

ORIGINAL

Decision No. 92591 JAN 6 1981

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of B. FRANK GILLARD)
and DAVID A. GILLARD, a partner-)
ship dba Frank Mobile Home Trans-)
port, to transfer a highway common)
carrier certificate and David A.)
Gillard, an individual, to acquire)
said certificate (Public Utili-)
ties Code 851 and 1064.5).)

Application No. 59972
(Filed September 26, 1980)

O P I N I O N

B. Frank Gillard and David A. Gillard, a partnership doing business as Frank Mobile Home Transport, request authority to transfer a highway common carrier certificate to David A. Gillard, an individual.

The highway common carrier certificate was issued January 31, 1980, (GC-6397) pursuant to Section 1063.5 of the Public Utilities Code. The partnership also holds a highway contract carrier and heavy specialized permits (File T-107844), which are also to be transferred to David A. Gillard.

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Section 1064.5 provides that no certificate of public convenience and necessity issued pursuant to Section 1063.5 may be sold, mortgaged, leased, assigned, transferred, or otherwise

encumbered for a period of five years after issuance, except to the extent of operations actually conducted in good faith, not including operations as a subhauler.

The request is to transfer the certificate from a partnership to one of the two partners. Resolution No. 18049 dated July 31, 1979 states that transfers of Section 1063.5 certificates will not be considered transfers within the meaning of Section 1064.5 if the transfer is the result of certain changes in the form of a business entity. One of the form changes specifically mentioned in Resolution No. 18049 was the dissolution of a partnership with one or more of the partners continuing in business. The transfer contemplated by this application is such a change of form and is therefore considered not subject to Section 1064.5.

Findings of Fact

1. The proposed transfer of the certificate would not be adverse to the public interest.
2. A public hearing is not necessary.
3. The proposed transfer should be authorized under Section 851.
4. The order which follows will provide, in the event the transfer is completed, for the transfer of the certificate presently held by B. Frank Gillard and David A. Gillard to David A. Gillard, an individual.

Conclusions of Law

1. The proposed transfer is not subject to the provisions of Section 1064.5.

2. The application should be granted to the extent provided in the order which follows.

David A. Gillard 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. B. Frank Gillard and David A. Gillard are authorized to transfer the operative rights referred to in the application to David A. Gillard (transferee). This authorization shall expire if not exercised by April 1, 1981, or within such additional time as may be authorized by the Commission.

2. Within thirty days after the transfer the transferee 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. Transferee shall amend or reissue the tariffs on file with the Commission, naming rates and rules governing the common carrier operations transferred, to show that he has adopted or established, as his own, the rates and rules. The tariff filings shall be made effective not earlier than five days after the effective date of this order and 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 granted pursuant to Section 1063.5 of the Public Utilities Code in GC-6397 is transferred to David A. Gillard, and authorizes him to operate as a highway common carrier, as defined in Section 213 of the Public Utilities Code.

5. Transferee 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. Transferee shall maintain his 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 his operations in such form, content, and number of copies as the Commission, from time to time, shall prescribe.

7. Transferee shall comply with the requirements of the Commission's General Order No. 84-Series for the transportation of collect on delivery shipments. If transferee elects not to transport collect on delivery shipments, he 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 JAN 6 1981, at San Francisco, California.

John E. Cooper
President
Michael D. Gove
Thomas M. Smith

Commissioners