

ORIGINAL

Decision No. 77270

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application
of VICTORY TRANSPORTATION SERVICE,
INC., a corporation, and ASBURY
TRANSPORTATION CO., a corporation,
for authority for VICTORY TRANS-
PORTATION SERVICE, INC. to purchase
a certain certificate of public
convenience and necessity from
ASBURY TRANSPORTATION CO.

Application No. 51807
(Filed April 6, 1970)

O P I N I O N

Asbury Transportation Co. (hereinafter referred to as Asbury) and Victory Transportation Service, Inc. (hereinafter referred to as Victory) seek herein authority for Asbury to sell and transfer and Victory to purchase and acquire Asbury's certificate of public convenience and necessity to operate as a highway common carrier for the transportation of general commodities.

Asbury presently holds operating authority from this Commission which authorizes it to do the following: (1) operate as a highway common carrier for the transportation of general commodities, with certain exceptions, between the San Diego Territory, Los Angeles Basin Territory and the San Francisco Territory including all intermediate points on U. S. Highways 101 and 101 Alternate; between San Fernando and Sacramento including all intermediate points on U. S. Highway 99; and between Sacramento and Oakland including all intermediate points on U. S. Highway 40; (2) operate as a highway common carrier for the transportation of petroleum products throughout substantial portions of California,

and (3) operate as a permitted carrier under permits issued by this Commission.

Victory is a permitted carrier operating under permits issued by this Commission. It presently conducts operations between San Jose, San Francisco, Oakland and Los Angeles-San Diego as well as Sacramento, Stockton and Los Angeles-San Diego.

The verified application avers that Asbury and Victory have entered into an agreement whereby Asbury will sell to Victory its highway common carrier certificate for the transportation of general commodities and attendant goodwill for \$35,000. Asbury will continue to operate as a highway common carrier for the transportation of petroleum products and as a permitted carrier.

The record indicates that on March 31, 1970, Victory's personnel consisted of two officers, six office employees, twenty-seven drivers, three helpers and one mechanic. It has terminals in Los Angeles and San Jose. It has approximately 70 units of operating equipment. On December 31, 1969, Victory had depreciated assets of \$109,006. The record indicates that copies of the application were served on the California Trucking Association and other persons, and that the Commission has received no protests in connection therewith.

The Commission makes the following findings and conclusions.

Findings of Fact

1. A public hearing is not necessary in this matter.
2. The sale and transfer of Asbury's certificate of public convenience and necessity to operate as a highway common carrier for the transportation of general commodities to Victory would not be adverse to the public interest.

3. Victory has the ability including financial ability to conduct operations under the certificate here involved.

4. The orderly administration of applicable regulatory statutes and regulations requires that the operating authority retained by Asbury be restated in an in-lieu certificate of public convenience and necessity.

Conclusions of Law

1. Asbury should be authorized to sell and transfer and Victory to purchase and acquire Asbury's certificate of public convenience and necessity to operate as a highway common carrier for the transportation of general commodities.

2. If the sale and transfer herein authorized is consummated, Asbury's remaining operating authority should be restated in an in-lieu certificate of public convenience and necessity.

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

Victory Transportation Service, 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.

O R D E R

IT IS ORDERED that:

1. On or before May 1, 1971, Asbury Transportation Co. may sell and transfer, and Victory Transportation Service, Inc. may purchase and acquire, the operative rights referred to in the application and certificate of public convenience and necessity set forth in Appendix A attached hereto. The certificate in Appendix A shall supersede the certificate of public convenience and necessity described in First Revised Pages 1 and 2, Second Revised Page 3 and Original Page 4 of Appendix A attached to Decision No. 63219, which certificate is revoked and canceled effective concurrently with the effective date of the tariff filings required by paragraph 4 hereof.

2. If the sale and transfer authorized in paragraph 1 hereof is consummated, then in such event, the certificate of public convenience and necessity set forth in Appendix B attached hereto shall supersede the certificate of public convenience and necessity described in Original Pages 4 and 5 of Appendix A attached to Decision No. 63219, which certificate is revoked effective concurrently with the effective date of the tariff filings required by paragraph 4 hereof.

3. Within thirty days after the consummation of the transfer herein authorized, purchaser 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. Purchaser 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 five days after the effective date of this order on not less than five 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.

5. Within thirty days after the transfer herein authorized is consummated, purchaser shall file a written acceptance of the certificate. Purchaser is placed on notice that, if it accepts such certificate, it 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-E.

6. Purchaser shall maintain its 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 its operations in such form, content, and number of copies as the Commission, from time to time, shall prescribe.

7. Purchaser shall comply with the requirements of the Commission's General Order No. 84-Series for the transportation of

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collect on delivery shipments. If purchaser elects not to transport collect on delivery shipments, it shall make the appropriate tariff filings as required by the General Order.

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

Dated at San Francisco, California, this 22nd day of MAY, 1970.

William Thomas Moran
President

August
J. Williams

Vernon L. Stevenson
Commissioners

Commissioner Thomas Moran, being necessarily absent, did not participate in the disposition of this proceeding.

Victory Transportation Service, Inc., a corporation, by the certificate of public convenience and necessity granted in the decision noted in the margin, is authorized to transport general commodities, as follows:

1. Between all points and places in the San Francisco Territory as described in Appendix C attached hereto.
2. Between all points and places in the Los Angeles Basin Territory as described in Appendix D attached hereto.
3. Between all points and places in the San Diego Territory as described in Appendix E attached hereto.
4. Between all points and places on and within 25 miles laterally of the following named highways:
 - a. U. S. Highway 40 between Oakland and Sacramento, inclusive.
 - b. State Highway 4 between its intersection with U. S. Highway 40 near Pinole and Stockton, inclusive.
 - c. U. S. Highways 101 and 101 Alternate between San Jose and San Diego, inclusive.
 - d. State Highway 118 between its intersection with U. S. Highway 101 near Ventura and Chatsworth, inclusive.
 - e. U. S. Highway 99 between Sacramento and San Fernando, inclusive, except that applicant shall not serve any point more than five miles easterly of U. S. Highway 99 between Bakersfield and San Fernando.
 - f. State Highway 33 between its junction with U. S. Highway 50 near Tracy and its junction with U. S. Highway 99 near Wheeler Ridge, inclusive.
 - g. U. S. Highway 395 between Temecula and San Diego, inclusive.
 - h. U. S. Highways 60 and 70 between the eastern boundary of the Los Angeles Basin Territory and Blythe, inclusive. (See Exception 1.)

EXCEPTION 1 - Service on and within 25 miles laterally of U. S. Highways 60 and 70 between Indio and Blythe, inclusive, is restricted to shipments weighing 20,000 pounds or more (truck-load lots).

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- i. U. S. Highway 99 between Redlands and Calexico, inclusive, except that applicant shall not serve any point north of the northerly boundary of the Los Angeles Basin Territory.
- j. U. S. Highway 80 between Bostonia and Winterhaven, inclusive.
- k. U. S. Highway 66 between Newberry and Needles, inclusive. (See Exception 3.)
- l. U. S. Highway 6 between Independence and its junction with U. S. Highway 395 near Brown, inclusive. (See Exceptions 2 and 3.)

EXCEPTION 2 - Service is restricted to shipments weighing 20,000 pounds or more (truck-load lots).

EXCEPTION 3 - No service is authorized to, from or between intermediate points on U. S. Highway 66 between San Bernardino and Newberry, nor on U. S. Highway 6 between San Fernando and its junction with U. S. Highway 395 near Brown, nor on any other highways not named herein.

- m. U. S. Highway 399 between Ventura and Greenfield, inclusive; including the off-route points of Santa Paula and Fillmore.
5. Through routes and rates may be established between any and all points described in subparagraph 1 through 4m above.
 6. Applicant may use any and all highways and roads between the areas described for operating convenience only.
 7. Applicant shall not transport any shipments of the following commodities:
 - a. Used household goods and personal effects not packed in accordance with the crated property requirements set forth in paragraph (d) of Item No. 10-C of Minimum Rate Tariff No. 4-A.
 - b. Automobiles, trucks and buses, viz.: new and used, finished or unfinished passenger automobiles (including jeeps), ambulances, hearses and taxis; freight automobiles, automobile chassis, trucks, truck chassis, truck trailers, trucks and trailers combined, buses and bus chassis.

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- c. Livestock, viz.: bucks, bulls, calves, cattle, cows, dairy cattle, ewes, goats, hogs, horses, kids, lambs, oxen, pigs, sheep, sheep camp outfits, sows, steers, stags or swine.
- d. Commodities requiring protection from heat by the use of ice (either water or solidified carbon dioxide) or by mechanical refrigeration.
- e. Liquids, compressed gases, commodities in semi-plastic form and commodities in suspension in liquids in bulk, in tank trucks, tank trailers, tank semi-trailers or a combination of such highway vehicles.
- f. Commodities when transported in bulk in dump trucks or in hopper-type trucks.
- g. Commodities when transported in motor vehicles equipped for mechanical mixing in transit.
- h. Logs.

END OF APPENDIX A

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Asbury Transportation Co. by the certificate of public convenience and necessity granted by the decision noted in the margin is authorized to transport property necessary or incidental to the establishment, maintenance, or dismantling of oil, gas, or water wells, pipe lines, refineries, and cracking or casing head plants, equipment and material used in construction, and equipment used in farming, with the exceptions hereinafter specified, and including liquefied petroleum gases and any other petroleum products requiring pressurized tanks and liquid asphalt and hot road oils and any other petroleum products requiring insulated tanks, as a highway common carrier as follows:

1. Between all points and places in the San Francisco Territory as described in Appendix C attached hereto.
2. Between all points and places in the Los Angeles Basin Territory as described in Appendix D attached hereto.
3. Between all points and places in the San Diego Territory as described in Appendix E attached hereto.
4. Between all points and places on and within 25 miles laterally of the following named highways:
 - a. U.S. Highway 40 between Oakland and Sacramento, inclusive.
 - b. State Highway 4 between its intersection with U.S. Highway 40 near Pinole and Stockton, inclusive.
 - c. U.S. Highways 101 and 101 Alternate between San Jose and San Diego, inclusive.

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- d. State Highway 118 between its intersection with U.S. Highway 101 near Ventura and Chatsworth, inclusive.
 - e. U.S. Highway 99 between Sacramento and San Fernando, inclusive, except that applicant shall not serve any point more than five miles easterly of U.S. Highway 99 between Bakersfield and San Fernando.
 - f. State Highway 33 between its junction with U.S. Highway 50 near Tracy and its junction with U.S. Highway 99 near Wheeler Ridge, inclusive.
 - g. U.S. Highway 395 between Temecula and San Diego, inclusive.
 - h. U.S. Highways 60 and 70 between the eastern boundary of the Los Angeles Basin Territory and Blythe, inclusive. (See Exception 1.)
- EXCEPTION 1 - Service on and within 25 miles laterally of U.S. Highways 60 and 70 between Indio and Blythe, inclusive, is restricted to shipments weighing 20,000 pounds or more (truck-load lots).
- i. U.S. Highway 99 between Redlands and Calexico, inclusive, except that applicant shall not serve any point north of the northerly boundary of the Los Angeles Basin Territory.
 - j. U.S. Highway 80 between Bostonia and Winterhaven, inclusive.
 - k. U.S. Highway 66 between Newberry and Needles, inclusive. (See Exception 3.)

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1. U.S. Highway 6 between Independence and its junction with U.S. Highway 395 near Brown, inclusive. (See Exceptions 2 and 3.)

EXCEPTION 2 - Service is restricted to shipments weighing 20,000 pounds or more (truck-load lots).

EXCEPTION 3 - No service is authorized to, from or between intermediate points on U.S. Highway 66 between San Bernardino and Newberry, nor on U.S. Highway 6 between San Fernando and its junction with U.S. Highway 395 near Brown, nor on any other highways not named herein.

- m. U.S. Highway 399 between Ventura and Greenfield, inclusive, including the off-route points of Santa Paula and Fillmore.
- n. U.S. Highway 66 between Newberry and San Bernardino, inclusive.
- o. U.S. Highway 6 between its junction with U.S. Highway 395 near Brown and San Fernando, inclusive. (See Exception 1.)

EXCEPTION 1 - Service on and within 25 miles laterally of U.S. Highway 6 between its junction with U.S. Highway 395 near Brown and Mojave, inclusive, is restricted to shipments weighing 20,000 pounds or more (truck-load lots).

- p. U.S. Highway 466 between Bakersfield and Barstow, inclusive.
5. Through routes and rates may be established between any and all points described in subparagraphs 1 through 4p above.
6. Applicant may use any and all highways and roads between the areas described for operating convenience only.

END OF APPENDIX B

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SAN FRANCISCO TERRITORY includes all the City of San Jose and that area embraced by the following boundary: Beginning at the point the San Francisco-San Mateo County boundary line meets the Pacific Ocean; thence easterly along said boundary line to a point 1 mile west of U.S. Highway 101; southerly along an imaginary line 1 mile west of and paralleling U.S. Highway 101 to its intersection with Southern Pacific Company right of way at Arastradero Road; southeasterly along the Southern Pacific Company right of way to Pollard Road, including industries served by the Southern Pacific Company spur line extending approximately 2 miles southwest from Simla to Permanente; easterly along Pollard Road to W. Parr Avenue; easterly along W. Parr Avenue to Capri Drive; southerly along Capri Drive to E. Parr Avenue; easterly along E. Parr Avenue to the Southern Pacific Company right of way; southerly along the Southern Pacific Company right of way to the Campbell-Los Gatos city limits; easterly along said limits and the prolongation thereof to the San Jose-Los Gatos Road; northeasterly along San Jose-Los Gatos Road to Foxworthy Avenue; easterly along Foxworthy Avenue to Almaden Road; southerly along Almaden Road to Hillsdale Avenue; easterly along Hillsdale Avenue to U.S. Highway 101; northwesterly along U.S. Highway 101 to Tully Road; northeasterly along Tully Road to White Road; northwesterly along White Road to McKee Road; southwestwesterly along McKee Road to Capitol Avenue; northwesterly along Capitol Avenue to State Highway 17 (Oakland Road); northerly along State Highway 17 to Warm Springs; northerly along the unnumbered highway via Mission San Jose and Niles to Hayward; northerly along Foothill Boulevard to Seminary Avenue; easterly along Seminary Avenue to Mountain Boulevard; northerly along Mountain Boulevard and Moraga Avenue to Estates Drive; westerly along Estates Drive, Harbord Drive and Broadway Terrace to College Avenue; northerly along College Avenue to Dwight Way; easterly along Dwight Way to the Berkeley-Oakland boundary line; northerly along said boundary line to the campus boundary of the University of California; northerly and westerly along the campus boundary of the University of California to Euclid Avenue; northerly along Euclid Avenue to Marin Avenue; westerly along Marin Avenue to Arlington Avenue; northerly along Arlington Avenue to U.S. Highway 40 (San Pablo Avenue); northerly along U.S. Highway 40 to and including the City of Richmond; southwestwesterly along the highway extending from the City of Richmond to Point Richmond; southerly along an imaginary line from Point Richmond to the San Francisco Waterfront at the foot of Market Street; westerly along said waterfront and shore line to the Pacific Ocean; southerly along the shore line of the Pacific Ocean to point of beginning.

END OF APPENDIX C

LOS ANGELES BASIN TERRITORY includes that area embraced by the following boundary: Beginning at the point the Ventura County-Los Angeles County boundary line intersects the Pacific Ocean; thence northeasterly along said county line to the point it intersects State Highway No. 118, approximately two miles west of Chatsworth; easterly along State Highway No. 118 to Sepulveda Boulevard; northerly along Sepulveda Boulevard to Chatsworth Drive; northeasterly along Chatsworth Drive to the corporate boundary of the City of San Fernando; westerly and northerly along said corporate boundary to McClay Avenue; northeasterly along McClay Avenue and its prolongation to the Angeles National Forest boundary; southeasterly and easterly along the Angeles National Forest and San Bernardino National Forest boundary to the county road known as Mill Creek Road; westerly along Mill Creek Road to the county road 3.8 miles north of Yucaipa; southerly along said county road to and including the unincorporated community of Yucaipa; westerly along Redlands Boulevard to U.S. Highway No. 99; northwesterly along U.S. Highway No. 99 to the corporate boundary of the City of Redlands; westerly and northerly along said corporate boundary to Brookside Avenue; westerly along Brookside Avenue to Barton Avenue; westerly along Barton Avenue and its prolongation to Palm Avenue; westerly along Palm Avenue to La Cadena Drive; southwesterly along La Cadena Drive to Iowa Avenue; southerly along Iowa Avenue to U.S. Highway No. 60; southwestwesterly along U.S. Highways Nos. 60 and 395 to the county road approximately one mile north of Perris; easterly along said county road via Nuevo and Lakeview to the corporate boundary of the City of San Jacinto; easterly, southerly and westerly along said corporate boundary to San Jacinto Avenue; southerly along San Jacinto Avenue to State Highway No. 74; westerly along State Highway No. 74 to the corporate boundary of the City of Hemet; southerly, westerly and northerly along said corporate boundary to the right of way of The Atchison, Topeka & Santa Fe Railway Company; southwestwesterly along said right of way to Washington Avenue; southerly along Washington Avenue, through and including the unincorporated community of Winchester to Benton Road; westerly along Benton Road to the county road intersecting U.S. Highway No. 395, 2.1 miles north of the unincorporated community of Temecula; southerly along said county road to U.S. Highway No. 395; southeasterly along U.S. Highway No. 395 to the Riverside County-San Diego County boundary line; westerly along said boundary line to the Orange County-San Diego County boundary line; southerly along said boundary line to the Pacific Ocean; northwesterly along the shore line of the Pacific Ocean to point of beginning.

END OF APPENDIX D

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SAN DIEGO TERRITORY includes that area embraced by the following imaginary line starting at the northerly junction of U.S. Highways 101-E and 101-W (4 miles north of La Jolla); thence easterly to Miramar on State Highway No. 395; thence southeasterly to Lakeside on the El Cajon-Ramona Highway; thence southerly to Bostonia on U.S. Highway No. 80; thence southeasterly to Jamul on State Highway No. 94; thence due south to the International Boundary Line, west to the Pacific Ocean and north along the coast to point of beginning.

END OF APPENDIX E