

LEM

Decision No. 18129

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 THE MISENER MOTOR-DRAYAGE COMPANY)
 (1) for permit to issue stock (a))
 for purchase of existing business)
 (b) for such future sale, if any,)
 as may be desired, and (2) of the)
 said corporation, as purchaser,)
 and of Joseph E. Garcia, L. A.)
 Misener, Peter Winfield, Lugo)
 Winfield and W.F.Ely, as sellers,)
 to sell and to purchase an automo-)
 bile freight line, now operated)
 between Winters, Oakland, Belmont,)
 San Jose, Santa Cruz, Watsonville,)
 Carmel and intermediate points,)
 under decisions of this Commission)
 Nos. 9398, 10281, 15285 and 16491.)

Application No. 13521.

O. G. Foelker, for applicants.

BY THE COMMISSION:

O P I N I O N

This is an application in which the Railroad Commission is asked to make its order:-

1. Authorizing Joseph E. Garcia to transfer certain operative rights and properties to The Misener Motor-Drayage Company, a corporation, and
2. Authorizing Louisa A. Misener, Peter Winfield, Lugo Winfield and W.F.Ely, co-partners doing business under the firm name and style of Misener Motor Drayage Company, to transfer certain operative rights and properties to The Misener-Motor-Drayage Company, a corporation; and,
3. Authorizing The Misener Motor-Drayage Company, a corporation, to issue 500 shares of its common capital stock of the aggregate par value of \$50,000.

The application shows that The Misener Motor-Drayage Company was organized on or about December 31, 1926, with an authorized capital stock of \$50,000., divided into 500 shares of the par value of \$100. each, all common. It is asking in this petition for permission to issue all of its capital stock. It proposes to deliver \$45,000. thereof in payment for the operative rights and properties which it intends to acquire and to sell the remaining \$5,000. at par without payment of any selling commission.

The operative rights proposed to be transferred to the corporation are those acquired by Joseph E. Garcia under authority granted by the Commission by Decisions Nos. 10281, 10939 and 16491 and those acquired by the co-partnership Misener Motor-Drayage Company under authority granted by Decisions Nos. 9398, 11634 and 15255. It appears that by Decision No. 10281, dated April 5, 1922, in Application No. 7613, the Commission authorized J.E.Garcia and G.B.Santos to operate a motor express service for the transportation of fruit and produce only between East San Jose, Warm Springs, Mission San Jose, Niles, Irvington, Centerville, Alvarado, Decoto, Mt. Eden, Hayward, San Lorenzo, San Leandro, Elmhurst and Oakland, no permission being granted to transport any goods, wares or merchandise other than fruit or vegetables nor to operate during any part of the year except when fruit and vegetables are produced in the above described region. Thereafter, by Decision No. 10939, dated September 2, 1922, in Application No. 8212, G.B.Santos was authorized to transfer his interest in the operating right granted by Decision No. 10281 to J.E.Garcia. Subsequently by Decision No. 16491, dated April 16, 1926, in Application No. 11174, the Commission authorized J.E.Garcia to extend the operations authorized by Decision No. 10281 to include service to San Francisco.

Referring to the rights heretofore acquired by the co-partnership Misener Motor-Drayage Company, it appears that by Decision No. 9398, dated August 23, 1921, in Application No. 6730, the

Commission authorized L.A. Misener to transport, as a common carrier, green fruit, vegetables and farm produce between Los Gatos and Oakland, serving as intermediate points Cupertino, Saratoga, Mountain View, Sunnyvale, Santa Clara, San Jose, Campbell, Berryessa and Milpitas, with no return loads other than empties, and no shipments between San Jose and Oakland originating on the state highway between such points, although at the places named above shipments originating at ranches located at points off the state highway may be handled within a zone not in excess of two miles distant from said state highway. Subsequently by Decision No. 11634, dated February 9, 1923, in Application No. 8641, L.A. Misener was authorized to transfer this right to a co-partnership, the present owner, consisting of L.A. Misener, Peter Winfield, Lugo Winfield and W.F. Ely. Later, by Decision No. 15255, dated August 4, 1925, in Application No. 11149, the Commission authorized the co-partnership to operate an automobile truck line as a common carrier of apples between Santa Cruz, Soquel, Aptos and Watsonville, including a radius of two miles from each point on the one hand and Oakland on the other hand, during the fruit season only of each year and for the transportation of vegetables between Carmel, Monterey and Castroville, including a two mile radius from each point on the one hand, and Oakland on the other hand, during the fruit season of each year and for the transportation of vegetables and fruits between Alviso, Mayfield, Menlo Park, Atherton, Redwood City and Belmont, including two mile radius from each point on the one hand and Oakland on the other hand, all of said service to be a part of and as an extension to the existing operating rights theretofore granted by Decision No. 9398 and acquired by the co-partnership by Decision No. 11634, and also to operate an auto truck line for the transportation of vegetables and fruits between Winters, Vacaville, Fairfield and Cordelia, including a two mile radius from each point on the one hand and Oakland on the other hand and for the transporta-

tion of fruits and vegetables between Knightson, Oakley, Antioch and Concord, including a two mile radius from each point on the one hand and Oakland on the other hand, during the fruit and vegetable season only of each year.

The testimony herein indicates that applicants are of the opinion that the two operations can be conducted more advantageously and economically if merged under one ownership. The corporation asks permission, upon acquiring these several rights, to consolidate them and to operate them as one system. We have given consideration to this request and believe that the transfer of the operative rights to the corporation and the consolidation thereof by the corporation should be authorized and the order herein will so provide. No one appeared in protest to the granting of the application.

Coming to the request of the corporation to issue \$45,000. of stock, it appears that \$15,000. thereof will be delivered to Joseph E. Garcia in payment for his operative rights and properties and \$30,000. to the co-partnership in payment for its rights and properties. The rights are those described in the preceding paragraphs and the properties are those set forth in Exhibit "F" attached to the petition. This exhibit shows the properties to be transferred as follows:-

From the co-partnership:-

- One 1922 Packard, three ton
- One 1923 Armerada, three and one-half ton
- One 1923 Mack, two and one-half ton
- One 1924 White, three and one-half ton
- One 1924 Rec, one ton
- One 1923 Ford, one ton
- Four three ton trailers
- Eight truck covers
- Oil and grease, etc.

From Joseph E. Garcia:-

One 1921 Mack, three and one-half tons
One 1922 Mack, two and one-half tons
One 1921 Day Elder, two and one-half tons
One 1926 Kleiber, two and one-half tons
One 1925 Ford, one and one-half tons
One 1926 Ford, one ton
One 1925 Ford coupe
One 1915 Ford delivery car
One gasoline pump
One gas tank, 270 gallons
One transmission gear pump
One battery charger
Oil and grease

It is of record that all of the equipment is well maintained, and that all of it is in good operating condition.

It appears to us that the proposed issue of \$45,000. of stock is reasonable and the order herein accordingly will authorize the issue of such an amount in payment for the physical properties to be transferred to the corporation.

As to the request of the corporation to issue and sell \$5,000. of stock, it appears that it is not in a position at this time to advise the Commission when or for what purposes such stock will be issued, it being the corporation's desire to hold this stock in its treasury and to dispose of it from time to time as the need for its sale may arise. The order herein, in this respect, will provide, therefore, that the proceeds from the sale of the \$5,000. of stock may be used only when and for such purposes as the Commission may authorize in supplemental orders to be made upon supplemental requests filed by applicant, The Misener Motor-Drayage Company, setting forth in detail the purposes for which it proposes to use such proceeds.

ORDER

Application having been made to the Railroad Commission for an order authorizing the transfer and consolidation of auto truck operating rights and properties and the issue of stock, a public hearing having been held before Examiner Fankhauser and the

Railroad Commission being of the opinion that the application should be granted as herein provided and that the money, property or labor to be procured or paid for through such stock issue is reasonably required for the purposes specified herein and that the expenditures for such purposes are not in whole or in part reasonably chargeable to operating expense or to income.

IT IS HEREBY ORDERED as follows:-

1. Joseph E. Garcia may transfer to The Misener Motor-Drayage Company, a corporation, the properties to which reference is made in the foregoing opinion and in this application and the operating rights heretofore acquired by him under authority granted by the Commission by Decision No. 10281, dated April 5, 1922, Decision No. 10939, dated September 2, 1922, and Decision No. 16491, dated April 16, 1926:

2. L.A. Misener, Peter Winfield, Lugo Winfield and W.F. Ely, co-partners, doing business under the firm name and style of Misener Motor-Drayage Company be, and they hereby are, authorized to transfer to The Misener Motor-Drayage Company, a corporation, the properties to which reference is made in this application and the operating rights heretofore acquired by them under authority granted by the Commission by Decision No. 9598, dated August 23, 1921, Decision No. 11634, dated February 9, 1923 and Decision No. 15255, dated August 4, 1925.

3. The Misener Motor-Drayage Company, a corporation, may acquire the operating rights herein authorized to be transferred and may consolidate them into one unified system, subject to the limitations imposed on such operating rights by the several decisions of the Commissions under which they were acquired by the present owners, which limitations are referred to in the preceding opinion.

4. The Misener Motor-Drayage Company, a corporation, may issue 500 shares of its capital stock, of the aggregate par value of \$50,000., and deliver 450 shares thereof, of the aggregate par

value of \$45,000., in payment for the operating rights and properties herein authorized to be transferred to it, and sell 50 shares thereof, of the aggregate par value of \$5,000., on or before June 30, 1928, at not less than the par value thereof without deductions for selling expenses or commissions, provided that none of the proceeds from the sale of such 50 shares be expended except for such purposes as the Commission hereafter may authorize.

5. The authority herein granted is subject to the following conditions:-

- a. The Misener Motor-Drayage Company, a corporation, shall keep such record of the issue, sale and delivery of the stock herein authorized and of the disposition of the proceeds, as will enable it to file, on or before the 25th day of each month, a verified report, as required by the Railroad Commission's General Order No. 24, which order, insofar as applicable, is made a part of this order.
- b. The consideration to be paid for the property herein authorized to be transferred shall never be urged before this Commission or any other public body as a measure of value of said property for any purpose other than the transfer herein authorized.
- c. Applicants, Joseph E. Garcia and L.A. Misener, Peter Winfield, Lugo Winfield and W. F. Ely, shall immediately unite with applicant, The Misener Motor-Drayage Company, a corporation, in common supplement to the tariffs on file with the Commission, applicants Joseph E. Garcia and L.A. Misener, Peter Winfield, Lugo Winfield and W.F. Ely on the one hand withdrawing, and applicant, The Misener Motor-Drayage Company, a corporation, on the other hand, accepting and establishing such tariffs and all effective supple-

ments thereto.

- d. Applicants, Joseph E. Garcia and L.A.Misener, Peter Winfield, Lugo Winfield and W.F.Ely shall immediately withdraw the time schedules filed in their names with the Railroad Commission and applicant, The Misener Motor-Drayage Company, a corporation, shall immediately file in duplicate in its own name, time schedules covering service heretofore given by applicants, Joseph E. Garcia and L.A.Misener, Peter Winfield, Lugo Winfield and W. F.Ely, which time schedules shall be identical with the time schedules now on file with the Railroad Commission in the names of Joseph E. Garcia and L.A.Misener, Peter Winfield, Lugo Winfield and W.F.Ely, or time schedules satisfactory to the Railroad Commission.
- e. The rights and privileges herein authorized to be transferred may not be sold, leased, transferred or assigned, nor service thereunder discontinued, unless the written consent of the Railroad Commission to such sale, lease, transfer, assignment or discontinuance has first been secured.
- f. No vehicle may be operated by The Misener Motor-Drayage Company, a corporation, unless such vehicle is owned by said applicant or is leased under a contract or agreement on a basis satisfactory to the Railroad Commission.
- g. The authority herein granted shall become effective upon the date hereof.

DATED at San Francisco, California, this 30th day of March, 1927.

[Signature]
[Signature]
[Signature]
[Signature]
Commissioners.