

Decision No. 33243

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

In the Matter of the Application of
ELI SCHEUMACHER and LORRAINE TEMPS
to sell and ELI SCHEUMACHER and H. N.
BENNETT to purchase an automobile
freight line operated between San
Francisco and Oakland, California.

Application No. 23328

BY THE COMMISSION:

O P I N I O N

In this application, as amended, Lorraine Temps has requested the Commission to authorize her to inherit the interest of her deceased husband, Gustave Temps, in a prescriptive highway common carrier operative right between San Francisco and Oakland, and for an order approving the sale and transfer by Eli Schumacher and Lorraine Temps to Eli Schumacher and H. N. Bennett of such operative right. Eli Schumacher and H. N. Bennett have petitioned for authority to purchase and acquire said operative right and hereafter to operate thereunder. The sale and transfer is to be made in accordance with an agreement, a copy of which, marked Exhibit "A," is attached to the application herein and made a part thereof. The consideration to be paid for the property herein proposed to be transferred is given as the nominal sum of \$10.

Attached to the amended application herein, marked Exhibit "A" is a copy of the order of distribution (No. 64887) issued by the Superior Court of the State of California in and

for the city and county of San Francisco, wherein said court distributed to said Lorraine Temps, among other things, the interest of Gustave Temps in and to the highway common carrier operative right involved herein.

The operative right herein proposed to be transferred is a prescriptive operative right established by Gustave Temps and Conrad Temps who were authorized by the Commission in its Decision No. 23767, dated June 8, 1931, on Application No. 17376 to transfer such operative right to Eli Schumacher and Gustave Temps.

This does not appear to be a matter in which a public hearing is necessary and the application will be granted.

O R D E R

IT IS ORDERED that Lorraine Temps is hereby authorized to inherit the interest of Gustave Temps in and to the operative right referred to in the foregoing opinion, and

IT IS FURTHER ORDERED that Eli Schumacher and Lorraine Temps are hereby authorized to sell and transfer to Eli Schumacher and H. N. Bennett, and Eli Schumacher and H. N. Bennett are hereby authorized to purchase and acquire the said operative right referred to in the foregoing opinion in accordance with the terms of the agreement marked Exhibit "A," attached to the application herein, and hereafter to operate thereunder, subject to the following conditions:

1. The authority herein granted shall lapse and be void if applicants shall not have complied with all the conditions within the periods of time fixed herein unless, for good cause shown, the time shall be extended by further order of the Commission.

2. 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 for any purpose other than the transfer herein authorized.

3. Applicants Eli Schumacher and Lorraine Temps shall within thirty (30) days after the effective date of the order herein, and upon not less than five (5) days' notice to the Commission and the public, unite with applicants Eli Schumacher and H. N. Bennett in common supplement to the tariffs on file with the Commission covering the service given under the operative rights herein authorized to be transferred, applicants Eli Schumacher and Lorraine Temps withdrawing, and applicants Eli Schumacher and H. N. Bennett accepting and establishing such tariffs and all effective supplements thereto.

4. Applicants Eli Schumacher and Lorraine Temps shall within thirty (30) days after the effective date of the order herein, and upon not less than five (5) days' notice to the Commission and the public, withdraw all time schedules filed in their names with the Railroad Commission and applicants Eli Schumacher and H. N. Bennett shall within thirty (30) days after the effective date of the order herein, and upon not less than five (5) days' notice to the Commission and the public, file in triplicate, in their own names time schedules covering service heretofore given by applicants Eli Schumacher and Lorraine Temps which time schedules shall be satisfactory to the Railroad Commission.

5. 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 obtained.

6. No vehicle may be operated by applicants Eli Schumacher and H. N. Bennett 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.

7. Applicants shall, prior to the commencement of service authorized herein and continuously thereafter, comply with all the provisions of this Commission's General Order No. 91.

The effective date of this order shall be the date hereof.

Dated at San Francisco, California, this 25th day of
June, 1940.

Ray & Riley
Frank Smith
Ralph W. ...
H. ...

COMMISSIONERS