

Decision No. 92674 FEB 4 1981

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application)
of H.S. Lyon Trucking, Inc. a)
corporation, to acquire, and)
Howard S. Lyon, an individual, to)
transfer a common carrier)
certificate GC 3888 and certain)
property pursuant to Sections 851)
et seq., of the California Public)
Utilities Code.)
_____)

Application No. 59953
(Filed September 22, 1980)

O P I N I O N

Howard S. Lyon requests authority to transfer a certificate of public convenience and necessity to H.S. Lyon Trucking, Inc. (Lyon), a newly formed California corporation, of which H.S. Lyon is president and sole stockholder.

The certificate as contained in GC 3888, File No. 132,459 was issued pursuant to Section 1063.5 of the Public Utilities Code and authorized the transportation of general commodities within the State.

Section 1063.5 authorizes holders of radial highway common carrier permits to convert their permits to highway common carrier certificates of public convenience and necessity. By Decision No. 89575 dated October 31, 1978, as amended, the Commission found that during the first five-year period after the Section 1063.5 certificates become operational, the carriers may expand or contract

operations conducted pursuant thereto by making appropriate tariff filings. This procedure preserves the opportunity, presently available under radial permits, for carriers to develop and shape their operations based upon managerial objectives. Section 1064.5 of the Public Utilities Code prohibits the transfer of Section 1063.5 certificates during the first five years after issuance except to the extent of operation actually conducted as a prime carrier. By Resolution No. 18049 dated July 31, 1979 this Commission recognized that in the normal course of events many businesses experience transformations of their legal form while maintaining a continuation of the same business concern. As a result, certain types of transfers of Section 1063.5 highway common carrier certificates were held not to be transfers within the meaning of Section 1064.5, including a change in the form or makeup of the business entity such as incorporation when the vested interests remain the same. Because the instant application falls within this category, the transfer will be authorized without need for compliance with all of the usual service regulations relating to transfers.

Findings of Fact

1. After consideration the Commission finds that the proposed transfer would not be adverse to the public interest. A public hearing is not necessary.

2. It can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.

3. The order which follows will not affect highway-carrier energy efficiency.

Conclusion of Law

We conclude that the application should be granted.

Lyon 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 1, 1981 Howard S. Lyon, may transfer to H.S. Lyon Trucking, Inc. (Lyon) the operating authority issued pursuant to Section 1063.5 of the Public Utilities Code and as set forth in Application No. GC 3888.

2. Within thirty days after the transfer Lyon shall file with the Commission written acceptance of the certificate and a true copy of the instrument of transfer.

3. Lyon shall amend or reissue the tariffs on file with this 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 cancellation of the operating authority granted by this decision.

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

Dated FEB 4 1981, at San Francisco, California.

John E. Bryan
President
William G. ...
James M. ...

Commissioners