

**ORIGINAL**Decision No. 59931

## BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )  
 JOHN D. WORLEY, an individual, doing )  
 business as CROCKER TRANSFER COMPANY, )  
 to sell, and LADS FURNITURE FREIGHT, )  
 INC., a California corporation to )  
 purchase operative rights. )

Application No. 40480  
 (Amended)

In the Matter of the Application of )  
 CRULES R. CHEEK, as trustee of the )  
 estate of JOHN D. WORLEY, dba CROCKER )  
 TRANSFER COMPANY, a bankrupt, to sell )  
 and LOYD B. TURNER, an individual, )  
 doing business as BLUE TRUCK LINES, )  
 to purchase operative rights. )

Application No. 41799

Ernest F. Shelander, for applicants.

R. C. Fels, for Furniture Manufacturers  
 Association of California, interested  
 parties.

No public hearing was held in A. 41799.

O P I N I O N

The above-entitled matters have been consolidated for decision because of the interrelated subject matter involved.

Application No. 40480 was filed on September 30, 1958.

It was conditionally accepted for filing by this Commission pending an amendment to make the application comply with the Commission's rules of procedure. Said amendment was filed on December 18, 1958.

A duly noticed public hearing was held on Application No. 40480 before Examiner Donald B. Jarvis in Los Angeles on February 25, 1959, at which time the matter was submitted.

On February 24, 1959, applicant John D. Worley (who sought to sell the operating rights here involved to applicant Lads Furniture Freight, Inc.) was adjudicated a bankrupt by the United

States District Court for the Southern District of California, Central Division, in Bankruptcy No. 96, 234-PH.

On March 20, 1959, while Application No. 40480 was still under submission, the United States District Court, acting under its bankruptcy jurisdiction, restrained the transfer of Worley's operating rights pending further order of that court. At no time did the District Court challenge the jurisdiction of this Commission to regulate or terminate the operating rights here involved in accordance with applicable California statutes and the rules and regulations of this Commission. The trustee in bankruptcy took the position that the contract between Worley and Lads for the sale of the operating rights was executory; that the operating rights were still an asset of Worley's bankruptcy estate; that the trustee had the power to disaffirm the contract and, subject to the approval of this Commission, enter into another contract for the sale of the operating rights which would be more advantageous to the creditors of the bankrupt.

On October 6, 1959, the referee in bankruptcy entered an order authorizing Crules R. Cheek, the trustee of the bankrupt's estate, to sell Worley's operating rights to Loyd B. Turner. Turner is an individual doing business under the name of Blue Truck Lines and holds a certificate of public convenience and necessity to operate as a highway common carrier of new household goods together with radial highway common carrier and highway contract carrier permits, all issued by this Commission.

On December 24, 1959, Turner and the trustee in bankruptcy filed Application No. 41799 seeking authorization by this Commission to transfer Worley's highway common carrier operating rights to Turner for the sum of \$3,500. On the same date the applicants in

Application No. 40480 filed a "Request for Dismissal on Condition" in which they requested dismissal of Application No. 40480 if Application No. 41799 be granted.

The records of this Commission indicate that on April 4, 1956, John D. Worley was issued Radial Highway Common Carrier Permit No. 19-37526 and Highway Contract Carrier Permit No. 19-37527. On December 1, 1958, Worley filed with this Commission an application for voluntary suspension of the two permits. At that time Worley had been delinquent in filing quarterly reports and paying quarterly fees since July 1, 1958. On December 16, 1958, this Commission entered an order permitting the voluntary suspension of the permits contingent upon the filing of the reports and payment of the fees. The delinquent reports were not filed nor were the delinquent fees paid. On March 2, 1959, this Commission, acting pursuant to Public Utilities Code Section 5007, revoked Worley's radial highway common carrier and contract carrier permits for failure to file quarterly reports and pay fees for the periods of July 1, 1958, to September 30, 1958, and October 1, 1958, to December 31, 1958.

In Decision No. 56842 in Application No. 39449, dated June 17, 1958, this Commission entered an order which authorized Worley to acquire from Fabiano Intra-Cal Lines, Inc., a certificate of public convenience and necessity to operate as a highway common carrier for the transportation of uncrated new household goods and office furniture and fixtures between various points in southern California. The operating rights contained in this certificate of public convenience and necessity are, therefore, the only rights involved in this proceeding. The trustee in bankruptcy has recognized this as evidenced by the fact that Application No. 41799 only seeks authority to transfer the aforesaid highway common carrier operating rights.

The uncontradicted evidence adduced at the public hearing in Application No. 40480 shows that Worley acquired the operating rights here involved from Fabiano Intra-Cal Lines, Inc., as authorized by Decision No. 56842 in Application No. 39449. Worley filed no tariffs pursuant to this authority and tariffs of Fabiano Intra-Cal Lines, Inc., have been canceled. There are no tariffs on file for this operation. Worley's operating equipment was levied upon by creditors before he commenced operations under these operating rights. Worley never transported property under the operating rights here involved and he does not now have the ability to do so.

By Application No. 41799 the trustee of Worley's bankruptcy estate seeks authority to sell and transfer the operating rights here involved to Loyd B. Turner. Turner has joined in Application No. 41799 and seeks authority to purchase these rights.

Loyd Turner presently holds a certificate of public convenience and necessity to operate as a highway common carrier together with radial highway common carrier and highway contract carrier permits issued by this Commission. During the first ten months of 1959 Turner had operating revenue of \$347,404. If authority to transfer the rights here involved be granted, Turner will be able to conduct the additional operations without adding any additional equipment.

The Commission finds that Turner has the ability to take over and operate a common carrier service under the rights here involved and that the transfer of the certificate of public convenience and necessity would not be adverse to the public interest. A public hearing is not necessary in Application No. 41799.

In order to avoid confusion among the shipping public and assist the Commission in its regulatory functions when the operating rights herein authorized to be transferred are transferred, Turner

will be required to consolidate into an in lieu certificate of public convenience and necessity his existing common carrier operating rights with the rights herein..

Loyd B. Turner 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

A public hearing having been held in Application No. 40480, and the Commission being of the opinion that a public hearing is not necessary in Application No. 41799, and based upon the evidence adduced at the public hearing in Application No. 40480 and the representations filed in verified Application No. 41799,

IT IS ORDERED that:

1. Application No. 40480 is dismissed.
2. Within thirty days after the effective date hereof

Crules R. Cheek, as trustee of the estate of John D. Worley, doing business as Crocker Transfer Company, a bankrupt, may sell and transfer and Loyd B. Turner may acquire, pursuant to an order confirming sale entered by the U. S. District Court for the Southern District of California, on October 6, 1959, a copy of which is attached to Application No. 41799, the certificate of public convenience and

necessity now held by John D. Worley under authority of Decision No. 56842 in Application No. 39449.

3. Loyd B. Turner shall, on not less than five days' notice to the Commission and to the public, effective concurrently with the consummation of said transfer, issue and file with this Commission tariffs naming rates, rules, and regulations governing common carrier operations here involved. The tariff filings made pursuant to this order shall show that they cover operating rights formerly held by John D. Worley and transferred to Loyd B. Turner and 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. Loyd B. Turner shall, within ninety days after the aforesaid highway common carrier operating rights have been transferred, file an application with this Commission seeking the consolidation of all of his operating rights into an in lieu certificate of public convenience and necessity.

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

Dated at San Francisco, California, this 12<sup>th</sup>  
day of April, 1960.

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*Green* *President*

*W. E. B. DuBois*

*W. E. B. DuBois*

*E. L. Fox*

*Theodore T. Tilton* *Commissioners*