

Decision No. 23767

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 G. and C. TEMPS, co-partners doing)
 business as the CITY TRANSFER COMPANY,)
 for an order validating an unauthorized) Amended
 transfer to ELI SCHUMACHER and) Application
 GUSTAV TEMPS of an automobile truck) No. 17376
 line for the transportation of freight,)
 baggage and express between San Francisco,)
 Berkeley, Oakland and Alameda.)

BY THE COMMISSION -

OPINION**ORIGINAL**

This is a joint application by G. and C. Temps, formerly operating under the name and style City Transfer Company, and Eli Schumacher requesting the Railroad Commission to validate two unauthorized transfers of a prescriptive automotive freight transportation right established by G. and C. Temps, a co-partnership.

The applicants herein allege that on or about the first of April, 1928, through ignorance of the requirement of the statutes making necessary the authorization of the Railroad Commission for the transfer of such operating rights, G. and C. Temps transferred unto Eli Schumacher and August Schumacher all their interest in said operating right in accordance with the terms of an agreement, a copy of which is attached to the application herein and made a part thereof and marked "Exhibit A."

The applicants herein further allege that on or about the first day of September, 1928, August Schumacher withdrew from the co-partnership of Eli Schumacher and August Schumacher, vendees under the terms set forth in "Exhibit A", above referred to, in accordance with the terms of an agreement, a copy of which is attached to the application herein and made a part thereof, being marked "Exhibit B."

The applicants herein further allege that on or about the first day of June, 1930, applicant Eli Schumacher, still being ignorant of the requirements of the statutes as hereinabove stated, undertook to sell and transfer unto Gustav Temps, an undivided one third (1/3) interest in the operating right hereinbefore referred to, together with certain personal property and the business of the City Transfer Company in accordance with the terms of an agreement dated June 1, 1930, a copy of which is attached to the application herein and made a part thereof, being marked "Exhibit C."

The consideration paid for the property transferred, in accordance with the agreement marked "Exhibit C," is given as Eight Thousand Three Hundred Thirty-three and 33/100 (\$8,333.33) Dollars, all of which represents the value of the tangible property.

The operating right involved herein is a prescriptive operating right for the transportation of furniture, trunks, theatrical property and personal effects having been established by G. and C. Temps, co-partners operating under the name and style City Transfer Company, as of May 1, 1917, and prior thereto, as set forth in numerous affidavits on file with the Commission and further evidenced by their Local Freight Tariff No.1, C.R.C. No.1, effective August 1, 1924, showing rates on the above commodities between San Francisco, Oakland, Berkeley, Alameda, Piedmont, Emeryville and Albany.

We are of the opinion that this is a matter in which a public hearing is not necessary and that the application should be granted.

Applicants Eli Schumacher and Gustav Temps are hereby placed upon notice that "operative rights" do not constitute a class of property which should be capitalized or used as an element of value in determining reasonable rates. Aside from their purely permissive aspect, they extend to the holder a full or partial monopoly of a class of business over a particular

route. This monopoly feature may be changed or destroyed at any time by the state which is not in any respect limited to the number of rights which may be given.

O R D E R

IT IS HEREBY ORDERED that G. and C. Temps be and they hereby are authorized to transfer the hereinabove described operating right to Eli and August Schumacher, and said Eli and August Schumacher are hereby authorized to acquire such operating right, and

IT IS HEREBY FURTHER ORDERED that August Schumacher be, and he hereby is authorized to transfer his interest in the hereinabove described operating right to Eli Schumacher, and said Eli Schumacher is hereby authorized to acquire the interest of said August Schumacher, and

IT IS HEREBY FURTHER ORDERED that Eli Schumacher be, and he hereby is authorized to transfer an undivided one third (1/3) interest in the hereinabove described operating right to Gustav Temps and Gustav Temps is hereby authorized to acquire said undivided one third (1/3) interest, subject to the following conditions:

1. The consideration to be paid for the property herein authorized to be transferred shall never be urged before this Commission or any other rate fixing body as a measure of value of said property for rate fixing, or any purpose other than the transfer herein authorized.
2. Applicants Temps and Temps shall immediately unite with applicants Schumacher and Temps in common supplement to the tariffs on file with the Commission covering service given under certificate herein authorized to be transferred, applicants Temps and Temps on the one hand withdrawing, and applicants Schumacher and Temps on the other hand accepting and establishing such tariffs and all effective supplements thereto.

3. Applicants Temps and Temps shall immediately withdraw time schedules filed in their names with the Railroad Commission and applicants Schumacher and Temps shall immediately file, in duplicate, in their names time schedules covering service heretofore given by applicants Temps and Temps, which time schedules shall be identical with the time schedules now on file with the Railroad Commission in the names of applicants Temps and Temps, or time schedules satisfactory to the Railroad Commission.

4. The rights and privileges herein authorized may not be sold, leased, transferred nor 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.

5. No vehicle may be operated by applicants Schumacher and Temps unless such vehicle is owned by said applicants or is leased by them under a contract or agreement on a basis satisfactory to the Railroad Commission.

Dated at San Francisco, California, this 27th day of June, 1931.

O. L. Seaver

Leon A. White

M. J. Curran

M. B. Harris

Fred G. Stewart

COMMISSIONERS.