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.

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 copartnership by the execution of the agreement of sale providing for deferred payments of the purchase price as 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. Harvey W. Krueger may transfer to Melvin Crail, Fred Becker and Thomas Stevens, a copartnership, the operative rights, motor vehicle equipment and material and supplies referred to herein, such transfer to be made under the terms and conditions of the agreement of sale attached to the application as Exhibit A.
2. Melvin Crail, Fred Becker and Thomas Stevens, a copartnership, may, as set forth in the agreement of sale, incur a long-term indebtedness in the principal amount of not exceeding \$15,334 and may execute a mortgage or chattels to secure payment of that portion of the purchase price to be provided for through deferred payments.
3. Melvin Crail, Fred Becker and Thomas Stevens, a copartnership, may assume the unpaid balance of \$1,326.65 due on an equipment contract originally entered into by seller.
4. 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 Harvey W. Krueger has withdrawn or canceled and that Melvin Crail,

Fred Becker and Thomas Stevens, a copartnership, 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. Melvin Crail, Fred Becker and Thomas Stevens, a copartnership, shall file with the Commission within 30 days after execution, a copy of the agreement of sale and of the chattel mortgage, as actually executed.

6. The authority herein granted will become effective when the three partners 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 16th day of December, 1956.

[Signature]
President

[Signature]

[Signature]

[Signature]

[Signature]
Commissioners

