

Decision No. 85035

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
ATHENS TRANSPORTATION SYSTEM, INC.,
a corporation, for authority to
acquire a certificate of public
convenience and necessity from
Bonded Draying Service, a corpora-
tion, pursuant to Section 851, et
seq., of the California Public
Utilities Code, and for Athens
Transportation System, Inc. to issue
stock and a promissory note pursuant
to Section 816, et seq., of said
Code.

Application No. 55693
(Filed May 16, 1975)

O P I N I O N

Athens Transportation System, Inc. (ATS), a California corporation, seeks authority to acquire from the Internal Revenue Service (IRS) the certificates of Bonded Draying Service (Bonded) which were seized and sold by IRS for the collection of delinquent taxes. The application also requests authority to issue stock and to issue a note. On June 2, 1975 applicant withdrew its request for authority to issue the note. A protest to the granting of this application was received from Norman R. Brown. Prehearing conference was held July 22, 1975 at San Francisco before Examiner Thompson at which applicant and protestant appeared.

Bonded holds a certificate of public convenience and necessity granted by Decision No. 60991, as amended by Decision No. 63050, in Application No. 42536 and transferred to it by Decision No. 63560 dated April 17, 1962 in Application No. 44316, authorizing operations as a highway common carrier in the transportation of general commodities between points extending generally from Sacramento to

Carmel via San Francisco. That certificate was registered with the Interstate Commerce Commission (ICC) on March 10, 1964 (certificate of registration No. MC 121321). The certificate of public convenience and necessity was suspended by the Commission on September 26, 1974 by reason of the failure of Bonded to have appropriate certificates of insurance on file.

At some time prior to March 19, 1974 IRS seized certain assets of Bonded, including the certificate. On the aforementioned date IRS purported to sell the certificate of public convenience and necessity and the ICC certificate of registration to John Paul Morgado who deposited \$15,000 on account of the purchased price. Morgado assigned his interests to Athens Finance Company (AF), a corporation wholly owned by James Jenkins.

AF purported to hold lien rights on Bonded's certificates by reason of a promissory note issued in 1972. On or about October 1, 1974 AF entered into an agreement with IRS under which AF would purchase the certificates that had been seized for \$50,000, \$15,000 of which had been deposited by Morgado whose interest had been assigned to AF. The remaining \$35,000 was deposited in escrow to be held until receipt of authorities from the regulatory agencies permitting the transfer of the certificates.

On or about May 5, 1975 AF assigned all of its rights, title, and interest to the deposits to ATS, the assignment being valid only upon the issuance by both the ICC and this Commission of orders establishing ATS as the owner of the certificates.

Provided approval by the Commission is obtained, AF will provide ATS with working capital by purchasing 2,500 shares of capital stock, a total of \$25,000. AF will also assign six tractors and six semitrailers to ATS to be used in the conduct of operations under the certificate.

Protestant was concerned only that the proposed transfer might be some sort of arrangement or device whereby the principal stockholder of Bonded could conceal assets or resume engaging in the trucking business under the front of a new corporation. Protestant and a number of other members of the Teamsters Union now have a pending court action against the aforesaid principal stockholder.

At the prehearing conference James Jenkins stated that he is the sole stockholder of AF and that AF will be the sole stockholder of ATS. He said that it is not his intention that the person about whom protestant is concerned will have any interest in ATS.

The proposed transfer will not be adverse to the public interest. It will preserve a service that has been found to have been required by public convenience and necessity with respect to interstate and foreign as well as intrastate commerce, to be conducted under a new management that has the facilities, including the financial ability, to conduct the operation

The proposed issuance of 2,500 shares of capital stock is necessary to provide working capital and is for a proper purpose.

The proposed transfer will not broaden or change motor carrier operations authorized to be conducted in intrastate, interstate, or foreign commerce over public highways in the State of California and will not have any significant effect upon the environment. A public hearing is not necessary.

ATS 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 December 31, 1975, the District Director of Internal Revenue, San Francisco, California, acting for and on behalf of the United States of America, may sell and transfer the operative rights it has acquired from Bonded Draying Service referred to in the application to Athens Transportation System, Inc., a corporation.
2. Within thirty days after the transfer the purchaser shall file with the Commission 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. 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 Athens Transportation System, 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 and over the routes set forth in Appendix A, attached hereto and made a part hereof.

5. The certificate of public convenience and necessity granted by Decision No. 60991, as amended, is revoked effective concurrently with the effective date of the tariff filings required by paragraph 3.

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

7. 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.

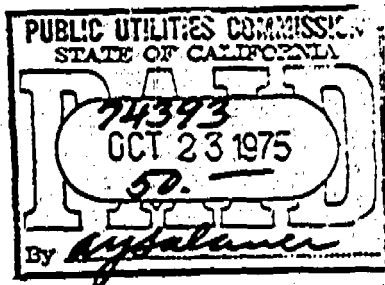
8. Purchaser shall comply with the requirements of the Commission's General Order No. 84-Series for the transportation of collect on delivery shipments. If purchaser elects not to transport collect on delivery shipments, it shall make the appropriate tariff filings as required by the General Order.

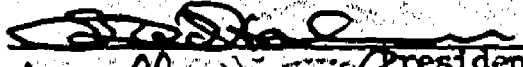
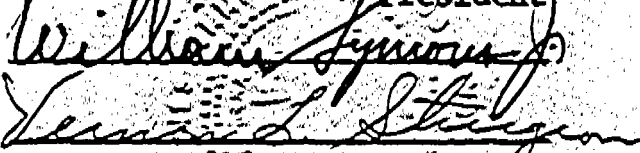
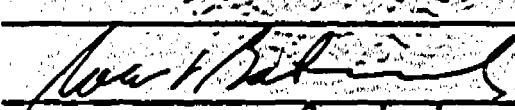
9. On or after the effective date of this order and on or before December 31, 1975, for the purposes specified in this proceeding, transferee may issue not exceeding 2,500 shares of its common stock having a stated value of \$10 per share.

10. 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.

11. The authority granted by this order to issue stock will become effective when the issuer has paid the fee prescribed by Section 1904.1 of the Public Utilities Code, which fee is \$50. In all other respects the effective date of this order shall be twenty days after the date hereof.

Dated at San Francisco, California, this 21st
day of OCTOBER, 1975.




President

Commissioners

Commissioners

Commissioner Leonard Ross, being necessarily absent, did not participate in the disposition of this proceeding.

Athens Transportation System, 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 general commodities between all points and places along and within 15 miles of the highways hereinafter designated:

- (a) All points and places within the San Francisco Territory as defined in Note A.
- (b) Interstate Highway 80 between San Francisco and Sacramento inclusive.
- (c) Interstate Highways 80, 580, 205 and 5 between San Francisco and Sacramento, inclusive.
- (d) U. S. Highway 101 between San Jose and Salinas, inclusive.
- (e) State Highway 1 between San Francisco and Carmel, inclusive.
- (f) Unnumbered highway between Salinas and Pacific Grove, inclusive.

Through routes and rates may be established between any and all points specified in subparagraphs (a) through (f) above.

Applicant shall not transport any shipments of:

1. 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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2. 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.
3. Commodities requiring protection from heat by the use of ice (either water or solidified carbon dioxide) or by mechanical refrigeration.
4. Commodities when transported in bulk in dump trucks or in hopper-type trucks.
5. Commodities when transported in motor vehicles equipped for mechanical mixing in transit.
6. Logs.
7. Commodities requiring special equipment and handling because of unusual size, weight or shape.
8. Articles of extraordinary value as set forth in Rule No. 3 of Western Classification No. 77, J. P. Hackler, Tariff Publishing Officer, on the issue date thereof.

Note A

SAN FRANCISCO TERRITORY

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 Line meets the Pacific Ocean; thence easterly along said County Line to a point one mile west of State Highway 82; southerly along an imaginary line one mile west of and paralleling State Highway 82 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 two 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 Division Street; easterly along Division

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Street to the Southern Pacific Company right-of-way; southerly along the Southern Pacific right-of-way to the Campbell-Los Gatos City Limits; easterly along said limits and the prolongation thereof to South Bascom Avenue (formerly San Jose-Los Gatos Road); northeasterly along South Bascom Avenue to Foxworthy Avenue; easterly along Foxworthy Avenue to Almaden Road; southerly along Almaden Road to Hillsdale Avenue; easterly along Hillsdale Avenue to State Highway 82; northwesterly along State Highway 82 to Tully Road; northeasterly along Tully Road and the prolongation thereof to White Road; northwesterly along White Road to McKee Road; southwesterly along McKee Road to Capitol Avenue; northwesterly along Capitol Avenue to State Highway 238 (Oakland Road); northerly along State Highway 238 to Warm Springs; northerly along State Highway 238 (Mission Blvd.) via Mission San Jose and Miles to Hayward; northerly along Foothill Blvd. and MacArthur Blvd. to Seminary Avenue; easterly along Seminary Avenue to Mountain Blvd.; northerly along Mountain Blvd. to Warren Blvd. (State Highway 13); northerly along Warren Blvd. to Broadway Terrace; westerly along 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; westerly, northerly and easterly along the campus boundary to Euclid Avenue; northerly along Euclid Avenue to Marin Avenue; westerly along Marin Avenue to Arlington Avenue; northerly along Arlington Avenue to San Pablo Avenue (State Highway 123); northerly along San Pablo Avenue to and including 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 shoreline to the Pacific Ocean; southerly along the shoreline of the Pacific Ocean to point of beginning.

(END OF APPENDIX A)

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