

Decision No. 28539

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
AUTOMOTIVE PURCHASING CO., INC.,
a corporation, for authority to
acquire from Violet M. Keller certain
property used and useful in connection
with the business heretofore conducted
by her under the fictitious name and
style of Automotive Purchasing Co.,
to acquire from Thomas Keller that
certain certificate of public conven-
ience and necessity to operate (a)
delivery service by auto truck as a
transportation company between certain
points and limited to auto parts houses,
garages, and service stations, and (b)
service as a freight forwarder between
the same points, and to issue stock
therefor.

ORIGINAL

Application No. 20340

Harry A. Encell, for applicants.

BY THE COMMISSION:

C O P Y

This is an application for an order authorizing Violet M. Keller and Thomas Keller to sell, transfer and assign certain operating rights and certain properties to Automotive Purchasing Co., Inc., and authorizing Automotive Purchasing Co., Inc., to issue \$10,592.00 par value of its common capital stock.

The application sets forth that Violet M. Keller for a number of years last past has been engaged as a contract carrier in serving numerous automobile parts houses, jobbers and garages which desire replacements for repair purposes or for resale of new or second hand automobile parts, by purchasing the same in San Francisco and Oakland and making deliveries thereof, or acting as a freight forwarder in relation thereto, between San Francisco and San Jose and intermediate points, and between San Francisco, Oakland, Stockton, Sacramento, Napa, Vallejo and intermediate points.

It further sets forth that Thomas Keller is the owner or holder of a certain certificate of public convenience and necessity granted by the Commission by Decision No. 28187, dated August 26, 1935, as amended by Decision No. 28438, dated December 9, 1935, in Application No. 20039, and permitting

" the establishment and operation by Thomas Keller, doing business under the fictitious name of 'Automotive Purchasing Co.', as ancillary to the business of the shopping for and purchasing of automotive parts, accessories and supplies necessary for and used in the building, maintenance, operation, repair and servicing of automotive equipment of

(a) a delivery service by auto truck as a transportation company between the following points and over the following routes and limited to service to auto parts houses, garages and service stations:

Route 1. Between San Francisco and Oakland on the one hand and San Jose on the other, serving the intermediate points of South San Francisco, Burlingame, San Mateo, Beresford, Belmont, San Carlos, Redwood City, Atherton, Menlo Park, Palo Alto, Mayfield, Sunnyvale and Santa Clara, over U.S. Highway 101 and Bay Shore Boulevard with lateral connections between the two at Burlingame, Redwood City, Palo Alto and Sunnyvale.

Route 2. A loop route with San Francisco and Oakland as its starting and terminating point and touching in its course and serving Dublin Junction, Livermore, Altamont, Tracy, Stockton, Lodi, Galt, Sacramento, Davis, Dixon, Vacaville, and Fairfield, Napa and Vallejo over U.S. Highways 50, 99 and 40 and the main highway Napa Junction to Napa and return, with the right to use alternative routes between San Francisco and Oakland and Livermore either via Dublin Canyon or via the San Mateo bridge;

and

(b) a service as a freight forwarder between the points specified in (a)".

It appears that Automotive Purchasing Co., Inc., has been organized to acquire from Thomas Keller the certificate of public convenience and necessity referred to above and from Violet M. Keller certain properties used in her operations and described in Exhibit "B" attached to the application as follows:-

ASSETS

as of December 15, 1935.

Cash	\$516.05
Accounts receivable	2,107.81
Organization costs	4,762.50
Truck account	8,750.35
Office equipment	362.50
Freight handling equipment	135.00
Prepaid expenses	75.00
Lease deposits	100.00
Tenants improvements	150.26

Total.....\$16,959.47LIABILITIES

as of December 15, 1935.

Contracts payable	\$5,008.16
Reserve for depreciation	801.74
Reserve for operating expenses.....	557.50
Capital account	10,592.07

Total.....\$16,959.47

It appears that the \$8,750.35 item included among the assets as truck account, represents the original cost of seven Chevrolet trucks and that the \$801.74 reserve for depreciation is the amount accumulated up to December 15, 1935 at the rate of twenty-five per cent. per annum. The organization costs of \$4,762.50, according to advice furnished the Commission, include the following:-

Cost of incorporation.....	\$250.00
Cost of obtaining certificate	770.05
Filing fees	117.50
Fine by Railroad Commission	500.00
Purchase price paid O.E.Herre-	
man and E.M.Herreman for	
goodwill and purchasing and	
delivery service between San	
Francisco and Palo Alto...	650.00
Purchase price paid G.M.Adams	
for goodwill and purchasing	
and delivery service between	
San Francisco and San Jose	1,000.00
Legal expense, 1928 to 1935	1,474.95

Total.....\$4,762.50

Automotive Purchasing Co., Inc., in acquiring the properties referred to herein, proposes to issue \$10,592.00 of stock, an amount

equivalent to the reported capital account, or net worth, of Violet M. Keller, as indicated in the foregoing balance sheet. It is recited that Thomas Keller does not seek to have issued to him any stock in exchange for the certificate of public convenience and necessity for the reason that through inadvertence the application for said certificate was made in his name, whereas in truth Violet M. Keller was the owner of the property used in the operations and advanced all necessary sums for the securing of the certificate.

However, we do not believe that we can authorize the issue of stock in the amount requested, for the reason that in our opinion, on the information before us, some of the items included as organization costs clearly should not be capitalized through the issue of stock. These items are the fine assessed by the Commission, the purchase prices paid for goodwill, etc. and the legal expenses during 1928 to 1935. Excluding these items there would be left a balance of assets over and above the contracts payable and the reserves, of \$6,967.12 which appears to us to measure the amount of stock to be authorized in this proceeding. The order accordingly will authorize the issue of \$6,967.00 par value of stock.

With respect to the certificate of public convenience and necessity to be transferred, it appears that some disagreement has arisen between Thomas Keller and Southern Pacific Company, one of the protestants in the original application, No. 20039, in the interpretation of the rights granted thereby. On January 21, 1936 there was filed in Application No. 20039 a stipulation, signed by counsel for Thomas Keller and Southern Pacific Company, containing copies of certain correspondence between the two parties and a list of four questions upon which the Commission is asked to make its rulings.

Further, it was stipulated and agreed as follows:-

" It is hereby stipulated and agreed that said parties (Thomas Keller and Southern Pacific Company) will and they do hereby request the Railroad Commission by formal or informal order, as it may deem advisable, to issue a Supplemental Order which will place the interpretation of the Commission on said order in respect to the questions raised or propounded in the said correspondence hereunto attached; and

It is further stipulated and agreed that if the Commission so desire or request, each of the parties hereto may file concurrently with the Commission a written memorandum in support of the respective positions taken by the parties hereto; and

It is further stipulated and agreed that any other or further order which may be made by the Commission in respect to sale, transfer, stock issue, or otherwise, of the said certificate of public convenience and necessity heretofore granted, shall be made without prejudice to the rights of protestant or applicant to such interpretation of said certificate as is hereinabove sought."

We will not in this decision pass upon the stipulation nor upon the questions referred to therein. The order herein will authorize the transfer of such rights as may stand in the name of Thomas Keller, which rights, of course, are subject to such interpretations or modifications as the Commission may hereafter order. Such a transfer will in no way prejudice the right of Southern Pacific Company in the future to question the operations of Automotive Purchasing Co., Inc.. In making the order herein, however, we wish to place Automotive Purchasing Co., Inc. upon notice that certificates of public convenience and necessity granting operating 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 in the number of rights which may be given.

O R D E R

Application having been made to the Railroad Commission for an order authorizing the transfer of operating rights and properties and the issue of \$10,592.00 of stock, and the Commission being of the opinion that this is not a matter in which a public hearing is necessary, that the application should be granted only as herein provided, that the money, property or labor to be procured or paid for through the issue of \$6,967.00 of stock is reasonably required for the purpose specified herein, which purpose is not, in whole or in part, reasonably chargeable to operating expense or to income, and that the application insofar as it involves the remaining \$3,625.00 of stock should be dismissed without prejudice, therefore,

IT IS HEREBY ORDERED as follows:-

1. Violet M. Keller and Thomas Keller may, on or before June 30, 1936, sell, transfer and assign to Automotive Purchasing Co., Inc. the properties referred to in Exhibit "B" attached to the application and the certificate of public convenience and necessity granted by Decision No. 28187, dated August 26, 1935, as amended by Decision No. 28438, dated December 9, 1935, such transfer of said certificate to be subject to the terms of the stipulation filed on January 21, 1936 in Application No. 20039.
2. Automotive Purchasing Co., Inc., in acquiring said properties and in payment therefor may assume the payment of contracts payable in amount not exceeding \$5,008.16 and may issue on or before June 30, 1936, not exceeding \$6,967.00 par value of its common capital stock.
3. The application insofar as it involves the issue of the remaining \$3,625.00 of stock is dismissed without prejudice.
4. The authority herein granted is subject to the following conditions:-

- a. Thomas Keller and Automotive Purchasing Co., Inc. shall join immediately in common supplement to be filed in triplicate, to the tariffs on file with the Commission in the name of the transferor, Thomas Keller on the one hand withdrawing and Automotive Purchasing Co., Inc. on the other hand accepting and establishing as its own, such tariffs and all effective supplements thereto.
- b. Thomas Keller shall withdraw immediately time schedules filed in his name with the Railroad Commission and Automotive Purchasing Co., Inc. shall file, in duplicate, in its own name, new time schedules which shall be identical with those now on file in the name of Thomas Keller, or time schedules satisfactory to the Commission.
- c. The rights and privileges herein authorized to be transferred may not hereafter be sold, leased, transferred nor assigned, nor service thereunder discontinued, increased or changed by Automotive Purchasing Co., Inc. unless the written consent of the Railroad Commission has first been secured.
- d. No vehicle may be operated by Automotive Purchasing Co., Inc. under the authority granted, unless such vehicle is owned by said applicant or is leased by it under a contract or agreement on a basis satisfactory to the Railroad Commission.
- e. Automotive Purchasing Co., Inc. shall keep such record of the issue of the stock herein authorized as will enable it to file, within thirty(30) days thereafter, 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.

- f. The authority herein granted will become effective fifteen(15) days from the date hereof.

DATED at San Francisco, California, this 12th day of February, 1936.

M B Harris

M A Cain

M A Harrison

Frank R. Deane

Commissioners.