

ORIGINAL

Decision No. 61166

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application)
of I. F. STEWART, an individual,)
to transfer operating rights and)
property to HAROLD S. SCOTT, and)
of HAROLD S. SCOTT to issue)
evidences of indebtedness in the)
form of a promissory note and)
chattel mortgage.)

Application No. 42938

O P I N I O N

This application was filed on December 7, 1960, for an order of the Commission (1) authorizing I. F. Stewart to transfer operative rights and equipment to Harold S. Scott and (2) authorizing Harold S. Scott to execute a mortgage of chattels and to issue a note in the principal amount of \$155,700.

Applicant Stewart is engaged in the operation of a radial highway common carrier service, a highway contract carrier service and a city carrier service and, in addition, in the operation of a highway common carrier service for general commodities, with certain exceptions, between San Francisco and other points in northern California, under a certificate of public convenience and necessity granted by Decision No. 60335, dated June 28, 1960, as amended by Decision No. 60681, dated September 1, 1960, in Application No. 41655. According to the present application, he desires

to dispose of his highway common carrier operations and he has made arrangements to sell his certificate of public convenience and necessity and goodwill, together with 30 units of rolling stock and certain office equipment, to Harold S. Scott for the sum of \$180,700, payable \$25,000 in cash and \$155,700 in installments which will be represented by a note payable at the rate of \$3,000 per month until \$72,000 has been paid and thereafter at the rate of \$2,325 per month, without interest, except that any delinquent installments shall bear interest at the rate of 7% per annum.

The agreement of sale dated December 1, 1960, filed as Exhibit A, shows that the parties have assigned \$5,000 of the purchase price to the operative rights, \$35,000 to goodwill and \$140,700 to the tangible properties. The amount assigned for operative rights is asserted to be not excessive because it does not represent substantially more than the amount which I. F. Stewart paid for attorneys' fees, accounting costs and other incidental costs in connection with the acquisition of his certificate.

It is not our practice to fix the price which may be paid by the purchaser of a public utility operation although, of course, we can decline to approve a transfer of public utility properties and rights if it should appear that the purchaser does not have sufficient financial resources to meet the purchase price and to undertake the obligations of furnishing public utility service, or if the transfer, in our opinion, would be adverse to the public interest. In the present case, it appears

that the purchaser is experienced in the operation of certificated truck lines and that he has the financial resources which should enable him to finance the acquisition and to continue operations of the highway common carrier service he proposes to acquire and to meet the obligations to be imposed by the proposed note and mortgage of chattels. We find and conclude, therefore, that the execution of the note and mortgage of chattels does not threaten to impair the ability of the purchaser to maintain the public service and that the proposed transfer will not be adverse to the public interest.

In making this finding, we are not passing on or approving the values placed by the parties on the various elements of the properties to be transferred. We place Harold S. Scott 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.

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, that the money, property or labor to be procured or paid for by the issue of the note 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; therefore,

IT IS HEREBY ORDERED as follows:

1. I. F. Stewart may transfer his certificate of public convenience and necessity and his other assets, as set forth in this application, to Harold S. Scott in accordance with the terms and conditions set forth in the agreement of December 1, 1960, filed in this proceeding as Exhibit A.

2. Harold S. Scott, in part payment for said rights and other assets, may issue a note in the principal amount of not to exceed \$155,700, and may execute a mortgage of chattels, which note and mortgage of chattels shall be in, or substantially in, the same forms as those filed with this application.

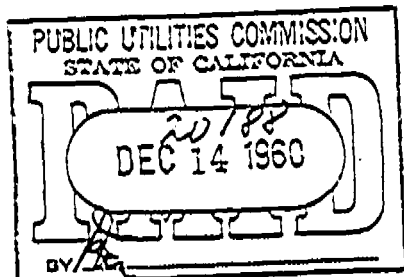
3. In acquiring said certificate and other assets Harold S. Scott shall enter in his property and depreciation reserve accounts the amounts reflected on the books of the present owner on the date the transfer is consummated and shall enter in Account 155, Other Intangible Property, any portion of the cost of acquisition not otherwise includable in the other intangible and tangible property accounts.

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 the Commission naming rates, rules and regulations governing the highway common carrier operations here involved to show that I. F. Stewart has withdrawn or canceled and Harold S. Scott has adopted or established, as his 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. Harold S. Scott 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. The authorization herein granted shall become effective when Harold S. Scott has paid the fee prescribed by Section 1904(b) of the Public Utilities Code, which fee is \$156. If not exercised, such authorization will expire on February 28, 1961.

Dated at San Francisco, California,
this 13th day of December 1960.



[Handwritten signature]

President
[Handwritten signature]

[Handwritten signature]

[Handwritten signature]

Commissioners