

ORIGINAL

Decision No. 67914

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of

OWEN R. POWELL doing business as LIVE OAK WAREHOUSES, for authorization to sell and transfer and of LAVERNE J. HEENAN doing business as LIVE OAK WAREHOUSES, 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 gift deed, execution of a promissory note, bill of sale and assignment of leases by the parties heretofore made.

Application No. 46759
Filed June 26, 1964

O P I N I O N

This is an application for an order of the Commission authorizing Owen R. Powell, an individual doing business as Live Oak Warehouses, (1) to sell and transfer a prescriptive operative right as a public utility warehouseman, together with certain buildings, inventory and equipment; (2) to convey by gift two parcels of land with buildings situated thereon; and (3) to execute an assignment of leasehold interests in land. In purchasing and acquiring the prescriptive operative right and properties referred to herein, Laverne J. Heenan requests an order of the Commission authorizing him to issue an unsecured installment note in the principal amount of \$87,514.

Applicants assert that, through inadvertence, they did not obtain timely authorization from the Commission to transfer the operative right and other assets or to issue the \$87,514 note in

accordance with the requirements of Sections 818 and 851 of the Public Utilities Code, and that, in this proceeding, they seek authority from the Commission to do so.

The application shows that Owen R. Powell, doing business as Live Oak Warehouses, operated as a public utility warehouseman in Live Oak and vicinity pursuant to a prescriptive operative right determined by the Commission in Case No. 6552 dated June 20, 1960. Said right allows the utilization of 25,050 square feet of storage or warehouse floor space, exclusive of the expansion permissible under Section 1051 of the Public Utilities Code. Applicant's annual report on file with the Commission indicates that for the year 1963 warehouse utility revenues totaled \$463.46 and that gross receipts from nonutility operations amounted to \$24,819.17.

According to the application, Owen R. Powell disposed of his interest in the business by transferring his operative right and other assets on October 1, 1963, in the manner set forth in the application and summarized as follows:

(a) Sold the prescriptive operative right and warehouse buildings No. 1 and No. 2 situated on leased lands mentioned in (c) below, together with merchandise inventory and equipment, for a consideration of \$87,514 as shown in the bill of sale annexed to the application as Exhibit B.

(b) Conveyed by gift warehouse buildings No. 3 and No. 4 as well as the land described in the grant deed appended to the application as Exhibit A.

(c) Assigned leasehold interests in land owned by Southern Pacific Company as evidenced by the execution of an assignment of lease attached to the application as Exhibit C.

The transferee, upon acquiring the prescriptive operative right and other assets, continued the business and issued an unsecured installment note in the principal amount of \$87,514 in payment for the assets described in the bill of sale. Said note is repayable in ten equal annual installments of \$8,751.40, plus interest at the rate of 4½% per annum. It appears that the transferee's income is supplemented by earnings from other enterprises and that he has sufficient resources to service the debt.

The Commission has considered this matter and finds that:

- (1) the sale and transfer of a prescriptive operative right as a public utility warehouseman and related assets, together with the transfer by gift and by assignment of other assets referred to in the application, are not adverse to the public interest;
- (2) the \$87,514 unsecured installment note was issued for a proper purpose prior to receiving authorization to do so from the Commission;
- (3) Sections 825 and 851 of the Public Utilities Code declare void any sale or transfer of utility property or any long-term note issue made without approval of the Commission;
- (4) the money, property or labor to be procured or paid for by the issue of the note herein authorized is reasonably required for the purpose specified herein; and
- (5) such purpose is not, in whole or in part, reasonably chargeable to operating expenses or to income.

On the basis of the foregoing findings we conclude that authority should be granted to (a) the transferor to sell and transfer his prescriptive operative right and to convey certain

other assets by gift and assignment, and (b) the transferee to issue a new note. A public hearing is not necessary. The action taken herein shall not be construed to be a finding of the value of the operative right or other assets authorized to be transferred.

O R D E R

IT IS ORDERED that:

1. Owen R. Powell, doing business as Live Oak Warehouses, may sell and transfer a prescriptive operative right and related property, and may convey by gift and assignment the other assets, as more particularly described in the application.

2. Laverne J. Heenan, in purchasing and acquiring said prescriptive operative right and assets, may issue a new note in the principal amount of not to exceed \$87,514 for the purpose specified in this proceeding. Said new note shall be in the same form, or in substantially the same form as that attached to the application as Exhibit D, and shall be issued in the place and stead of the instrument presently outstanding which was issued without authorization from the Commission.

3. Within thirty days after the issue of the new note herein authorized, Laverne J. Heenan shall file with the Commission a copy thereof as actually issued.

4. Within thirty days after the consummation of the transfer herein authorized, Laverne J. Heenan shall notify the Commission, in writing, of that fact and within said period shall

file with the Commission a true copy of any new deed, bill of sale or other instrument of transfer which may be executed to effect the transfer of public utility property.

5. Laverne J. Heenan shall amend or reissue the tariffs on file with the Commission, naming rates and rules governing the warehouse operations herein to show that he has adopted or established, as his own, said rates and rules. The tariff filings shall be made effective not earlier than ten days after the 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.

6. Concurrently with the effective date of tariff filings for warehouse operations required by Ordering Paragraph 5 hereof, the prescriptive operative right as a public utility warehouseman set forth in the Order dated June 20, 1960, in Case No. 6552, is hereby revoked and, in place and stead thereof, a prescriptive operative right as a public utility warehouseman is hereby stated for Laverne J. Heenan, as more particularly described in Appendix A attached hereto.

7. In providing service pursuant to the warehouse operative authority set forth herein, Laverne J. Heenan shall comply with and observe the following service regulation:

Within thirty days after the date hereof, he shall file a written acceptance of the operative right herein stated. By accepting such operative right, he is placed on notice that he will be required, among other things, to file annual reports of his operations. Failure to file said reports, in such form and at such time as the Commission may direct, may result in a cancellation of the operative right set forth in Appendix A hereof.

8. This order shall become effective when Laverne J. Heenan has paid the fee prescribed by Section 1904(b) of the Public Utilities Code, which fee is \$88.

Dated at Los Angeles, California, this 30th day of SEPTEMBER, 1964.

Frederick B. Holloff
President

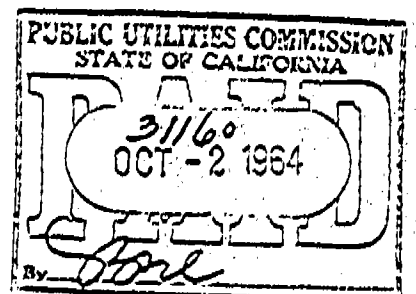
John E. [unclear]

George J. [unclear]

William W. [unclear]

Commissioners

Commissioner Everett C. McKeago, being necessarily absent, did not participate in the disposition of this proceeding.



Appendix A

Laverne J. Heenan
doing business as
Live Oak Warehouses

Laverne J. Heenan possesses a prescriptive operative right as a public utility warehouseman for the operation of storage or warehouse floor space as follows:

<u>Location</u>	<u>Number of Square Feet of Floor Space</u>
Live Oak and vicinity	25,050

(The floor space shown above is exclusive of the expansion permissible under Section 1051 of the Public Utilities Code.)

End of Appendix A

Issued by California Public Utilities Commission.

Decision No. 67914, Application No. 46759