

**ORIGINAL**

Decision No. 59688

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of

THOMAS H. MARROW, an individual doing business as THOMAS MARROW TRUCKING, for the transfer of a certificate of public convenience and necessity, issued pursuant to Decision No. 54149, to THOMAS H. MARROW TRUCKING CO., a corporation, under Sects. 851-853 of the Public Utilities Code.

Application No. 41802

THOMAS H. MARROW TRUCKING CO., a corporation, for a permit authorizing it to sell and issue its securities.

Application No. 41803

O P I N I O N

In these two applications, filed on December 24, 1959, Thomas H. Marrow, an individual doing business as Thomas Marrow Trucking, requests authority to sell and transfer his operative rights and certain of the assets utilized in his highway common carrier operations to Thomas H. Marrow Trucking Co., a corporation, and Thomas H. Marrow Trucking Co. requests authority to issue shares of its capital stock in payment for the operative rights and assets being acquired.

Thomas H. Marrow operates as a highway common carrier for the transportation of general commodities, generally between Los Angeles, Huntington Park, Vernon and South Gate, and points on U. S. Highway 101 between and including Oceanside and San Ysidro

plus off-route points as authorized by Decision No. 54149, dated November 27, 1956, in Application No. 35970.

For the nine months ended September 30, 1959, Thomas H. Marrow reports freight revenues from operations of \$215,038.14 and net profit of \$25,815.81 after provision for depreciation and income taxes. His assets and liabilities, as reflected in his September 30, 1959 balance sheet, are, in condensed form, as follows:

<u>Assets</u>			
Current assets -			
Cash		\$ 6,182.25	
Accounts receivable		19,766.70	
Other current assets		<u>12,105.39</u>	\$ 38,054.34
Fixed assets -			
Land and buildings		94,431.39	
Other fixed assets	\$153,053.65		
Less: Reserve for Depreciation	<u>62,376.20</u>	<u>90,677.45</u>	185,108.84
Other assets -			
Franchise cost		931.95	
Loan fees and cost		3,586.00	
Deposits		<u>1,025.00</u>	<u>5,542.95</u>
Total			<u>\$228,706.13</u>
<u>Liabilities</u>			
Current liabilities -			
Accounts payable		\$ 5,640.77	
Accrued taxes and insurance -			
Other than income taxes		4,949.08	
Provision for income taxes		<u>6,429.10</u>	\$ 17,018.95
Long-term liabilities -			
Notes payable - land and buildings		103,245.78	
Contracts payable - equipment		<u>40,827.57</u>	144,073.35
Capital -			
Proprietorship			<u>67,613.83</u>
Total			<u>\$228,706.13</u>

Thomas H. Marrow advises that he now desires to conduct his operations under a corporate form of organization. To accomplish this objective he has caused the formation of Thomas H. Marrow Trucking Co., a California corporation, and proposes to transfer his net assets, except for the real property, the encumbrances thereon, deferred loan costs and accounts receivable in the amount of \$10,942.17 to the corporation in exchange for 6,700 shares of the corporation's capital stock of the par value of \$10 per share and an aggregate par value of \$67,000.

With reference to the real property not to be transferred to the corporation, it appears that such property comprises approximately 4.78 acres, that there has been just recently constructed on 2.75 acres a new terminal which was placed in operation about December 1, 1959, that the property not utilized for terminal purposes will either be leased or developed for other commercial purposes and that it is proposed to lease the terminal property to the corporation at a monthly rental of \$1,200.

In transferring the assets to the corporation, the item for franchises has been revalued to \$5,000. Under the provisions of Section 820 of the Public Utilities Code, the Commission has no power to permit the capitalization of operative rights in excess of the amount actually paid to the state or to a political subdivision thereof as the consideration for the grant of such operative rights. Further, if the \$5,000 represent a capitalization of goodwill, we are of the opinion that the issue of stock in payment for goodwill is not one of the purposes contemplated by Section 817 of the Public Utilities Code. Moreover, the

Commission has no information on which to predicate an order authorizing the issue of stock in payment for the purchase of operative rights. Deducting \$5,000 from the \$67,000 reported as the net value of assets to be transferred, results in an amount of \$62,000 for which we will authorize the corporate applicant to issue and sell 6,200 shares of its capital stock.

From a review of the application, it appears that the proposed transfer will not be adverse to the public interest, that there will be no change in the rates to be charged to the public as a result of the transfer, that the money, property or labor to be procured or paid for by the issue of the \$62,000 par value of stock 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.

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 a consideration for the granting 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 order entered herein is not to be construed to be a finding of the value of the operative rights and assets herein authorized to be transferred.

O R D E R

The Commission having considered the above-entitled matters and being of the opinion that a public hearing is not necessary, therefore,

IT IS HEREBY ORDERED as follows:

1. Thomas H. Marrow may sell and transfer to Thomas H. Marrow Trucking Co., a corporation, the highway common carrier operative rights and the assets referred to in this application.
2. Thomas H. Marrow Trucking Co., a corporation, may assume the payment of outstanding liabilities and may issue not to exceed \$62,000 par value of its common stock for the purpose set forth in this application.
3. The application insofar as it involves the issue of an additional \$5,000 par value of stock is denied.
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 this Commission naming rates, rules and regulations governing the operations here involved to show that Thomas H. Marrow has withdrawn or canceled and Thomas H. Marrow 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.

5. Thomas H. Marrow 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.

6. Applicants may use an effective date of September 30, 1959, for accounting purposes in recording the transfer herein authorized.

7. This order shall become effective on the date hereof.

*23<sup>rd</sup>* Dated at San Francisco, California, this  
23 day of FEBRUARY, 1960.

*[Signature]* President  
*[Signature]*  
*[Signature]*  
*[Signature]* Commissioners