

ORIGINAL

Decision No. 61799

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of DON H. HAWKEY, an individual doing business as HAWKEY TRANSPORTATION, 1) to transfer a certificate of public convenience and necessity and property to HAWKEY TRANSPORTATION, INC., a corporation, 2) to sell certain property to the corporation, and 3) of the corporation to issue a note and assume certain obligations.

Application No. 43208

O P I N I O N

This application was filed on March 8, 1961, for an order of the Commission (1) authorizing Don H. Hawkey to transfer operative rights and properties to Hawkey Transportation, Inc., and (2) authorizing Hawkey Transportation, Inc., to assume liabilities and to issue a note in the principal amount of \$14,063.55.

Don H. Hawkey, an individual doing business under the firm name and style of Hawkey Transportation, is a highway common carrier of general commodities between the San Francisco Territory, Sacramento, Weaverville, Burney and the California-Oregon state line and intermediate and off-route points, with certain restrictions, under a certificate of public convenience and necessity granted by Decision No. 58300, dated April 21, 1959, in Application No. 40528.

The application shows that Don H. Hawkey owns some of the units of equipment used in the operations and leases other units from Hawkey Transportation, Inc., which is a non-carrier corporation of which said Don H. Hawkey is president. Applicant Hawkey now reports that he desires to transfer the operative rights and equipment he owns to the corporation and to continue the operations by means of a corporate form of organization. The proposed transaction will consolidate the rights and properties under one ownership.

A review of the application shows that applicant Hawkey proposes to transfer the physical equipment and accounts receivable to the corporation at their book values and that such assets will be transferred subject to outstanding accounts payable and equipment obligations. The application indicates that the excess of the book values of the properties so acquired by the corporation over the book balances of the liabilities to be assumed by it, amounting to \$28,637.81, will be set up on the corporation's books as capital surplus.

Applicant Hawkey also will transfer to the corporation materials and supplies, prepaid expenses and other assets at their book values of \$14,063.55, payment to be made by the corporation by the issue of a note payable in five annual installments of \$2,812.71, each with interest at the rate of 7% per annum on deferred balances.

It appears that there will be no change in the rates or service as the result of the transfer and accordingly we find and conclude that such transfer will not be adverse to the public interest; that the proposed note issue is for a proper purpose; that the money, property or labor to be procured or paid for by the issue of the note 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. On the basis of these findings we will enter our order granting the application.

The action taken herein shall not be construed to be a finding of the value of the operative rights or properties herein authorized to be transferred. 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 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, therefore,

IT IS ORDERED -

1. That Don H. Hawkey may sell and transfer to Hawkey Transportation, Inc., the certificate of public convenience and necessity granted by Decision No. 58300, dated April 21, 1959, in Application No. 40528, and his operative properties under the terms set forth in this application.
2. That Hawkey Transportation, Inc., in acquiring said certificate and properties, may assume the payment of outstanding indebtedness, as set forth in the application, and may issue a promissory note in the principal amount of not to exceed \$14,063.55 for the purpose and under the terms referred to in the preceding opinion.
3. That on not less than five days' notice to the Commission and to the public, effective concurrently with the consummation of such transfers, 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

Don H. Hawkey has withdrawn or canceled and Hawkey Transportation, Inc., 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.

4. That Hawkey Transportation, Inc., 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.

5. That this order shall become effective when Hawkey Transportation, Inc., has paid the minimum fee prescribed by Section 1904(b) of the Public Utilities Code, which fee is \$25.

Dated at San Francisco, California,
this 11th day of April, 1961.

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

