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ORIGINAL

Decision No. _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of THOMAS A. LaMAIDA
 and FRANK MINTON doing business as
 JOSEPHINE WAREHOUSE, for authorization
 to sell and transfer and of THOMAS A.
 LaMAIDA doing business as JOSEPHINE
 WAREHOUSE, to purchase and acquire a
 prescriptive right for operation as a
 public warehouseman in Sutter County,
 California, and for an order ratifying
 and authorizing the execution of a
 promissory note and deed of trust by
 THOMAS A. LaMAIDA heretofore made.

Application No. 45763

O P I N I O N

The Commission determined on June 20, 1960, in Case No. 6557 that applicants LaMaida and Minton, as copartners, had a prescriptive operating right for 25,000 square feet of public utility warehouse space in the vicinity of Meridian, Sutter County.

It appears that two actions have been taken by this warehouseman that required authorization by this Commission. Through oversight such authorization was not obtained. One of the actions in question was that, in May of 1963, applicant LaMaida took over the partnership interest of applicant Minton for the sum of \$500. The second action involved the refunding of an old debt. The refunded debt appears to have antedated both the partnership and the determination of prescriptive right in Case No. 6557. The proceeds of this old loan were employed to purchase and improve the utility property.

It is alleged in the application that the original investment in the warehouse business was made by LaMaida alone.

Some time prior to the dedication LaMaida sold a partnership interest to Minton, and the order in Case No. 6557 contains both names.

Minton was to acquire his interest by additions to his capital account. However, such additions did not materialize and Minton never acquired any measurable financial interest in the business. A copy of an "Agreement of Termination of General Partnership" executed by the applicants and their wives was attached to the application.

This agreement reveals that Minton quitclaims to LaMaida all his right, title and interest in the partnership assets and all monies or profits that might have accrued. There is a waiver of an accounting and a mutual release of liability. Minton agrees not to go into the same business as the warehouse is in, within Sutter County.

Applicant LaMaida refinanced the original debt in July 1961, by borrowing \$25,000 from Wells Fargo Bank-American Trust Company (now Wells Fargo Bank) on a promissory note secured by a deed of trust. Sections 825 and 851 of the Public Utilities Code declare void any note or other evidence of indebtedness of a public utility, or any encumbrance of utility property, made without approval of the Commission. However, the note was issued for a proper purpose and we will enter an order authorizing applicant to issue a new note and to execute a new deed of trust in lieu of those issued and executed without Commission authorization.

The application alleges that the note is payable in monthly installments of \$285.00 per month. The interest rate is 6½ percent. The balance at the time of the application was \$21,341.60.

A financial statement attached to the application reveals that on May 1, 1963, La Maida's interest in the business amounted to \$73,329.20. The current ratio was approximately 17 to 10.

In the opinion of the Commission the two requests in the application are reasonable.

The Commission finds that:

1. The proposed transfer would not be adverse to the public interest.
2. The issue of the securities herein authorized is reasonably required for the purposes specified herein and such purposes are not, in whole or in part, reasonably chargeable to operating expenses or to income.

The Commission concludes that the application should be granted.

Thomas A. La Maida is hereby placed on notice that operative rights, as such, do not constitute a class of property which may be capitalized or used as an element of value in rate fixing for any amount of money in excess of that originally paid to the State as the consideration for the grant of such rights. Aside from their purely permissive aspect, such rights extend to the holder a full or partial monopoly of a class of business in a particular area. This monopoly feature may be modified or canceled at any time by the State, which is not in any respect limited as to the number of rights which may be given. A public hearing is not necessary.

The authorization herein granted shall not be construed as a finding of the value of the rights and properties herein authorized to be transferred.

O R D E R

IT IS ORDERED that:

1. On or before December 31, 1963, Thomas A. LaMaida and Frank Minton may sell and transfer and Thomas A. LaMaida may purchase and acquire, the operating rights and property referred to in the application.

2. Within thirty days after the consummation of the transfer herein authorized, Thomas A. LaMaida shall notify the Commission, in writing, of that fact and within said period shall file with the Commission a true copy of any bill of sale or other instrument of transfer which may be executed to effect said transfer.

3. Thomas A. LaMaida shall amend or reissue the tariffs on file with the Commission, naming rates, rules and regulations governing the warehouse operations herein to show that he has adopted or established, as his own, said rates, rules and regulations. The tariff filings shall be made effective not earlier than ten days after the effective date of this order on not less than ten days' notice to the Commission and the public, and the effective date of the tariff filings shall be concurrent with the consummation of the transfer herein authorized. The tariff filings made pursuant to this order shall comply in all respects with the regulations governing the construction and filing of tariffs set forth in the Commission's General Order No. 61-A.

4. Thomas A. LaMaida may issue a new promissory note in the principal amount of not to exceed \$21,341.60, at interest of 6½ percent per annum payable in monthly installments of \$285 to the Wells Fargo Bank, secured by a deed of trust substantially in the form attached to his application but not marked as an exhibit.

5. The authority herein granted to issue a note will become effective when applicant has paid the fee prescribed by Section 1904(b) of the Public Utilities Code, which fee is \$25.00. In other respects the effective date of this order shall be twenty days after the date hereof.

Dated at San Francisco, California, this 19th day of NOVEMBER, 1963.

William L. Smith
President

Arthur J. H. Smith

Walter R. Pegg

George A. Trover

Friedrich B. Holdhoff
Commissioners

