

ORIGINALDecision No. 92194 SEP 3 - 1980

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
 Timothy E. Brooks, Franklin J. Ditto,
 and Kimery L. Yancey for authority
 to obtain control of Security Trans-
 portation Co., a California
 corporation.

Application No. 59586
 (Filed April 11, 1980)

O P I N I O N

Security Transportation Co. (Security) is a highway common carrier, as defined in Section 213 of the Public Utilities Code, authorized to transport general commodities, with certain limited exceptions, between points in California extending from San Francisco and Hollister on the west to Sacramento and Stockton on the east. These operating rights were granted by Commission Decisions Nos. 60147, 63087, 64905, 66315, and 73730. It also holds certain certificates of registration and a certificate of public convenience and necessity issued by the Interstate Commerce Commission.

Pursuant to Section 854 of the Public Utilities Code, Timothy E. Brooks, Franklin J. Ditto, and Kimery L. Yancey (buyers) request authority to control Security through the purchase of all the outstanding stock of the corporation from Gerald E. Hamilton (Hamilton). The buyers and Hamilton entered into an agreement on February 21, 1980, whereby the buyers have agreed to purchase 5,000 shares of the capital stock of the corporation which represents all of the issued and outstanding stock of that company. It is alleged that the transfer of control of Security will not be contrary to the public interest inasmuch as the buyers are presently employed in motor carrier transportation in the area embraced by Security's authorities and thus have the competence, knowledge, and experience to continue Security's operations. Hence, it is alleged that the public will be assured of continued transportation service from this carrier.

Buyers claim that no party has any interest in opposing this application and that the proposed change of control will not affect the competitive position or operation of Security. A copy of the application was served upon California Trucking Association and notice of the filing of the application appeared on the Commission's Daily Calendar. The application requests an exemption from Rule 21(f) of the Commission's Rules of Practice and Procedure which requires that competing carriers be served. Ex parte relief is requested. It is also alleged that the application will not affect the human environment.

By letter of August 19, 1980, the attorney for applicants informally amended the application. His letter alleged that Security also holds a "grandfather" certificate required under Section 1063.5^{1/} of the Public Utilities Code, which the parties to this proceeding did not intend to transfer; they would prefer to have it canceled. Accordingly, the amendment requested that the certificate be canceled by order herein.

We find that the acquisition of control of Security Transportation Co. by the buyers will not be adverse to the public interest and conclude that the transfer of control should be authorized, except that Security's certificate acquired pursuant to Section 1063.5, Public Utilities Code, should be canceled. We further conclude that the exemption from the notification requirements of Rule 21(f) of the Commission's Rules of Practice and Procedure should be granted. A public hearing is not necessary.

^{1/} This section provides that a permitted radial highway common carrier may convert its permitted authority to a certificate to operate as a highway common carrier. Section 1064.5 prohibits transfer of such certificates, except to the extent of operations actually conducted thereunder.

The action taken herein shall not be construed as a finding of the value of the capital stock of Security Transportation Co.

The Commission also concludes that the effective date of this order should be the date on which it is signed since there is no known opposition and no reason to delay the requested authority.

Buyers are 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 HEREBY ORDERED that:

1. Timothy E. Brooks, Franklin J. Ditto, and Kimery L. Yancey are hereby authorized to acquire control of Security Transportation Co. by means of a purchase of its outstanding stock.

2. Within ninety days after the date hereof, Timothy E. Brooks, Franklin J. Ditto, Kimery L. Yancey, and Security Transportation Co. shall file reports informing the Commission whether or not the change in control authorized herein has been completed.

3. Applicants are granted a deviation from the Commission's Rules of Practice and Procedure to the extent requested in the application.

4. The certificate of public convenience and necessity as a highway common carrier acquired by Security Transportation Co., pursuant to Public Utilities Code Section 1063.5, is hereby canceled.

The effective date of this order is the date hereof.

Dated SEP 3 - 1980, at San Francisco, California.

John E. Byron
President
Jerome L. Peterson
Richard W. Kunkle
Clair T. DeLuca
Donald J. Smith
Commissioners