

ORIGINAL

Decision No. 73652

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of FRANK E. WILLS and GEORGE A. SCHIMMELPFENNIG, a partnership, doing business as WILLS DELIVERY SERVICE, for permission to transfer highway common carrier certificate to Frank E. Wills, an individual, doing business as WILLS FREIGHT LINE. }

Application No. 49795
Filed November 15, 1967

O P I N I O N

Frank E. Wills and George A. Schimmelpfennig, copartners, doing business as Wills Delivery Service, operate as a highway common carrier between points in the so-called San Francisco-East Bay Cartage Zone and between points within the zone and certain named points and places outside thereof, pursuant to authority acquired by them by Decision No. 55445, dated August 20, 1957, in Application No. 38476.¹ By this application they seek authority to transfer their highway common carrier certificate, together with other assets to Frank E. Wills, an individual, doing business as Wills Freight Line.

The assets proposed to be transferred, together with the common carrier certificate and other carrier permits, include all vehicles totaling 33 units, leasehold interests, good will and trade name, and all other property belonging to and used in connection with the operation of the copartnership. These assets had a book

¹ Applicants also hold radial highway common carrier, highway contract carrier and city carrier permits. A separate application has been filed to transfer said permits from the copartners to Frank E. Wills.

value of \$122,879.04 as of June 30, 1967. In consideration of the transfer of assets to Wills, the application discloses, Wills assumes the payment of all debts and obligations due by the partnership business and agrees to save Schimmelpfennig free and harmless from all liability in connection with any debts or obligations of the partnership business. According to the application, those liabilities amounted to \$43,586.76 as of June 30, 1967.

The application further states that the partnership of Wills and Schimmelpfennig was dissolved as of October 31, 1967.

After consideration, the Commission finds that the proposed transfer would not be adverse to the public interest. A public hearing is not necessary. The order which follows will provide for, in the event the transfer is consummated, the revocation of the certificate presently held by Frank E. Wills and George A. Schimmelpfennig, copartners, doing business as Wills Delivery Service, and the issuance of a certificate in appendix form to Frank E. Wills.

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

Frank E. Wills 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

IT IS ORDERED that:

1. On or before April 1, 1968, Frank E. Wills and George A. Schimmelpfennig, copartners, may sell and transfer, and Frank E. Wills may purchase and acquire, the operative rights and property referred to in the application.
2. Within thirty days after the consummation of the transfer herein authorized, Frank E. Wills 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.
3. Frank E. Wills shall amend or reissue the tariffs on file with the Commission, naming rates and rules governing the common carrier operations herein to show that he has adopted or established, as his own, said rates and rules. The tariff filings shall be made effective not earlier than thirty days after the effective date of the 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. Failure to comply with and observe the provisions of General Order No. 80-A may result in a cancellation of the operating authority granted by this decision.

4. On or before the end of the third month after the consummation of the transfer as herein authorized, Frank E. Wills 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.

5. In the event the transfer authorized in paragraph 1 hereof is consummated, a certificate of public convenience and necessity is granted to Frank E. Wills, authorizing him to operate as a highway common carrier, as defined in Section 213 of the Public Utilities Code between the points and over the routes particularly set forth in Appendices A and B attached hereto and made a part hereof.

6. The certificate of public convenience and necessity granted in paragraph 5 of this order shall supersede the certificate of public convenience and necessity granted by Decision No. 55445, which certificate is revoked effective concurrently with the effective date of the tariff filings required by paragraph 3 hereof.

7. In providing service pursuant to the certificate herein granted, Frank E. Wills shall comply with and observe the following service regulations. Failure so to do may result in a cancellation of the operating authority granted by this decision.

- a. Within thirty days after the effective date hereof, applicant shall file a written acceptance of the certificate herein granted. Applicant is placed on notice that, if he accepts the certificate of public convenience and necessity herein granted, he will be required, among other things, to comply with and observe the safety rules of the California Highway Patrol and the insurance requirements of the Commission's General Order No. 100-D.

- b. Applicant shall maintain his accounting records on a calendar year basis in conformance with the applicable Uniform System of Accounts or Chart of Accounts as prescribed or adopted by this Commission and shall file with the Commission, on or before March 31 of each year, an annual report of his operations in such form, content, and number of copies as the Commission, from time to time, shall prescribe.

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

Dated at San Francisco, California, this 29th day of JANUARY, 1968.

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

Frank E. Wills, by the certificate of public convenience and necessity granted in the decision noted in the margin, is authorized to transport:

1. BOILERS, FURNACES, RADIATORS, STOVES, RELATED ARTICLES OR PARTS NAMED, as listed under that heading in Items Nos. 11960 through 13231 of the Western Classification No. 76, George H. Dumas, Agent, on the issue date thereof.
2. CONDUITS, PIPE, SMOKESTACKS, TUBING OR FITTINGS, OTHER THAN CLAY, CONCRETE OR EARTHEN, as listed under that heading in Items Nos. 29220 through 30440 of Western Classification No. 76, George H. Dumas, Agent, on the issue date thereof.
3. COOLERS, COOLING BOXES, COOLING ROOMS OR REFRIGERATORS, as listed under that heading in Items Nos. 30600 through 30742 of Western Classification No. 76, George H. Dumas, Agent, on the issue date thereof.
4. ELECTRICAL APPLIANCES OR EQUIPMENT, OR PARTS NAMED, as listed under that heading in Items Nos. 34020 through 35430 of Western Classification No. 76, George H. Dumas, Agent, on the issue date thereof.
5. LAMPS, LANTERNS OR LIGHTING FIXTURES, OR PARTS NAMED, as listed under that heading in Items Nos. 55690 through 56100 of Western Classification No. 76, George H. Dumas, Agent, on the issue date thereof.
6. MACHINERY OR MACHINES, OR PARTS NAMED, as listed under that heading in Items Nos. 58470 through 67391 of Western Classification No. 76, George H. Dumas, Agent, on the issue date thereof.

BETWEEN

- A. All points and places in the San Francisco-East Bay Cartage Zone as shown on Appendix "B" hereto attached.
- B. The Zone, on the one hand, and Fremont, Newark and points lying between Fremont and the Zone, on the other hand.

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- C. The Zone, on the one hand, and on the other hand, points on or within five miles laterally of the following routes:
- (1) U. S. Highway 40 between the Zone and Hercules;
 - (2) State Highway No. 4 between Hercules and Antioch;
 - (3) State Highway No. 21 between Martinez and Dublin; and
 - (4) State Highway No. 24 between the Zone and Walnut Creek.

The phrase "the Zone" when used herein means the San Francisco-East Bay Cartage Zone.

For operating convenience applicants may use any and all streets, highways and toll bridges.

End of Appendix A

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LIMITS OF SAN FRANCISCO-EAST BAY CARTAGE ZONE

San Francisco-East Bay Cartage Zone includes that area embraced by the following boundary:

Beginning at the point where the San Francisco-San Mateo County Boundary line meets the Pacific Ocean; thence easterly along said boundary line to Lake Merced Boulevard; thence southerly along said Lake Merced Boulevard and Lynnwood Drive to So. Mayfair Avenue; thence westerly along said South Mayfair Avenue to Crestwood Drive; thence southerly along Crestwood Drive to Southgate Avenue; thence westerly along Southgate Avenue to Maddux Drive; thence southerly and easterly along Maddux Drive to a point one mile west of Highway U.S. 101; thence southeasterly along an imaginary line one mile west of and paralleling Highway U.S. 101 (El Camino Real) to its intersection with the southerly boundary line of the City of San Mateo; thence northeasterly, northwesterly, northerly and easterly along said southerly boundary to Bayshore Highway (U.S. 101 Bypass); thence leaving said boundary line and continuing easterly along the projection of last said course to its intersection with Belmont (or Angelo) Creek; thence northeasterly along Belmont (or Angelo) Creek to Seal Creek; thence westerly and northerly to a point one mile south of Toll Bridge Road; thence easterly along an imaginary line one mile southerly and paralleling Toll Bridge Road and San Mateo Bridge and Mt. Eden Road to its intersection with State Sign Route 17; thence continuing easterly and northeasterly along an imaginary line one mile south and southeasterly of and paralleling Mt. Eden Road and Jackson Road to its intersection with an imaginary line one mile easterly of and paralleling State Sign Route 9; thence northerly along said imaginary line one mile easterly of and paralleling State Sign Route 9 to its intersection with "B" Street, Hayward; thence easterly and northerly along "B" Street to Center Street; thence northerly along Center Street to Castro Valley Boulevard; thence westerly along Castro Valley Boulevard to Redwood Road; thence northerly along Redwood Road to William Street; thence westerly along William Street and 168th Avenue to Foothill Boulevard; northwesterly along Foothill Boulevard to the southerly boundary line of the City of Oakland; thence easterly and northerly along the Oakland Boundary line to its intersection with the Alameda-Contra Costa County Boundary Line; thence northwesterly along last said line to its intersection with Arlington Avenue (Berkeley); thence northwesterly along Arlington Avenue to a point one mile north-easterly of San Pablo Avenue (Highway U.S. 40); thence northwesterly along an imaginary line one mile easterly of and paralleling San Pablo Avenue (Highway U.S. 40) to its intersection with County Road No. 20 (Contra Costa County); thence westerly along County Road No. 20 to Broadway Avenue (also known as Balboa Road); thence northerly along Broadway Avenue (also known as Balboa Road) to Highway U.S. 40; thence northerly along Highway U.S. 40 to Rivers Street; thence westerly along Rivers Street to 11th Street; thence northerly along 11th Street to Johns Avenue; thence westerly along Johns Avenue to Collins Avenue; thence northerly along Collins Avenue to Morton Avenue; thence westerly along Morton Avenue to the Southern Pacific Company right of way and continuing westerly along the prolongation of Morton Avenue to the shore line of San Pablo Bay; thence southerly and westerly along the shore line and waterfront of San Pablo Bay to Point San Pablo; thence southerly along an imaginary line from Point San Pablo to the San Francisco Waterfront at the foot of Market Street; thence westerly along said waterfront and shore line to the Pacific Ocean; thence southerly along the shore line of the Pacific Ocean to the point of beginning.

The foregoing description includes the following points or portions there-

of:

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|-----------------|-------------------|----------------------|-----------------|
| Alameda | Elkton | Oakland Pier | San Leandro |
| Alameda Pier | Elmhurst | Ocean View | San Lorenzo |
| Albany | Emeryville | Piedmont | San Mateo |
| Baden | Ferry Point | Point Castro | San Pablo |
| Bay Farm Island | Fruitvale | Point Fleming | South San |
| Bayshore | Government Island | Point Isabel | Francisco |
| Berkeley | Hayward | Point Molate | Stege |
| Bernal | Lawndale | Point Orient | Tanforan |
| Brisbane | Lomita Park | Point Potrero | Treasure Island |
| Broadway | Melrose | Point Richmond | Union Park |
| Burlingame | Millbrae | Point San Pablo | Visitacion |
| Camp Knight | Mills Field | Richmond | Westlake |
| Castro Valley | Mt. Eden | Russell City | Winchaven |
| Colma | Oakland | San Bruno | Yerba Buena |
| Daly City | Oakland Municipal | San Francisco | Island |
| East Oakland | Airport | San Francisco Inter- | |
| El Cerrito | | national Airport | |