

ORIGINAL

Decision No. 35626

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application

of

KELLOGG EXPRESS & DRAYING COMPANY,
a corporation, for an order authoriz-
ing it to purchase and acquire all
of the issued and outstanding capi-
tal stock of Napa Transportation
Company, a corporation

Application No. 24215

Reginald L. Vaughan and Oliver Dibble, for
Kellogg Express & Draying Company,
David Glickman for Louis Friedman, Protestant,
Donahue, Richards & Hamlin by O. D. Hamlin, Jr.
for Lloyd Swayne,
Oliver Dibble for Henry F. Miller and San
Francisco Warehouse Company, interested parties.

BY THE COMMISSION:

O P I N I O N

Kellogg Express & Draying Company asks permission to purchase and acquire from Lloyd Swayne all of the issued and outstanding stock of Napa Transportation Company.

Napa Transportation Company is a California corporation organized on or about March 6, 1936. It is engaged in conducting operations by vessels solely within and upon the inland waters of California for the transportation of freight

as a common carrier in intrastate, interstate and foreign commerce between San Francisco Bay points, on the one hand, and Mare Island, Vallejo and Napa, and points between Napa and Vallejo, on the other hand, and by motor truck solely within California for the transportation of freight as a common carrier in intrastate, interstate and foreign commerce between San Francisco and Napa. The Commission in previous decisions has defined the extent of the company's operative rights. (1)

The Napa Transportation Company has issued and outstanding \$15,000 par value of common stock. On February 14, 1941, Norvin A. Fay and John C. Stone, then the owners of said stock, entered into an agreement (Exhibit C) to sell said stock to Kellogg Express & Draying Company for \$25,000, payable \$12,500 when the stock is transferred and the remainder evidenced by a note for \$12,500, with interest at 5% per annum, secured by the pledge of the stock. The note is payable on or before twelve months after the date of the transfer of the stock. The agreement further provides that the stock transfer shall be subject, among others, to the following conditions:

(a) Sellers assume and agree to pay all indebtedness, accounts payable, notes, mortgages or any other encumbrances upon the business and property of said Napa Transportation Company outstanding at midnight of March 31st, 1941, and all undisclosed liabilities based upon facts existing prior to April 1, 1941.

(b) Sellers shall be entitled to all of the cash on hand and accounts and notes receivable of said Napa Transportation Company outstanding at, or which ac-

(1) Decision No. 28285, dated October 14, 1935 in Application No. 19468; Decision No. 30107, dated September 7, 1937 in Application No. 21104; Decision No. 34777, dated November 18, 1942 in Application No. 24133, and Decision No. 35307, dated May 5, 1942, in Application No. 24132.

crued prior to but were not known until after, midnight of March 31st, 1941, with pro-ration of pre-paid insurance, assessments, taxes and unamortized prepaid expenses.

(c) Beginning as of April 1st, 1941, the business of said Napa Transportation Company shall be continued in operation for the account of buyer, with the understanding that current receipts shall be applied against current expenses, provided, however, that until the sale and transfer is authorized by the Interstate Commerce Commission, as hereinafter provided, said John C. Stone shall manage the business and shall receive as his salary therefor the sum of Two Hundred and Fifty (\$250) Dollars per month.

The Interstate Commerce Commission by its decision of November 5, 1941, in its proceeding MC-F-1506, authorized Kellogg Express & Draying Company to acquire said stock, subject to the terms of the agreement of February 14, 1941. By its decision of December 23, 1941 in said proceeding, it authorized Lloyd Swayne to acquire the stock of Napa Transportation Company and hold it subject to resale to Kellogg Express & Draying Company upon the terms described in the agreement of February 14, 1941. The Interstate Commerce Commission modified its decision because Norvin A. Fay and John C. Stone desired to be relieved of the responsibility and obligation of operating Napa Transportation Company, and further because of the fact that the Railroad Commission had not at the time entered an order in the instant application.⁽²⁾ Lloyd Swayne has acquired said stock under the terms of said agreement of February 14, 1941. He now asks permission to transfer said stock to Kellogg Express & Draying Company under the terms of the agreement filed herein as Exhibit E. Under

⁽²⁾ Hearings on Application held September 26, 1941; November 10, 1941; January 28, 1942; March 2, 1942, and April 22, 1942.

this agreement, Kellogg Express & Draying Company will reimburse Lloyd Swayne for the amounts he has paid Norvin A. Fay and John C. Stone, and agrees to carry out the agreement of February 14, 1941.

In its balance sheet as of March 31, 1941, Napa Transportation Company shows total assets of \$23,873.62 consisting of a depreciated investment of real property and equipment of \$6,928.88; current assets of \$15,709.39, and prepayments of \$1,225.32. Liabilities of the company, aside from the \$15,000 of stock and \$7,561.17 of surplus, consist of \$756.28 of accounts payable and deferred credits of \$556.17. For 1941, Napa Transportation Company reports operating revenues of \$67,286.77 and a net income for the year of \$9,461.16.

Included in the assets of Napa Transportation Company are two boats, one the "City of Napa" and the other the "South Shore." The present value of the "City of Napa" is reported at approximately \$7,000 and the present value of the "South Shore" at \$8,000. In addition, the company has some truck and dock equipment aside from its current assets.

Lloyd Swayne, President of Kellogg Express & Draying Company and President of Napa Transportation Company, testified that, in his opinion, the purchase of the stock of the latter by the former would be a profitable investment for Kellogg Express & Draying Company. He believes that the purchase of such stock will enable Kellogg Express & Draying Company to increase its business to some extent and decrease its expenses, due to the fact that by operating both of the companies under one control, it should be possible to improve the pick-up and

delivery service which the two companies now give to their customers. He also believes that it will be possible to reduce the overhead expenses of the two companies, particularly by the elimination of the overhead expense of Napa Transportation Company.

Louis Friedman, who protested the granting of the application during the hearings had thereon, has recently withdrawn his protest.

O R D E R

Public hearings having been held in the above entitled matter before Examiner Fankhauser; the Commission having considered the testimony submitted at such hearings and it being of the opinion that the purchase of the stock of Napa Transportation Company by Kellogg Express & Draying Company is in the public interest, and that this application should be granted, therefore,

IT IS HEREBY ORDERED that Kellogg Express & Draying Company be, and it is hereby, authorized to acquire, from Lloyd Swayne, and hold all of the presently issued and outstanding stock of Napa Transportation Company, such purchase of stock to be made under the terms of the agreements filed in this proceeding as Exhibit C and Exhibit E.

Dated at Los Angeles, California, this 28th day
of July, 1942.

Justice A. Cullen
W. W. H. H.
Ray L. Riley
Francis D. Hawes
Richard L. Lachse
Commissioners.