

Decision No. 13732**ORIGINAL**

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

In the Matter of the Application of)
 OLIVE INVESTMENT COMPANY for permis-)
 sion to purchase the water system of)
 Olive Milling Company, and install)
 additional pumping unit.)

Application
 Number
 9987

K. V. Wolff for Olive Investment Company.
 F. A. Blake for Olive Milling Company.

BY THE COMMISSION :

OPINION

In this application, as amended at the hearing held before Examiner Geary in Los Angeles, the Railroad Commission is asked to make an order authorizing the transfer of the public utility water properties of Olive Milling Company to Olive Investment Company and the issue of stock and the execution of a mortgage by Olive Investment Company.

The record shows that Olive Milling Company was organized during May 1887 for the purpose, primarily, of milling flour and grain. It appears that a water system was installed to supply the mill and that this system thereafter, from time to time, was extended to supply water to residents in the town of Olive, no charge being made for such service in the beginning. By Decision Number 9723, dated November 5, 1921 (Volume 20, Opinions and Orders of the Railroad Commission of California, page 805) the Commission fixed the company's rates. In that decision reference is made to a report prepared by Mr. F. H. Van Hoesen, one of the Commission's engineers, in which the original cost of the system was estimated at \$10,558.00.

The present application and the testimony herein show that on March 1, 1922 Olive Milling Company sold its public utility water properties for \$10,000.00 in cash to Olive Investment Company. This company is engaged in the business of buying and selling real estate, renting houses and furnishing water for domestic purposes in and about the City of Olive, Orange County. As of December 31, 1923 it reports its assets and liabilities as follows :-

ASSETS

Real estate and buildings	\$15,378.44
Contracts receivable	16,088.45
Water properties	20,272.88
Cash	2,300.10
Notes receivable	1,275.00
Accounts receivable	<u>516.63</u>

Total Assets \$ 55,831.50

LIABILITIES

Capital stock	\$32,000.00
Advances from system corporations	1,076.99
Notes payable	6,800.00
Corporate surplus	<u>15,954.51</u>

Total Liabilities . . . \$55,831.50

Since taking possession of the properties of Olive Milling Company on March 1, 1922 and up to May 1, 1924 it appears that Olive Investment Company has expended \$10,878.00 for additions to the water system consisting in general of a new well and pump, complete, and service mains. The items going to make up these expenditures are shown in some detail in the Commission's Exhibit No. 1 filed in Application Number 9986, a rate proceeding heard concurrently with this application. As shown in this exhibit, the investment in the water properties as of May 1, 1924 was estimated at \$21,436.00.

Olive Investment Company was organized during February 1922 with an authorized capital stock of \$75,000.00 divided into 7500 shares of the par value of \$10.00 each. By an order of the Commissioner of Corporations, dated March 28, 1922, it was authorized to sell all of its authorized capital stock, of which, however, only

\$32,000.00 has been issued. In addition to the outstanding stock, as shown in the foregoing balance sheet, applicant reported outstanding on December 31, 1923, notes of \$6,800.00 which, it appears, are secured by a mortgage in favor of Olive Milling Company which is a lien on properties including certain lots used in the operation of the water system.

The transfer of the water properties and the issue of stock and the execution of the mortgage were not authorized by the Railroad Commission and therefore, we believe, are void under the provisions of the Public Utilities Act. The present application was filed when this fact was brought to the companies' attention. It appears that the officers of applicants were not aware that authority had to be obtained from this Commission and that such transactions were made without such authority through inadvertence and with no intent to evade the provisions of the Public Utilities Act. The Commission has therefore been asked to authorize the transfer of the properties, the issue of the stock and the execution of the mortgage.

The Commission cannot ratify transactions which it believes are void under the terms of the Public Utilities Act. It will be necessary for applicant to execute a new instrument of conveyance and issue new stock certificates, the certificates now outstanding to be cancelled. Since the hearing the Commission has been advised that the mortgage will not be a lien on any public utility property. Its execution, therefore, need not be authorized by the Commission.

ORDER

Application having been made to the Railroad Commission for an order authorizing the transfer of properties and the issue of stock, a public hearing having been held and the Railroad Commission being of the opinion that the application should be granted as herein provided, and that the money, property or labor to be procured or paid for through such issue is reasonably required for the purpose specified herein,

IT IS HEREBY ORDERED that OLIVE MILLING COMPANY be, and it is hereby, authorized to sell and transfer the public utility water system to which reference is made in the foregoing opinion, to Olive Investment Company, and OLIVE INVESTMENT COMPANY be, and it is hereby, authorized to issue not exceeding \$32,000.00 of stock in full payment for such public utility water properties and other properties and for additions and betterments thereto made prior to May 1, 1924.

The authority herein granted is subject to the following conditions :-

1. Within sixty days from the date hereof Olive Investment Company shall file with the Commission a certified copy of the deed conveying the properties to which reference is made in the foregoing opinion, and shall, at the same time, file a verified report as required by the Commission's General Order Number 24, showing the issue and disposition of the \$32,000.00 of stock.
2. The amount of stock which Olive Investment Company is herein authorized to issue shall not be binding upon this Commission or other court or public body as a measure of value of the properties for the purpose of fixing rates.
3. The authority herein granted will become effective upon the date hereof.

DATED at San Francisco, California, this 23rd day of June, 1924.

C. Seavey
H. B. ...
Dwight ...

Commissioners.