

Decision No. 78042

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application
of KENNETH HENRICKSEN (Purchaser)
and ELWOOD M. BOBO, (Seller) for
authorization to transfer certi-
ficate and equipment of passenger
bus service.

Application No. 52124
(Filed August 12, 1970)

Gladstone A. Gillette, for Kenneth
Henricksen, applicant.
Howard B. Pettersen, for Pettersen
Bus Company, protestant.
Paul A. Burket, for the Commission
staff.

O P I N I O N

This application was heard on October 22, 1970 in San Francisco before Examiner Fraser. Only the applicants testified. Protestant made a brief statement and asked questions. A staff representative assisted in developing the record.

Bobo has been an employee of the Mare Island Naval Shipyard for 30 years. He drives a bus to work and has transported fellow workers between San Rafael and the shipyard since he was hired. He was certificated to perform this service by Decision No. 76681, dated January 20, 1970, in Application No. 51178. Bobo has now applied to sell his certificate and one 1941 G.M.C. 41-passenger bus, with its spare parts, to Henricksen for the sum of \$3,500. Bobo testified that he is on sick leave and will soon go into retirement.

Henricksen has applied to purchase the Bobo certificate and bus. He is also employed at Mare Island and provides service

between the Santa Rosa area and Mare Island under the authority of Decision No. 76315 in Application No. 51170. He will transport Mare Island employees exclusively at \$2.00 per day or \$8.00 per week.

Howard B. Pettersen, doing business as Pettersen Bus Company, and a protestant herein, transports Mare Island employees by bus between Napa and Mare Island. He filed Application No. 50898 on February 18, 1969, and requested authority to extend service from Mare Island to Fairfield and San Rafael. Decision No. 75536, dated April 8, 1969, granted the requested authority. Pettersen has never extended service to San Rafael and his tariffs have never been amended to include the San Rafael route. Pettersen obtained extensions of time within which to start service to San Rafael, but the last extension obtained (Decision No. 76714, dated January 27, 1970, in Application No. 50898) expired on July 1, 1970. Pettersen is protesting on the theory that his certificate to serve San Rafael was granted before Henricksen's claim was filed and he should therefore have the prior right to serve San Rafael. Pettersen advised that he did not operate out of San Rafael because Bobo was already providing service and the area could not support two bus operators. He obtained his certificate because he thought it would entitle him to provide the service when Bobo retired.

Discussion and Findings

Bobo has the right to dispose of his certificate. The certificate held by the protestant expired on July 1, 1970. The owner of an expired certificate, who has never operated under it, has no standing to protest the transfer of another certificate on the basis of a prior right to provide the service.

After consideration the Commission finds that the proposed transfer would not be adverse to the public interest.

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

Kenneth Henricksen 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, Elwood M. Bobo may sell and transfer, and Kenneth Henricksen 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 and timetables 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 and timetable filings shall be made effective not earlier than ten days after the effective date of this order on not less than ten days' notice to the Commission and the public, and the effective date of the tariff and timetable filings shall be concurrent with the consummation of the transfer herein authorized. The tariff and timetable filings made pursuant to this order shall comply in all respects with the regulations governing the construction and filing of tariffs and timetables set forth in the Commission's General Orders Nos. 79 and 98-A. Failure to comply with and observe the provisions of General Orders Nos. 79 and 98-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. 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, the rules and other regulations of the Commission's General

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Order No. 98-A and insurance requirements of the Commission's
General Order No. 101-C.

6. 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.

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

Dated at San Francisco, California, this 8th
day of DECEMBER, 1970.

Chairman

Chairman
Norgaard
William J. Brown
Frank M.
Vernon L. Sturgeon
Commissioners

Commissioner J. P. Takasin, Jr., being necessarily absent, did not participate in the disposition of this proceeding.