

Decision No. 88734 APR 18 1978**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application)
of:)
D'ONOFRIO DRAYAGE, INC., a Cali-)
fornia corporation, M. Nolden,)
trustee in bankruptcy, for author-)
ity to transfer its certificated)
rights to operate as a highway)
common carrier to WALKUP DRAYAGE)
AND WAREHOUSE CO., a California)
corporation.)

Application No. 57794
(Filed January 11, 1978)

O P I N I O N

D'Onofrio Drayage, Inc., a California corporation, by M. Nolden, Trustee in Bankruptcy, (seller), requests authority to sell and transfer and Walkup Drayage and Warehouse Co., a California corporation, (purchaser), seeks authority to purchase and acquire a certificate of public convenience and necessity authorizing operations as a highway common carrier.

The certificate was granted by Decision 82048 dated October 30, 1973 in Application 54084, and authorizes transportation of general commodities with certain exclusions between points in the San Francisco-East Bay Cartage Zone and also between San Mateo and San Jose over U.S. Highway 101 and State Highway 82 with service to intermediate points. It also authorizes the transportation of distilled spirits and vinous alcoholic beverages between points on various routes in an area bounded by Santa Rosa-Roseville on the north and Fresno-Monterey on the south. The general commodity portion of the certificate is the subject of a co-extensive Certificate of Registration issued by the Interstate Commerce Commission in Docket No. MC-99286 (Sub. No. 2) dated April 30, 1964. The seller also operated pursuant to a radial highway common carrier permit under File T-106,632 and as a public utility warehouseman. The public warehouse authority will be transferred to the purchaser pursuant to a separate application. Purchaser does not presently hold certificated operating authority issued by this Commission.

Seller was declared a bankrupt in the United States District Court, Northern District of California, on May 4, 1977 in Bankruptcy No. 4-77-0898EN. M. Nolden was appointed trustee and caused to be offered at a trustee's sale on October 18, 1977, all of the authorities issued by this Commission and the Certificate of Registration issued by the Interstate Commerce Commission. Notice of the sale is filed as Exhibit C to the application. Purchaser was the high bidder for all of the authorities to be purchased as a package for the sum of \$6,005. On October 19, 1977, the bankruptcy court accepted the purchaser's bid and issued an order approving trustee's sale of the property. A copy of said order is filed as Exhibit E of the application.

Purchaser's balance sheet of October 31, 1977 shows a net worth of \$7,593.22. The remaining portion of the purchase price allegedly can be paid out of cash and working funds and leave a sufficient balance for operating capital until regular operating revenue is received. Purchaser's President, Ward G. Walkup, Jr., has been in the transportation business all of his adult life. He has substantial financial resources and is in a position to advance funds to the purchaser, should the need arise.

The applicants request relief from the provisions of the Commission's Rules of Practice and Procedure which require wide dissemination of the application. A copy of the application was mailed to the California Trucking Association and notice of filing appeared in the Commission's Daily Calendar of January 13, 1978. No protests to the application have been received.

After consideration the Commission finds:

1. The proposed transfer would not be adverse to the California public interest and should be authorized.
2. The requested deviation from the Commission's Rules of Practice and Procedure should be authorized.

The Commission concludes that 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 highway common carrier certificate presently held by D'Onofrio Drayage, Inc., and the issuance of a certificate in appendix form

to Walkup Drayage and Warehouse Co. The new certificate issued to Walkup Drayage and Warehouse Co. will not broaden or change the interstate and foreign commerce rights held by D'Onofrio Drayage, Inc.

Purchaser is placed on notice that operating 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 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 cancelled at any time by the State, which is not in any respect limited as to the number of rights which may be given. The action taken herein shall not be construed as a finding of the value of the rights authorized to be transferred.

O R D E R

IT IS ORDERED that:

1. D'Onofrio Drayage, Inc., a California corporation, by M. Nolden, Trustee in Bankruptcy, may sell and transfer the operating rights referred to in the application to Walkup Drayage and Warehouse Co., a California corporation. This authority shall expire if not exercised by December 31, 1978 or within such additional time as may be authorized by the Commission.
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 file tariffs with the Commission naming rates and rules on the same level as heretofore governing the operation transferred. 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 80-Series. Failure to comply with the provisions of General Order 80-Series may result in the 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 Walkup Drayage and Warehouse Co., a California 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 82048 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 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 April 30 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 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. The applicants are granted a deviation from the Commission's Rules of Practice and Procedure to the extent requested in the application.

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

Dated at San Francisco, California this 18th day of APRIL, 1978.

Robert Botwinick
President

William Sproun

Vernon L. Sturgeon

Clare J. Deibel
Commissioners

Commissioner Richard D. Gravelle, being necessarily absent, did not participate in the disposition of this proceeding.

Walkup Drayage and Warehouse Co. 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 transportation of the following:

I. General Commodities.

- A. Between all points in the San Francisco-East Bay Cartage Zone as described in Note A hereof, subject to Exclusions 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 Exclusions 1 through 8 inclusive.

Except that pursuant to the authority herein granted carrier shall not transport any shipments of:

1. Used household goods, personal effects and office, store and institution furniture, fixtures and equipment not packed in salesmen's hand sample cases, suitcases, overnight or boston bags, brief cases, hat boxes, valises, traveling bags, trunks, lift vans, barrels, boxes, cartons, crates, cases, baskets, pails, kits, tubs, drums, bags (jute, cotton, burlap or gunny) or bundles (completely wrapped in jute, cotton, burlap, gunny, fibreboard, or straw matting).
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.

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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-type trucks or trailers or in hopper-type trucks or trailers.
6. Commodities when transported in motor vehicles equipped for mechanical mixing in transit.
7. Portland or similar cements, in bulk or packages, when loaded substantially to capacity of motor vehicle.
8. Logs.
9. Articles of extraordinary value.

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

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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 statute miles laterally and radially from all points and places on said highways.

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

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

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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 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

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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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