

ORIGINALDecision No. 57610

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
 BROWN DRAYAGE INC., a corporation,
 for authority to purchase the certifi-
 cates of public convenience and
 necessity to operate as a highway
 common carrier issued to ALVES SERVICE
 TRANSPORTATION, INC.

Application No. 40589

OPINION AND ORDER

Brown Drayage Inc., presently transporting property pursuant to permits issued by this Commission, requests authority to purchase the certificates of public convenience and necessity heretofore granted Alves Service Transportation, Inc.

Applicant alleges:

1. That Alves Service Transportation, Inc., is authorized to operate as a highway common carrier for the transportation of general commodities between San Francisco Territory and Crockett, on the one hand, and Los Angeles Territory, on the other hand (Decisions Nos. 53310 and 53938), and fresh fruits and vegetables from points in an area generally encompassed by Fresno and Ventura, on the north, and San Diego and El Centro, in the south, to San Francisco, Oakland, Alameda, San Leandro and Richmond (Decision No. 49247).
2. That the U. S. Treasury Department - Internal Revenue Service seized, among other things, the highway common carrier certificates above mentioned due to the failure of Alves Service Transportation, Inc., to pay certain taxes.
3. That pursuant to a notice of sale, a copy of which is attached to the application as Exhibit "E", a public auction was held on October 30, 1958, at which certain property and the said certificates

of public convenience and necessity were sold to Stanley M. Friedman & Associates for the sum of \$46,500.

4. That Stanley M. Friedman assigned said certificates to applicant for the sum of \$25,000.

5. That confirmation of the sale and transfer of said certificates to applicant is evidenced by a duly certified "Certificate of Sale of Seized Property" and "Assignment", copies of which are attached to the application as Exhibit "C".

6. That the rules and regulations of the U. S. Treasury Department do not permit that department to be a party to a proceeding, such as the instant one, before a State Commission.

The application discloses that Brown Drayage Inc. heretofore has carried on a motor transportation business and that it possesses adequate facilities and financial resources to render service under the certificates herein involved.

The Commission finds that the public interest will not be adversely affected by approval of the transfer with which we are here concerned. The application will be granted. The action taken herein shall not be construed to be a finding of the value of the operative rights and authority to transfer which is hereinafter granted. A public hearing is not necessary.

Brown Drayage Inc. is 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, such rights extend to the holder a full or partial monopoly of a class of business over a particular route. This monopoly

feature may be modified or canceled at any time by the State, which is not in any respect limited as to the number of rights which may be given.

Application having been filed and the Commission being of the opinion that the application should be granted,

IT IS ORDERED:

1. That on or before March 31, 1959 Brown Drayage Inc., a corporation, may purchase the operative rights referred to in the application.
2. That within thirty days after the consummation of the transfer herein authorized, Brown Drayage Inc. shall notify the Commission, in writing, of that fact and within said period shall file with the Commission a true copy of any bill of sale or other instrument of transfer which may be executed to effect said transfer.
3. That on not less than five days' notice to the Commission and to the public, effective concurrently with the consummation of such transfer, applicant shall amend or reissue the tariffs on file with the Commission, naming rates, rules and regulations governing the operations here involved to show that Alves Service Transportation, Inc., has withdrawn or canceled, and Brown Drayage Inc. has adopted or established as its own, said rates, rules and regulations. The tariff filings made pursuant to this order shall comply with the regulations governing the construction and filing of tariffs set forth in the Commission's General Order No. 80.
4. That applicant is placed on notice that it will be required, among other things, to file annual reports of its operations and to comply with and observe the safety rules and other regulations of the Commission's General Order No. 99. Failure to file such reports, in

such form and at such time as the Commission may direct, or to comply with and observe the provisions of General Order No. 99, may result in a cancellation of the operative rights, the authority to transfer which is granted by this decision.

The effective date of this order shall be twenty days after the date hereof.

Dated at San Francisco, California, this 14th day of November, 1958.

E. J. Fox
President
D. E. Mitchell
Raymond J. Kessler
Monte A. Baker
Theodore Decker
Commissioners