

**ORIGINAL**

Decision No. 69924

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application  
of CROCKER-CITIZENS NATIONAL BANK,  
a national banking association,  
as Executor of the ESTATE OF  
MELVIN F. ROY, DECEASED, to trans-  
fer the partnership interest of  
said decedent in a certain certi-  
ficate of public convenience and  
necessity and other property to  
JOHN M. BRAINERD and of JOHN M.  
BRAINERD to acquire such interest  
in such property and to issue  
promissory notes.

Application No. 47758  
(Filed July 19, 1965)

O P I N I O N

Crocker-Citizens National Bank, a national banking association, as Executor of the Estate of Melvin F. Roy, deceased, (hereinafter sometimes called Executor) requests authority to sell and transfer the partnership interest of said decedent in a certain highway common carrier certificate of public convenience and necessity and other property to his surviving partner, John M. Brainerd (hereinafter sometimes called Brainerd), and Brainerd requests authority to acquire such operative right and property and to issue promissory notes therefor.

Brainerd, transferee, and Melvin F. Roy, deceased, (hereinafter called Roy) during Roy's lifetime, were partners in the operation of a certificated trucking business conducted under the name of Flo-Del Co. The operating authority was granted by Decision No. 58628, dated June 16, 1959, in Applications Nos. 21879, 28194 and 33516, and authorizes the transportation of fresh cut flowers, potted plants, fresh floral

wreaths and other floral arrangements generally in the San Francisco Bay Area, San Rafael on the north, Walnut Creek on the east and Palo Alto on the south, including service at many intermediate points. Roy held a two-thirds interest in said partnership and Brainerd held a one-third interest therein.

Roy and Brainerd entered into an agreement of purchase and sale, a copy of which agreement is attached to the application herein as Exhibit A. By the terms of said agreement Brainerd and Roy agreed that upon the death of one of the partners the survivor should purchase from the decedent's estate the share of the deceased partner in the partnership for a purchase price equal to the value of his interest in the partnership assets at the date of his death. Said agreement further provided that a policy of life insurance should be taken upon the life of each partner and that the proceeds should be used by the surviving partner for the purpose of purchasing the deceased partner's interest in the partnership business, and in the event the value of the deceased partner's interest should exceed the proceeds of such life insurance policy, the difference between the full value of the deceased partner's interest and the life insurance proceeds should be paid by the surviving partner through a series of three promissory notes payable to the order of the executor of the deceased partner, the first such note to mature within two years from the date of death of such deceased partner, the second within four years from such date and the final within five years from such date, such notes to bear interest at the rate of six percent per annum payable semi-annually.

Roy died on October 4, 1964, and Crocker-Citizens National Bank was duly appointed Executor of his estate.

As of October 4, 1964, the book value of the physical assets of the partnership, less goodwill, has been determined to be \$28,746.61. The total value of the partnership business, computed in accordance with the method provided in the aforesaid agreement, as of October 4, 1964, was \$107,294.37, and the value of Roy's two-thirds interest was \$71,529.58. The insurance policy mentioned in the aforesaid agreement has created a fund of \$49,667.00 to which sum Brainerd will add \$362.58, leaving a balance of \$21,500.00 due on the purchase price of Roy's interest in said business. Brainerd proposes to pay this balance through the issuance of three promissory notes, each in the sum of \$7,166.67, payable to the order of the Executor and each to be dated October 4, 1964. The first such promissory note will be payable October 4, 1966; the second, October 4, 1968; and the third October 4, 1969. Each of the notes is to bear interest at the rate of six percent per annum payable semi-annually and is to be in substantially the form attached to the application herein and marked Exhibit C.

The application alleges that Brainerd has been associated with the business for many years; he is thoroughly familiar with the operation, and he is fully able to operate it as sole owner. It further alleges that the service is required by the public and has been used over the years, and that the overall price being paid for the business is fair and reasonable in all respects.

After consideration the Commission finds that the proposed transfer would not be adverse to the public interest, and the money, property or labor to be procured or paid for by the issue of notes 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.

On the basis of these findings we conclude that the application should be granted. 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 January 31, 1966 Crocker-Citizens National Bank, a national banking association, as Executor of the Estate of Melvin F. Roy, deceased, may sell and transfer, and John M. Brainerd may purchase and acquire, the operative rights and property referred to in the application.

2. Within thirty days after the consummation of the transfer herein authorized, John M. Brainerd 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. John M. Brainerd shall amend or reissue the tariffs on file with the Commission, naming rates and rules governing the common carrier 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 thirty days after the effective date of this order on not less than thirty 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. 80-A.

4. On or before the end of the third month, after the consummation of the transfer herein authorized, John M. Brainerd shall cause to be filed with the Commission, in such form as it may prescribe, an annual report, or reports, covering the period commencing with the first day of the current year to and including the effective date of the transfer.

5. John M. Brainerd on or after the effective date hereof and on or before January 31, 1966, for the purpose specified in this proceeding, may issue three promissory notes payable to Crocker-Citizens National Bank, a national banking association, as Executor of the Estate of Melvin F. Roy, Deceased, each in the sum of \$7,166.67 and each to be dated October 4, 1964, the first of which will be payable October 4, 1966, the second, October 4, 1968, and the third, October 4, 1969. Each of the notes is to be substantially in the form of Exhibit C, attached to the application.

6. John M. Brainerd shall file with the Commission a report, or reports, as required by General Order No. 24-B, which order, in so far as applicable, is made a part of this order.

7. This order shall become effective when John M. Brainerd has paid the minimum fee prescribed by Section 1904(b.) of the Public Utilities Code, which fee is \$25.

Dated at San Francisco, California, this 9<sup>th</sup> day of NOVEMBER, 1965.

Fredrick B. Holshoff  
President  
John L. Fisher  
George A. Crover  
Augusta  
William W. Arnold  
Commissioners

