

Decision No. 71394**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of JERRY A. SMITH and RUSSELL O. BROWN, individually and as copartners, by JAMES E. CUSSEN, Trustee in Bankruptcy, to sell and transfer a certificate of public convenience and necessity to J. D. S. TRUCKING, INC., a corporation.

Application No. 48673

O P I N I O N

Jerry A. Smith and Russell O. Brown, copartners, by James E. Cussen, Trustee in Bankruptcy, request authority to sell and transfer and J. D. S. Trucking, Inc., requests authority to purchase and acquire certain highway common carrier operating authority.

The certificate was granted by Decision No. 63059, dated January 9, 1962, in Application No. 38505, and authorized transportation of general commodities in portions of El Dorado, Placer and Sacramento Counties. The certificate was acquired by Richard J. Lee, Jerry A. Smith and Russell O. Brown by Decision No. 69230, dated October 26, 1965, in Application No. 47826. According to the instant application, Lee assigned his interests to Smith and Brown prior to the institution of operations. This transaction required Commission approval which was not obtained at that time.

On or about April 6, 1966, applicants Smith and Brown were adjudicated bankrupt and James E. Cussen was appointed trustee of the bankrupts' estate. Applicant J. D. S. Trucking, Inc., presently rendering service as a permitted carrier, offered

the sum of \$3,366 for the certificate. Said offer was accepted and approved by the court. As of February 28, 1966, applicant buyer indicated a net worth in the amount of \$77,550. *e*

After consideration the Commission finds that the proposed sale would not be adverse to the public interest. A public hearing is not necessary.

J. D. S. Trucking, Inc. 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.

The authorization herein granted shall not be construed as a finding of the value of the rights herein authorized to be transferred.

O R D E R

IT IS ORDERED that:

1. The assignment by Richard J. Lee of his right, title and interest in the certificate of public convenience and necessity acquired by Decision No. 69830, dated October 26, 1965,

in Application No. 47326 to Jerry A. Smith and Russell O. Brown is hereby authorized.

2. On or before January 15, 1967, Jerry A. Smith and Russell O. Brown, individually and as copartners, by James E. Cussen, may sell and transfer, and J. D. S. Trucking, Inc., a corporation, may purchase and acquire the operative right referred to in the application.

3. Within thirty days after the consummation of the transfer herein authorized, J. D. S. Trucking, Inc., shall notify the Commission, in writing, of that fact 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.

4. J. D. S. Trucking, Inc. shall amend or reissue the tariffs on file with the Commission, naming rates and rules governing the common carrier operations herein to show that it has adopted or established, as its own, said rates and rules. The tariff filings shall be made effective not earlier than thirty days after the effective date of this order on not less than thirty days' notice to the Commission and the public, and the effective date of the tariff filings shall be concurrent with the consummation of the transfer herein authorized. 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-A.

5. On or before the end of the third month after the consummation of the transfer as herein authorized, J. D. S. Trucking, Inc. shall cause to be filed with the Commission, in

such form as the Commission may prescribe, an annual report, or reports, related to the operations of the seller for the period commencing with the first day of the current year to and including the effective date of the transfer.

6. Whenever J. D. S. Trucking, Inc. engages other carriers for the transportation of property of Sutherland Construction, Inc., or Sierra Pipe Company, Inc., or Mountain Counties Industrial Supply Co., Inc., or Sierra Builders Exchange, Inc., or customers or suppliers of said corporations, J. D. S. Trucking, Inc. shall not pay such other carriers rates and charges less than the rates and charges published in the J. D. S. Trucking, Inc. tariffs on file with this Commission. ✓

The effective date of this order shall be the date hereof.

Dated at San Francisco, California, this 11th day of OCTOBER, 1966.

[Signature]
President
George J. [Signature]
Fredrick B. Holdhoff
[Signature]

Commissioners

Commissioner A. W. Getov, being necessarily absent, did not participate in the disposition of this proceeding.