

Decision No. 82048

**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application  
of D'Onofrio Drayage, Inc., a  
California corporation, to change  
its name to Dono Corporation, a  
California corporation, and for  
Dono Corporation to sell its rights  
to certain operating authorities  
evidenced by Certificate of Public  
Convenience and Necessity to a new  
corporation, D'Onofrio Drayage, Inc.

Application No. 54084  
(Filed June 5, 1973;  
amended July 31, 1973)

O P I N I O N

The original application of D'Onofrio Drayage, Inc., doing business as Dono Corporation, stated that the corporation held certain operating rights as a common carrier issued by this Commission. Don D'Onofrio is the president and major stockholder of that corporation.

That corporation has entered into a contract with William Swenson and Gary Naman, under which the highway common carrier certificates, an ICC Certificate of Registration, and operating equipment are to be sold to a new corporation using the same name, D'Onofrio Drayage, Inc.<sup>1/</sup>

The president and major stockholder of purchaser is William D. Swenson who has been actively involved in the motor carrier business for many years. He presently is the owner of a sole proprietorship, Ace City Express, which operates as a highway contract carrier under authority stated in File No. T-101,168. He also holds a permit to operate as a radial highway common carrier. William D. Swenson, doing

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<sup>1/</sup> Under the terms of the purchase agreement, the Swenson-Naman corporation will acquire the name and goodwill of seller corporation. Accordingly, seller is in the process of changing its name to the Dono Corporation and purchaser was incorporated under the name of "D'Onofrio Drayage, Inc."

business as Ace City Express, will continue to operate as a separate entity.

Purchaser, D'Onofrio Drayage, Inc. currently holds no operating authority from either the California Public Utilities Commission or the Interstate Commerce Commission. It is a new corporation which has never engaged in business. A pro forma balance sheet is attached to the application as Exhibit I. Purchaser has paid-in capital from the original incorporators in the amount of \$50,000. The amounts paid in are as follows:

William D. Swenson	- \$30,000
Gary A. Naman	- \$10,000
Morris Swenson	- \$10,000

\$23,000 of this amount represents money paid as a down payment on the sale; the remainder will be used as working capital.

According to the terms and provisions of the purchase agreement the total purchase price for the operating authority and equipment to be transferred is \$80,000. A 7 percent promissory note in the principal amount of \$57,000 repayable in full on or before October 1, 1977 would be issued by purchaser for a portion of the purchase price; the remaining \$23,000 will be paid in cash.

The amendment indicates that the operating rights were never transferred from Don D'Onofrio, as an individual, to his D'Onofrio Drayage, Inc. corporation. The contract of sale was amended to indicate that Don D'Onofrio rather than the corporation is to sell the operating rights.

According to the Commission's records the following operating authorities are held by Don D'Onofrio:

<u>Decision No.</u>	<u>Date</u>	<u>Application No.</u>	
50866	12/14/54	35128	Original general commodities
53634	8/28/56	36087	Original general commodities
75682	5/20/69	(35128	
		(36087	Amended D.50866 & 53634
74155	5/21/68	48416	Original alcoholic beverages
74391	7/16/68	48416	Amended D.74155

The general commodity authority is the subject of a certificate of registration issued by the Interstate Commerce Commission in Proceeding No. MC-99286 (Sub-No. 2) dated April 30, 1964.

An in-lieu certificate granted by Decision No. 62518 in Application No. 42980 (September 5, 1961) was not accepted by either the selling corporation or by Don D'Onofrio; that decision consequently is now void.

It is alleged that seller and its predecessors have long been engaged in the transportation of commodities within the State of California pursuant to the above-referenced certificate and Certificate of Registration. The president of purchaser is asserted to be experienced, reliable, and responsible in motor carrier affairs, having served members of the general shipping public within the State of California in both interstate and intrastate commerce. He has served within the area encompassed by the authorities sought to be transferred herein for a period of three years. He has a total of twenty-five years in the trucking industry in general, both as an employee and as a proprietor of a carrier. It is alleged that approval of this transfer will allow purchaser to provide a permanent and continuing service in replacement for that heretofore offered for the public by seller and that there will be no interruption in service as a result of this transfer. It is further alleged that there will be no adverse competitive effect on existing motor carriers.

It was requested that compliance with orders herein be stayed until such time as the Interstate Commerce Commission issues its order authorizing the transfer for applicant's Certificate of Registration so as to facilitate simultaneous consummation of both portions of this transaction. However, since the order herein is permissive no stay is required. If the parties are unable to complete proceedings before the ICC within the time limits provided, they may seek an extension.

The application was properly noticed according to the Commission's Rules of Procedure and no protests have been received.

After consideration the Commission finds that the proposed transfer would not be adverse to the public interest, and further that the proposed security issue is for proper purposes. The money, property, or labor to be procured or paid for by the issue of the security authorized by this decision is reasonably required for the purposes specified, which purposes are not, in whole or in part, reasonably chargeable to operating expenses or to income. We conclude the application should be granted. A public hearing is not necessary. The order which follows will provide for, in the event the transfer is completed, the revocation of the certificates presently held by Don D'Onofrio and the issuance of a certificate in appendix form to D'Onofrio Drayage, Inc. We find with reasonable certainty that the project involved in this proceeding will not have a significant effect on the environment.

In the event the transfer is consummated William D. Swenson is placed on notice that he may not operate as a highway contract carrier of any of the commodities, and in any of the territories, set forth in Appendix A, except as provided in Section 1066.2 of the Public Utilities Code (Section 3542, Public Utilities Code). He is further placed on notice that any common carrier transportation of those commodities in those territories, performed by him, may be deemed to have been performed by D'Onofrio Drayage, Inc. subject to its tariffs and to the statutes and regulations governing highway common carriers.

The authorization granted shall not be construed as a finding of the value of the rights and properties authorized to be transferred, nor as authority to issue capital stock.

Purchaser D'Onofrio Drayage, Inc. is 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. 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 July 1, 1974, Don D'Onofrio may sell and transfer the operative rights and property referred to in the application to D'Onofrio Drayage, Inc.
2. Within thirty days after the transfer the purchaser shall file with the Commission written acceptance of the certificate and a true copy of the bill of sale or other instrument of transfer.
3. Purchaser shall amend or reissue the tariffs on file with the Commission, naming rates and rules governing the common carrier operations transferred to show that it has adopted or established, as its own, the 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 transfer. 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-Series. Failure to comply with the provisions of General Order No. 80-Series 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 transfer, the 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 is completed, effective concurrently with the effective date of the tariff filings required by paragraph 3, a certificate of public convenience and necessity is granted to D'Onofrio Drayage, Inc., a corporation, authorizing it to operate as a highway common carrier, as defined in Section 213 of the Public Utilities Code, between the points set forth in Appendix A, attached hereto and made a part hereof.

6. The certificates of public convenience and necessity granted by Decisions Nos. 50866, 53634, 75682, 74155, and 74391 are revoked effective concurrently with the effective date of the tariff filings required by paragraph 3.

7. Purchaser shall comply with the safety rules of the California Highway Patrol and the insurance requirements of the Commission's General Order No. 100-Series.

8. 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.

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 transport collect on delivery shipments, it shall make the appropriate tariff filings as required by the General Order.

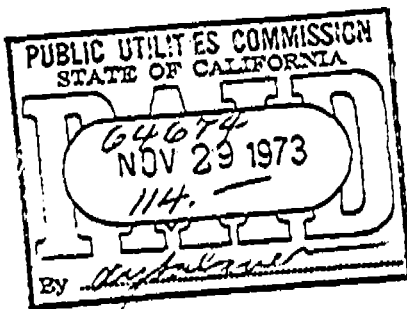
10. This certificate will be restated, but such restatement will not change or broaden the authority transferred.

11. Purchaser D'Onofrio Drayage, Inc., for the purposes specified in this proceeding, is authorized to issue the encumbrance as shown by Exhibit J attached to the application.

12. The issuer of the securities authorized by this order shall file with the Commission a report, or reports, as required by General Order No. 24-Series.

The authority granted by this order to issue a note will become effective when the issuer has paid the fee prescribed by Section 1904(b) of the Public Utilities Code, which fee is \$114. In other respects the effective date of this order shall be twenty days after the date hereof.

Dated at San Francisco, California, this 30th day of OCTOBER, 1973.



William L. Stenberg  
President  
William Stenberg, Jr.  
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Commissioners

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

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

D'Onofrio Drayage, Inc., by the certificate of public convenience and necessity granted in 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:

I. General commodities:

- A. Between points in the San Francisco-East Bay Cartage Zone, as described in Note A (Subject to Exceptions Nos. 1, 3, 4, and 9).

In performing the service herein authorized, carrier may make use of any and all streets, roads, highways and bridges necessary or convenient for the performance of said service.

- B. Between San Mateo and San Jose and intermediate points via U.S. Highway 101 and State Highway 82 (Subject to Exceptions Nos. 1 through 8, inclusive).

Restrictions: Carrier shall not establish through routes and joint rates, charges and classifications as to the authority in Paragraph B and the operative rights set forth in Paragraph A above, excepting, however, that this restriction shall not apply between San Francisco and San Jose and intermediate points via U.S. Highway 101 and State Highway 82.

II. Distilled spirits, alcoholic beverages, liquor, alcoholic liquors, vinous liquors, spirits and wines only:

- A. Between all points and places on the following highways and within twenty miles laterally and radially from all points and places on said highways:

- (1) U.S. Highway 101 between Santa Rosa and Salinas.

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Decision No. 82048, Application No. 54084.



- (2) State Highway 1 between San Francisco and Monterey.
- (3) Interstate Highway 80 between San Francisco and Roseville.
- (4) Interstate Highways 580, 205 and 5 between San Francisco and Stockton, and State Highways 4 and 99 between Stockton and Sacramento.
- (5) State Highway 99 between Sacramento and Fresno.
- (6) State Highway 29 between Napa and Vallejo.
- (7) Interstate Highway 680 between Dublin and Vallejo.
- (8) State Highway 24 between Oakland and Walnut Creek.
- (9) State Highway 4 between Pinole and Stockton.
- (10) State Highway 160 between Sacramento and its junction with State Highway 4, near Oakley.

Although duplications occur in describing the operating authority in this appendix, it is not to be construed as granting more than one operating right to transport the same commodities between the same points. To the extent of any such duplication these rights may not later be separated to permit the carrier to sell or transfer one certificated authority and retain another certificated authority to perform the same service.

Exceptions: Where specifically noted and pursuant to the authority herein granted, carrier shall not transport any shipments of:

Issued by California Public Utilities Commission.

Decision No. 82048, Application No. 54084.

1. Used household goods, personal effects and office, store and institution furniture, fixtures and equipment not packed in accordance with the crated property requirements set forth in Item 5 of Minimum Rate Tariff 4-B.
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.: barrows, boars, bulls, butcher hogs, calves, cattle, cows, dairy cattle, ewes, feeder pigs, gilts, goats, heifers, hogs, kids, lambs, oxen, pigs, rams (bucks), sheep, sheep camp outfits, sows, steers, stags, swine or wethers.
4. Liquids, compressed gases, commodities in semi-plastic form and commodities in suspension in liquids in bulk, in tank trucks, tank trailers, tank semitrailers or a combination of such highway vehicles.
5. Commodities when transported in bulk in dump trucks or in hopper-type trucks.
6. Commodities when transported in motor vehicles equipped for mechanical mixing in transit.
7. Trailer coaches and campers, including integral parts and contents when the contents are within the trailer coach or camper.
8. Commodities requiring the use of special refrigeration or temperature control in specially designed and constructed refrigerator equipment.
9. Commodities of unusual value.

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Decision No. 82048, Application No. 54084.

## NOTE A

## SAN FRANCISCO-EAST BAY CARTAGE ZONE

The San Francisco-East Bay Cartage Zone includes the 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 to South 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 State Highway 82; thence southeasterly along an imaginary line one mile west of and paralleling State Highway 82 (El Camino Real) to its intersection with the southerly boundary line of the City of San Mateo; thence along said boundary line to U.S. Highway 101 (Bayshore Freeway); thence leaving said boundary line proceeding to the junction of Foster City Boulevard and Beach Park Road; thence northerly and easterly along Beach Park Road to a point one mile south of State Highway 92; thence easterly along an imaginary line one mile southerly and paralleling State Highway 92 to its intersection with State Highway 17 (Nimitz Freeway); thence continuing northeasterly along an imaginary line one mile southerly of and paralleling State Highway 92 to its intersection with an imaginary line one mile easterly of and paralleling State Highway 238; thence northerly along said imaginary line one mile easterly of and paralleling State Highway 238 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 Somerset Avenue; thence westerly along Somerset Avenue and 168th Street to Foothill Boulevard; thence 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 said County Line to its intersection with Arlington Avenue (Berkeley); thence northwesterly along Arlington Avenue to a point one mile northeasterly of San Pablo Avenue (State Highway 123); thence northwesterly along an imaginary line one mile easterly of and paralleling San Pablo Avenue to its intersection with County Road 20 (Contra Costa County); thence westerly along County Road 20 to Broadway Avenue; thence northerly along Broadway Avenue to San Pablo Avenue (State Highway 123) to Rivers Street; thence westerly along Rivers Street to 11th Street; thence northerly along 11th Street to Johns Avenue; thence westerly along Johns

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Decision No. 82048, Application No. 54084.

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 shoreline of San Pablo Bay; thence southerly and westerly along the shoreline and waterfront of San Pablo Bay to Point San Pablo; thence southerly along an imaginary line to the San Francisco waterfront at the foot of Market Street; thence westerly along said waterfront and shoreline to the Pacific Ocean; thence southerly along the shoreline of the Pacific Ocean to point of beginning.

(END OF APPENDIX A)

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Decision No. 82048, Application No. 54084.