

Decision No. 58951**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 ERNEST GILMAN FAIRBANK, an individual,)
 doing business as MANTECA TRANSFER,)
 and BILL W. SMITH, an individual, doing) Application No. 41258
 business as SMITH TRANSFER, for the)
 transfer of a certificate of public)
 convenience and necessity from)
 ERNEST GILMAN FAIRBANK to BILL W. SMITH.)

O P I N I O N

Ernest Gilman Fairbank, doing business as Manteca Transfer, requests authority to sell and transfer and Bill W. Smith, doing business as Smith Transfer, requests authority to purchase and acquire certain operative rights authorizing the transportation of limited commodities between Manteca, on the one hand, and San Francisco, Oakland, Alameda and Stockton, on the other hand.

Bill W. Smith is presently operating as a radial highway common carrier and for the year ending December 13, 1958, realized a net profit of \$9,298.31. The proposed transfer will be made for a cash consideration of \$1,000.

It is alleged that Ernest Gilman Fairbank suffered a heart attack in 1957, which forced him to discontinue active participation in the business and allow his insurance policy to lapse. By Decision No. 58171 dated March 24, 1959, his certificated authority was suspended.

After consideration the Commission is of the opinion and so finds that the proposed transfer will not be adverse to the public interest. A public hearing is not necessary.

Bill W. Smith 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.

O R D E R

Application having been filed and the Commission being informed in the premises,

IT IS ORDERED:

1. That on or before December 15, 1959, Ernest Gilman Fairbank may sell and transfer, and Bill W. Smith may purchase and acquire, the operative rights granted in Decision No. 53567 in Application No. 36508.

2. That, within thirty days after the consummation of the transfer herein authorized, the purchaser 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, applicants shall amend or reissue the tariffs on file with the Commission, naming rates, rules and regulations governing the common carrier operations here involved, to show that Ernest Gilman Fairbank has withdrawn or canceled, and Bill W. Smith

has adopted or established as his 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 Decision No. 58171 is hereby vacated and set aside.

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

Dated at San Francisco, California, this 1st day of September, 1959.

Ernest R. Page
President
W. E. Hatch
W. H. Kealey
E. L. Fox
Theodore J. Jones
Commissioners