

**ORIGINAL**

Decision No. 54498

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of  
RUSS DI SALVO, an individual, to  
transfer certificates of public  
convenience and necessity, permits  
and property to DI SALVO TRUCKING  
CO., a corporation, and to issue  
stock and assume certain obligations.

Application No. 38367

O P I N I O N

This is an application for an order of the Commission  
(1) authorizing Russ Di Salvo to transfer operative rights and  
certain property to Di Salvo Trucking Co., a corporation, and  
(2) authorizing said corporation to assume the payment of  
liabilities and to issue \$27,600 par value of capital stock.

Russ Di Salvo possesses certificates of public convenience  
and necessity granted by the Commission by Decision No. 51073, dated  
February 1, 1955, and Decision No. 52905, dated April 17, 1956,  
authorizing the transportation of general commodities, with certain  
exceptions, within the San Francisco-East Bay Cartage Zone and  
between San Francisco Territory, Los Angeles Territory, Stockton  
and Fresno and intermediate points. In addition, he has permits  
to operate as a radial highway common carrier, highway contract  
carrier, household goods carrier, and city carrier. In Exhibit C  
filed with the application he has reported his operating revenues  
for the first seven months of 1956 in the amount of \$455,523.21  
and his net profit at \$39,637.72.

For the purpose of incorporating his business, Russ Di Salvo has organized Di Salvo Trucking Co. He proposes to withhold from transfer to such corporation his revenue equipment (except service cars and fork lifts), structures, prepaid interest, liabilities on revenue equipment, and reserves for depreciation allocable to such structures and revenue equipment. The application shows that the equipment proposed to be retained by Russ Di Salvo will be leased on a long-term arrangement assuring the corporation exclusive possession thereof, and that any additions to the fleet will be purchased directly by the corporation. The assets and liabilities proposed to be acquired by the corporation, together with the capital, are summarized in a condensed pro forma balance sheet as of July 31, 1956, as follows:

Assets

Current assets	\$65,212.02
Tangible assets, less reserves	11,831.08
Franchise and organization expense	<u>1,849.44</u>
Total	<u>\$78,892.54</u>

Liabilities and Capital

Current liabilities	\$51,271.95
Capital stock	27,600.00
Paid-in surplus	<u>20.59</u>
Total	<u>\$78,892.54</u>

Russ Di Salvo alleges that the assets which he proposes to retain will enable him to continue to benefit from an accelerated basis of depreciation which cannot be transferred to the corporation, thus affording him income tax savings estimated at approximately \$5,000 per year. In addition, the application shows that the proposed transfer will provide other tax advantages by spreading the

income over two entities, and will permit Russ Di Salvo to limit the liability to which he is exposed as an individual.

A review of the application shows that the corporation will take over the indicated assets and liabilities at their book values and that there will be no change in the equipment or services available to the public or in the rates. We are of the opinion, and so find, that the transfer under the terms as proposed, subject to the condition prescribed in the following order, will not be adverse to the public interest and should be authorized.

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.

The action taken herein shall not be construed to be a finding of the value of the 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, 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 by applicant

corporation for the purpose specified herein, and that such purpose is not, in whole or in part, reasonably chargeable to operating expenses or to income; therefore,

IT IS HEREBY ORDERED as follows:

1. Russ Di Salvo may transfer to Di Salvo Trucking Co., a corporation, his highway common carrier operative rights and assets as set forth in this application, such transfer to be made on or after March 25, 1957, subject to the condition that the operative property not transferred to the corporation shall not be relieved of its devotion to the public use and that its status as public utility operative property shall remain the same as though the transfer authorized herein had not taken place, anything in the lease or other agreements between the parties to the contrary notwithstanding.

2. Di Salvo Trucking Co., a corporation, in payment for said operative rights and assets may assume the payment of outstanding liabilities and may issue not exceeding \$27,600 par value of its capital 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 Russ Di Salvo has withdrawn or canceled and Di Salvo 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. 80.

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4. Di Salvo 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 twenty days after the date hereof.

Dated at San Francisco, California, this 5th day of February, 1957.

*John E. Mitchell* President  
*Paul G. Latorre*  
*R. H. Hardy*  
*S. J. Fox*  
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 Commissioners