

ORIGINAL

Decision No. 92530 DEC 16 1980

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the application of Adolph A. Gotelli, Edward J. Gotelli, and Theresa E. Gotelli, doing business as N. A. Gotelli Trucking Company, a partnership, for authority to transfer assets, and N. A. Gotelli Trucking, Inc., a California corporation, for authority to acquire assets and issue stock.

Application No. 59794
(Filed July 7, 1980)

O P I N I O N

Adolph A. Gotelli, Edward J. Gotelli, and Theresa E. Gotelli (Gotellis), a partnership doing business as N. A. Gotelli Trucking Company (company), request authority to transfer and N. A. Gotelli Trucking, Inc. (corporation), a California corporation to be wholly owned by the Gotellis, requests authority to acquire the certificates and related assets of the company in exchange for the corporation's: (1) assuming the debts of the company, (2) issuing 10,000 shares of its common stock to the Gotellis, and (3) issuing notes to the Gotellis in the total principal sum of \$544,274.20. A copy of the application was served on the California Trucking Association. Notice of the filing of the application appeared on the Commission's Daily Calendar July 10, 1980. No protests to the application have been received.

The company transports produce and general commodities to and from all points in the State of California, with its heaviest movements to, from, and between points in the San Joaquin and Sacramento counties, and to, from, and between the Stockton and Sacramento areas and Los Angeles. It operates under a highway

common carrier certificate of public convenience and necessity issued in Decision No. 62735 dated October 24, 1961 in Application No. 40217, and highway common carrier Certificate No. GC 811 effective June 30, 1980 under Section 1063.5 of the Public Utilities Code (Code). (The transfer of the company's permits to the corporation is the subject of another application.) The company is not a party to through routes or joint rates with any other common carrier. The application alleges that there has been no suspension of discontinuance of the services performed by the company under its existing authorities.

Adolph A. Gotelli and Edward J. Gotelli each own a 46.87 percent interest in the company. Theresa E. Gotelli owns the remaining 6.26 percent interest. As of December 31, 1979 the company had a net worth of \$662,937. For the calendar year 1979 the company had operating revenues of \$3,732,116 and a net income of \$280,216. The original cost of the company's equipment as reflected in the application was \$1,694,780, with accumulated depreciation of \$1,008,481. The equipment has a present book value of \$686,299. The company has a short- and long-term debt of approximately \$331,000. The Gotellis have determined that their best interests and that of the company would be served by conducting future business as a corporation rather than as a partnership.

The corporation was organized as a closed corporation on May 8, 1980 with authority to issue up to 100,000 shares of common stock. To date, the corporation has not issued any stock nor engaged in any enterprise. Under the terms of the offer (Exhibit C) made by the Gotellis to the corporation, of which Adolph A. Gotelli was the incorporator, the Gotellis agree to sell and transfer to the corporation all of the business and assets of the company for an agreed value of \$644,274.20 in return for the corporation's assuming all of the company's liabilities and issuance to the Gotellis pro rata in accordance with each of their partnership interest

in the company (1) a total of 10,000 shares of the corporation's stock valued at \$10 per share, and (2) promissory notes totaling \$544,274.20. The corporation's pro forma balance sheet depicting the consummated sale and transfer shows the corporation will have tangible assets totaling \$896,369, liabilities totaling \$796,369, and capital stock of \$100,000. Under the terms of the offer the Gotellis agree to hold the corporation harmless from any undisclosed liabilities.

Discussion

The company's Certificate No. GC 811 was issued under Section 1063.5 of the Code. Section 1064.5 of the Code forbids the transfer of such certificate for a period of five years after issuance of the certificate, except to the extent of operation actually conducted in good faith. No showing of actual operations under GC 811 was furnished. However, the Commission in Resolution No. 18049 dated July 31, 1979 ordered that a transfer under continuity of ownership is not a transaction within the meaning of Section 1064.5 where the following criteria are met:

"Individuals or partners incorporate their business. Applicants must submit articles of incorporation. The former individuals or partners must hold a majority of the shares of the outstanding common stock. New stockholders may not have such amounts of common stock so as to directly or indirectly control the corporation."

The transfer herein is a relatively simple incorporation of a partnership business. Each of the Gotellis will hold the same proportionate common stock interest in the corporation each held in the partnership. The Gotellis collectively will control 100 percent of the corporate stock in the same proportion they control the company. The proposed sale and transfer meets the

criteria set out in the resolution and hence is not a transfer within the meaning of Section 1064.5 of the Code.

Findings of Fact

1. The company operates pursuant to two trucking certificates issued by the Commission, one of which was issued pursuant to Section 1063.5 of the Code.

2. Adolph A. Gotelli and Edward J. Gotelli each own a 46.87 percent interest in the company and Theresa E. Gotelli owns the remaining 6.26 percent.

3. The Gotellis desire to incorporate their company and to this end have caused the corporation to be formed.

4. The Gotellis propose to transfer the company's assets valued at \$644,247.20 and certificates to the corporation.

5. Concurrent with the transfer the Gotellis will cause the corporation to assume the company's debts and to issue to the Gotellis in proportion to each of their interest in the company a total of 10,000 shares of the corporation's common stock and notes with a total principal amount of \$544,274.20.

6. Upon consummation of the required transfer the Gotellis will be the only owners of the corporation's stock and each will own a proportionate number of shares equal to the interest each owned in the company.

7. The proposed transfer would not be adverse to the public interest.

8. The proposed stock and note issues are for a proper purpose.

9. The money, property, or labor to be procured or paid for by the stock and notes herein authorized are reasonably required for the purpose specified herein, which purpose is not, in whole or in part, reasonably chargeable to operating expenses or to income.

10. A public hearing is not necessary.

Conclusions of Law

1. The proposed transfer does not constitute a transfer within the meaning of Section 1064.5 of the Code.

2. The application should be granted.

The action taken herein shall not be construed as a finding of the value of the rights and properties authorized to be transferred. So far as the operative rights are concerned, the authorization herein granted is for the transfer of the highway common carrier certificates only. Any transfer of permitted operative rights must be the subject of a separate application or applications.

N. A. Gotelli Trucking, 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 March 31, 1981, Adolph A. Gotelli, Edward J. Gotelli, and Theresa E. Gotelli (Gotellis) may sell and transfer the highway common carrier certificate of public convenience and necessity and related assets referred to in the application to N. A. Gotelli Trucking, Inc.
2. N. A. Gotelli Trucking, Inc., on or after the effective date hereof and on or before March 31, 1981, for the purpose and in proportion specified in the application, may issue not exceeding 10,000 shares of its no par value capital stock to the Gotellis at a stated value of \$10 per share and notes in the total principal amount of not exceeding \$544,274.20, which notes shall be in substantially the same form as Exhibit F attached to the application.
3. N. A. Gotelli Trucking, Inc., shall file with the Commission the report required by General Order No. 24-B, which order, insofar as applicable, is hereby made a part of this order.
4. Within thirty days after the transfer, N. A. Gotelli Trucking, Inc., shall file with the Commission written acceptance of the certificate and a true copy of the bill of sale or other instrument of transfer.
5. N. A. Gotelli Trucking, Inc. shall amend or reissue the tariffs and affidavit of subhauling 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 and affidavit of subhauling 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 and affidavit of subhauling 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.

6. On or before the end of the third month after the transfer, N. A. Gotelli Trucking, Inc. 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 N. A. Gotelli Trucking, Inc. for the period commencing with the first day of the current year to and including the effective date of the transfer.

7. In the event the transfer authorized in paragraph 1 is completed, effective concurrently with the effective date of the tariff filings required by paragraph 5, certificates of public convenience and necessity are transferred to N. A. Gotelli Trucking, Inc. 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 of Decision No. 67235 and in Certificate No. GC 811.

8. N. A. Gotelli Trucking, Inc. 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.

9. N. A. Gotelli Trucking, Inc. 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.

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

A.59794 ALJ/rr/hh

11. The authority granted by this order to issue a note and stock shall become effective when N. A. Gotelli Trucking, Inc. has paid the fees prescribed by Sections 1904(b) and 1904.1 of the Public Utilities Code, which fees are \$1,088 and \$10, respectively, or a total of \$1,098. In other respects the effective date of this order shall be thirty days after the date hereof.

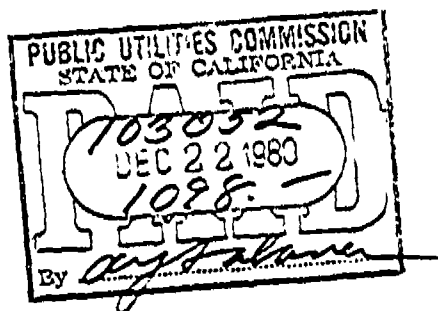
Dated DEC 16 1988, at San Francisco, California.

John E. Bayson
President

Richard W. Howell
Clair T. DeLoach

Commissioners

Commissioner Vernon B. Sturgeon, being necessarily absent, did not participate in the disposition of this proceeding.



Commissioner Leonard M. Grimes, Jr., being necessarily absent, did not participate.