

ORIGINAL

Decision No. 92540 DEC 16 1980

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Alpha M. Passino,)
dba C&M Transportation Co., to)
transfer his Highway Common Carrier)
Certificate and Alpha M. Passino,)
Trustee of the Passino Family Trust,)
to acquire said Certificate (Public)
Utilities Code 851 and 1064.5).)

Application No. 59890
(Filed August 19, 1980)

O P I N I O N

Alpha M. Passino (Trustor), an individual doing business as C&M Transportation Co., requests authority to transfer and The Passino Family Trust (Trust), a revocable trust, Alpha M. Passino, Trustee, dba C&M Transportation Co., seeks to acquire common carrier certificate GC 3124, File No. T-80490, pursuant to Public Utilities Code Sections 851 and 1064.5.

The application was served in accordance with Commission rules and notice of its filing appeared on the Commission's Daily Calendar. No protests have been received to the application.

The application alleges that Trustor is currently engaged, among other operations, in the transportation of general commodities by motor vehicle in intrastate commerce as a common carrier under the subject certificate and as a contract carrier. Trustor and his wife, a joint trustor, intend to transfer without compensation certain property, including the subject certificate, to Trust for the benefit of Trustor and his wife with right of survivorship and remainder to their children. The contract carrier permit has been requested to be transferred to the Trust by informal application.

Trustor's tariffs are published by Cal-West Tariff Bureau, Inc. It is the plan and purpose of Trust to adopt such tariffs. The balance

sheet attached to the application shows that as of March 31, 1980 Trustor had assets slightly in excess of \$1 million, including \$56,000 in cash. These assets have or will be included in the corpus of the Trust along with other assets not connected with the trucking business. No specific evidence was submitted to show activity under the certificate. ✓

Trustor and Trustee are the same person. In accordance with the trust agreement attached to the application, either Trustor or his wife may revoke or amend the trust agreement during their joint lifetime. During the joint lifetime of the Trustor and his wife, Trustee is required to pay to them or apply for their benefit as much of the income and principal of the Trust's assets as Trustee, in his discretion, deems appropriate for their reasonable health, education, support, and maintenance. The apparent end purpose of the Trust is to ensure that the trust assets, including the certificate, are passed on to the Trustor's descendants upon the demise of Trustor and his wife. After the requested transfer Trustor will still have beneficial control of the certificate.

Discussion

The certificate was issued under Section 1063.5 of the Public Utilities Code (the Code). Section 1064.5 of the Code prohibits the transfer of such a certificate during the first five years after issuance except to the extent of operations actually conducted as a prime carrier. Commission Resolution No. 18049 dated July 31, 1979 recognized that in the normal course of events many businesses change their legal form from individual proprietorships to other types of concerns. If the prohibition against transfer of unexercised portions of such certificates is applied to proposed transfers resulting from changes in the legal form of business entity where no substantial change in the identity of the beneficial owner

occurs, the opportunity for the affected carriers to expand their operations as transferees will be denied. The resolution indicates that the limitation on the scope of operating rights authorized to be transferred pursuant to Section 1064.5 of the Code is not intended to apply, as here, to a change in the form or make-up of the business entity where the parties who hold the majority beneficial interest in the certificates will continue to hold the majority interest. In the case at hand, Trustor, who holds both the legal and beneficial interest in the certificate at this time, will hold the same beneficial interest in the certificate upon transfer to the Trust. The transfer is one which does not come within the meaning of Section 1064.5 of the Code, and will be authorized without the necessity of the Trustor submitting any evidence of the activity under the certificate.

Findings of Fact

1. Trustor requests authority to transfer and Trust requests authority to acquire, without compensation, common carrier certificate GC 3124, File No. T-80490 issued pursuant to Section 1063.5 of the Code.
2. Trustor and Trustee are the same person.
3. Trustor's tariffs are published by Cal-West Tariff Bureau, Inc., and upon the proposed transfer Trust will adopt such tariffs.
4. The assets representing the truck line operations of Trustor have or will be transferred to Trust.
5. The requested transfer will result in Trustor's retaining 100 percent of the beneficial ownership of the subject certificate.
6. Trust is fit, willing, and able to conduct the proposed operation.

7. The proposed transfer is not adverse to the public interest.

8. A public hearing on the application is unnecessary.

Conclusions of Law

1. The proposed transfer does not constitute a transaction within the meaning of Section 1064.5 of the Code whereby the scope of operations under the Section 1063.5 certificate is required.

2. The application should be granted.

Trust 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. Alpha M. Passino (Trustor), dba C&M Transportation Co., may transfer the operative rights referred to in the application to The Passino Family Trust (Trust), Alpha M. Passino, Trustee, dba C&M Transportation Co. This authorization shall expire if not exercised by March 21, 1981, or within such additional time as may be authorized by the Commission.

2. Within thirty days after the transfer Trust 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. Trust 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, the certificate of public convenience and necessity referred to in paragraph 1 hereof, is transferred to Trust authorizing it to operate as a highway common carrier, as defined in Section 213 of the Public Utilities Code.

5. Trust 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.

6. Trust 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.

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

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

Dated DEC 16 1980, at San Francisco, California.

John E. Byrnes
President

Richard W. Howell

Clair T. Sedwick

Commissioners

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

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