

Decision No. 77363

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application  
of WALTER E. FLOWER, doing  
business as FLOWER'S STOCKTON-  
LODI FAST FREIGHT, a proprietor-  
ship, to transfer his certificate  
of public convenience and necessity  
to DARREL D. FANDRICH.

Application No. 51875  
(Filed May 4, 1970)

O P I N I O N

Walter E. Flower requests authority to sell and transfer, and Darrel D. Fandrigh requests authority to purchase and acquire, a certificate of public convenience and necessity authorizing operations as a highway common carrier as well as certain operating equipment.

The certificate was granted by Decision No. 62105 in Application No. 42968 and authorizes the transportation of general commodities, with certain exceptions, between Stockton and Galt over U.S. Highway 99, with the right to serve within five-mile laterals thereof. The equipment consists of a 1963 Ford truck. The consideration is \$6,500.

Applicant purchaser has been conducting the operation for the past eighteen months and as of December 31, 1969, indicated a net worth in the amount of \$6,528.

It is alleged that on or about July 1, 1968, the parties without legal advice, entered into and consummated the sale and transfer. During the time that applicant purchaser has conducted the operation the revenue derived therefrom has been used to pay the purchase price in full.

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 Walter E. Flower, an individual, doing business as Flower's Stockton-Lodi Fast Freight, and the issuance of a certificate in appendix form to Darrel D. Fandrich, an individual.

Darrel D. Fandrich 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 and properties herein authorized to be transferred.

O R D E R

IT IS ORDERED that:

1. On or before December 1, 1970, Walter E. Flower may sell and transfer, and Darrel D. Fandrich 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, 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.

3. 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 he has adopted or established, as his 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.

4. On or before the end of the third month after the consummation of the transfer as herein authorized, purchaser 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 Darrel D. Fandrich authorizing him to operate as a highway common carrier as defined in Section 213 of the Public Utilities Code as particularly set forth in Appendix A attached hereto and made a part hereof.

6. The certificate of public convenience and necessity granted by Paragraph 5 of this order shall supersede the certificate of public convenience and necessity granted to the seller by Decision No. 62105 dated June 6, 1961, in Application No. 42968, as amended by Decision No. 74082 dated May 7, 1968, in Application No. 48547, which certificate is revoked effective concurrently with the tariff filings required by Paragraph 3 hereof.

7. 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 he accepts such certificate, 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-E.

8. Purchaser 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.

9. Purchaser shall comply with the requirements of the Commission's General Order No. 84-Series for the transportation of collect on delivery shipments. If purchaser elects not to

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transport collect on delivery shipments, he 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 16th day of JUNE, 1970.

William Seymour J.  
President  
Arthur  
W. H. ...  
...  
Simon L. Sturgeon  
Commissioners

Darrel D. Fandrich, by the certificate of public convenience and necessity granted by the decision noted in the margin, is authorized to conduct operations as a highway common carrier as defined in Section 213 of the Public Utilities Code for the transportation of general commodities between all points and places on and within five miles laterally of U.S. Highway 99 between Stockton and Galt, inclusive.

Applicant shall not transport any shipments of:

1. 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.
2. 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.
3. 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.
4. Commodities requiring the use of special refrigeration or temperature control in specially designed and constructed refrigerator equipment.

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5. Liquids, compressed gases, commodities in semiplastic form and commodities in suspension in liquids in bulk, in tank trucks, tank trailers, tank semitrailers or a combination of such highway vehicles.
6. Commodities when transported in bulk in dump trucks or in hopper-type trucks.
7. Commodities when transported in motor vehicles equipped for mechanical mixing in transit.
8. Logs.
9. Trailer coaches and campers, including integral parts and contents when the contents are within the trailer coach or camper.

END OF APPENDIX A

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