

ORIGINAL

Decision No. 54964

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application
of

J. H. DEVINE AND J. J. DEVINE,
doing business as DEVINE & SON
TRUCKING CO., a partnership, to
transfer certificate of public
convenience and necessity,
permits and property to DEVINE
& SON TRUCKING CO., a California
corporation, to issue stock and
assume certain obligations, and
to publish less than minimum
rates as authorized in Decision
No. 54539.

Application No. 39007

O P I N I O N

This is an application for an order authorizing J. H. Devine and J. J. Devine, doing business as Devine & Son Trucking Co., to transfer highway common carrier operative rights and equipment to Devine & Son Trucking Co., a corporation, and authorizing the corporation to assume indebtedness and to issue stock.

The application shows that J. H. Devine and J. J. Devine are engaged in the operation of a highway common carrier service for the transportation of lumber and forest products in the northern part of the state under a certificate of public convenience and necessity granted them by Decision No. 49018, dated August 25, 1953. It appears that the present operators

1/ Applicants report their operating revenues and net income, before federal income taxes, for the last three years as follows:

| | | | |
|--------------------|-------------|-------------|-------------|
| | <u>1954</u> | <u>1955</u> | <u>1956</u> |
| Operating revenues | \$349,481 | \$280,625 | \$342,059 |
| Net income | 57,660 | 29,242 | 44,158 |

have concluded to incorporate their business and that they have made arrangements to transfer their operative rights and equipment to Devine & Son Trucking Co., a corporation, at their book values subject to outstanding obligations in exchange for common stock in an amount approximately equal to the partnership net worth. The corporation will establish the present rates, rules and regulations and it also seeks authority to continue to publish a rate lower than the minimum rate which the partnership was authorized by Decision No. 54539 of February 19, 1957, in Case No. 5432 (Petition No. 46). The rate in question is 46 cents per 100 pounds, minimum weight 40,000 pounds, for the transportation of lumber from Elk Creek to Sacramento. It expires September 14, 1957.

Upon a review of this application, we are of the opinion and so find that the proposed 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 \$63,000 of stock herein authorized is reasonably required by applicant corporation for the purposes specified herein, and that such purposes are not, in whole or in part, reasonably chargeable to operating expenses or to income and that the application should be granted by an ex parte order in this proceeding.

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 equipment 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. J. H. Devine and J. J. Devine may transfer their operative rights and equipment as set forth in this application to Devine & Son Trucking Co., a corporation, the transfer to be effective for accounting purposes as of May 1, 1957.

2. Devine & Son Trucking Co., a corporation, in payment for such rights and equipment may assume the payment of outstanding indebtedness and may issue not exceeding \$63,000 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 J. E. Devine and J. J. Devine, doing business as Devine & Son Trucking Co., have withdrawn or canceled and Devine & Son Trucking Co., a corporation, has adopted or established, as its own, said rates, rules and regulations, including the lower than minimum rate authorized by Decision No. 54539, dated February 19, 1957 in Case No. 5432 (Petition No. 46). 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. Devine & Son 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. This order will become effective on the date hereof.

Dated at San Francisco, California, this 14th day of MAY, 1957.

[Signature]
President
[Signature]
[Signature]
[Signature]

Commissioners