

Decision No. 61460**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 CHARLES H. MOORE to sell his interest)
 in W. F. MOORE & SON, to WESTERN)
 ASPHALT SERVICE, a California corpo-)
 ration.)

Application No. 42494

O P I N I O N

Charles H. Moore, doing business as W. F. Moore & Son, requests authority to sell and transfer and Western Asphalt Service requests authority to purchase and acquire certain operative rights and property.

The operative rights to be transferred were granted by Decision No. 54942 and authorized service as a petroleum irregular route carrier. The property, which is both real and personal, includes goodwill and rolling stock. According to a copy of the sales agreement attached to the application the agreed consideration was \$165,000 with a down payment of \$1,000 and the balance payable in annual installments of \$10,000 or more plus interest at 4½ per cent per annum. A value of \$875 is placed upon the operative rights.

It is alleged that through inadvertence and ignorance, the sale was actually consummated on January 2, 1960. The parties were assertedly just made aware of the fact that the prior authorization of this Commission was necessary. It is further alleged that service was continued without any change in management or personnel inasmuch as the seller Charles H. Moore is also vice president of purchaser Western Asphalt Service.

After consideration the Commission finds and concludes that the transfer is not adverse to the public interest and that the

property procured and paid for by the indebtedness herein authorized is reasonably required for the purposes specified herein, and that such purposes are not, in whole or in part, reasonably chargeable to operating expenses or to income. A public hearing is not necessary.

Western Asphalt Service 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 May 1, 1961, Charles H. Moore may sell and transfer and Western Asphalt Service may purchase and acquire the operative rights granted by Decision No. 54942 as well as the property specified according to Exhibit B attached to the application.
2. That, within thirty days after the consummation of the transfer herein authorized, the purchaser shall notify the Commission, in writing, 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 the transfer applicants shall amend or reissue the tariff on file with the Commission, naming rates, rules and regulations governing the common carrier operations here involved, to show that Charles H. Moore has withdrawn or canceled, and that Western Asphalt Service 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 Western Asphalt Service may incur indebtedness in the amount according to the terms set forth in Exhibit B attached to the application.

The authority herein granted to incur indebtedness will become effective when applicant has paid the fee prescribed by Section 1904(b) of the Public Utilities Code, which fee is \$165. In other respects the effective date of this order shall be twenty days after the date hereof.

Dated at San Francisco, California, this 7th day of February, 1961.

Charles H. Moore
President
John E. Fitzgerald
George E. Brown
Frederick B. Hallock
Commissioners

