

DRA

Decision No. 15887

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
FRANK PICKARD to sell, and SIERRA)
VAN & STORAGE COMPANY, a corpora-)
tion, to purchase, an automobile)
freight line between Los Angeles)
and Pasadena, California.)

Application No. 11941

Harry A. Chamberlin, for applicants.

BY THE COMMISSION:

OPINION

In this application, as amended, the Railroad Commission is asked to make an order authorizing Frank Pickard to sell and transfer an operative right to Sierra Van & Storage Company, a corporation, and authorizing the corporation to issue \$202,100. of its common capital stock.

The application shows that Frank Pickard, pursuant to an order from the Commission, has acquired an operative right permitting the transportation of freight, express and baggage by auto trucks between Los Angeles and Pasadena. The records of the Commission show that this right was originally established by the Commission's Decision No. 11422, dated December 29, 1922, in Application No. 8301, wherein it was found that Pasadena Transfer & Storage Company, then the owner, had been operating in good faith on, and continuously since, March 1, 1917, the effective

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date of the Auto Stage and Truck Transportation Act, as a common carrier of freight, express and baggage between Los Angeles and Pasadena, over a regular route via Los Angeles and Macy Streets, Mission Road, Huntington Drive, Oneonta Park and Fair Oaks Avenue.

On September 19, 1924, Pasadena Transfer and Storage Company applied for permission to transfer the operative right established by Decision No. 11422, to Frank Pickard, one of the applicants herein. This request was granted by Decision No. 14168, dated October 10, 1924, the order indicating that the consideration paid was \$7,500. of which \$2,500. was said to represent the value of four one ton trucks and \$5,000. the value of the operative right.

Condition No. 4 of the Commission's Order in Decision No. 14168 reads as follows:-

"The rights and privileges herein authorized transferred may not be discontinued, sold, leased, transferred nor assigned unless the written consent of the Railroad Commission has first been secured."

It appears that Frank Pickard conveyed his property, including the operating right to which reference has been made, to the Sierra Van & Storage Company, a corporation. This transfer, we think, is void because the consent of the Commission was not first obtained. The Sierra Van & Storage Company, a corporation, was organized on or about September 4, 1924, with an authorized capital stock of \$500,000. divided into 5,000 shares of the par value of \$100. each, all shares being common. It is of record that the corporation filed an application with the Commissioner of Corporations for permission to issue stock. The order of the Commissioner of Corporations (applicants' Exhibit E) reads in part as follows:-

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"Sierra Van & Storage Company, a California corporation, is hereby authorized to sell and issue 2,500 shares of its capital stock as herein below set forth:

- 1st: To issue to Frank Pickard 1,417 shares of its capital stock for and in consideration of the transfer and assignment by him to the applicant first to be made of the property and assets described in its application, subject to liabilities of not to exceed \$62,194.35.
- 2nd: After applicant shall have sold, received the consideration for and issued all the shares as provided for in paragraph 1st hereof, to sell and issue 1,083 shares of its capital stock at par for cash, lawful money of the United States, for the uses and purposes recited in its application."

It is our opinion that before applicant corporation could exercise the authority to issue stock under the permit of the Commissioner of Corporations, Frank Pickard had to transfer his assets, including the operative right in question, to the corporation. This he could not do until the transfer of the operative right was authorized by the Railroad Commission. There is no doubt that upon such transfer, to say nothing as to the status of the corporation prior to the transfer, the corporation became a transportation company subject to the jurisdiction of the Railroad Commission and could issue no stock without the permission of the Railroad Commission.

It appears that under the permit obtained from the Commissioner of Corporations the Sierra Van & Storage Company issued \$202,100. of stock, of which \$400. was delivered to directors for qualifying purposes, \$141,700. was delivered to Frank Pickard in payment for his properties, subject to outstanding indebtedness, and

\$60,000. was sold at par to pay indebtedness, to purchase equipment and to provide working capital as follows:-

Mortgage indebtedness - - - - -	\$33,000.00
Accounts payable- - - - -	12,617.28
New vans- - - - -	9,000.00
Working capital - - - - -	<u>5,382.72</u>
Total-----	<u>\$60,000.00</u>

In their amended application filed on January 6th, applicants ask that the Sierra Van & Storage Company be authorized to issue \$202,100. of stock for the purposes herein mentioned, such stock to be issued in lieu of the stock heretofore issued without permission from the Railroad Commission.

As of December 31, 1924, Frank Pickard reports his assets and liabilities as follows:-

ASSETS:-

Fixed Assets:-

Incorporation expense	\$218.00
Land	35,395.67
Buildings.	78,684.98
Automobiles.	7,357.45
Trucks	41,959.29
Truck equipment.	2,949.32
Warehouse equipment.	4,380.74
Service station equipment.	1,861.95
Scales	1,853.88
Garage and stable equipment.	702.46
Furniture and fixtures	3,431.53
State franchise	<u>10,000.00</u>

Total.....\$188,795.28

Less:-Reserve for depreciation..	<u>14,242.18</u>	\$174,553.10
Cash		7,599.78
Accounts receivable.		5,035.52
Inventories.		1,224.76
Prepayments.		<u>1,275.02</u>

TOTAL ASSETS.....\$189,688.18

LIABILITIES:-

Accounts payable	\$2,334.89	
Notes payable.	12,617.28	
Mortgages payable.	<u>33,000.00</u>	\$47,952.17

Net Worth:-

141,736.01

Total Liabilities.....\$189,688.18

It will be noted that he includes among his assets a state franchise valued at \$10,000. This amount, according to the testimony herein, is the value placed by applicants on the operative right purchased by Frank Pickard from Pasadena Transfer and Storage Company pursuant to Decision No. 14168. We do not believe that we can recognize this amount as a basis for an order authorizing the issue of stock in view of the provisions of Section 52 of the Public Utilities Act and Section 6 of the Auto Stage and Truck Transportation Act. Section 52 reads in part as follows:-

"The Commission shall have no power to authorize the capitalization - - - of any franchise or permit whatsoever or the right to own, operate or enjoy any such franchise or permit, in excess of the amount (exclusive of any tax or annual charge) actually paid to the state or to a political subdivision thereof as the consideration for the grant of such franchise, permit or right*****"

In this proceeding no showing was made as to the amount actually paid to the state, or a political subdivision thereof, as the consideration for the grant of the operative right and accordingly we must deduct \$10,000. from the statement.

Making this deduction there is left the sum of approximately \$131,700. representing the amount of stock which we may authorize the company to issue for the properties. The order herein therefore will permit Sierra Van & Storage Company to issue

\$192,100. of stock. This amount includes the \$131,700. of stock to be delivered to Frank Pickard in payment for his properties, subject to outstanding indebtedness, \$60,000. to be delivered in lieu of the \$60,000. of stock issued to pay indebtedness, purchase equipment and provide working capital, as indicated herein, and \$400. to be issued to directors for qualifying purposes.

ORDER

Application having been made to the Railroad Commission for an order authorizing Frank Pickard to transfer an operative right to Sierra Van & Storage Company, a corporation, and authorizing Sierra Van & Storage Company to issue \$202,100. of its common capital stock, a public hearing having been held before Examiner Fankhauser, and the Commission being of the opinion that the transfer of the operative right should be granted, as provided herein, and that the issue of \$192,100. of stock is reasonably required by the corporation,

IT IS HEREBY ORDERED that Frank Pickard be, and he is hereby, authorized to transfer to Sierra Van & Storage Company, a corporation, the operative right heretofore acquired by him pursuant to Decision No. 14168, dated October 10, 1924, in Application No. 10485 permitting the transportation of freight, express and baggage between Los Angeles and Pasadena.

IT IS HEREBY FURTHER ORDERED that Sierra Van & Storage Company, a corporation, be, and it is hereby, authorized to issue \$192,100. of its common capital stock in lieu of the \$202,100. of stock which applicant heretofore attempted to issue without an order from this Commission, such stock to be issued for the pur-

poses indicated in the opinion which precedes this order.

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

1. Frank Pickard shall cancel immediately all time schedules, tariffs, rates and classification now on file with the Railroad Commission, and Sierra Van & Storage Company, a corporation, shall file immediately new time schedules, tariffs, rates and classifications, or adopt as its own the time schedules, tariffs, rates and classification heretofore filed with the Commission by Frank Pickard all such new time schedules, tariffs, rates and classification to be identical with those heretofore filed with the Commission, such cancellation and filing to be in accordance with the provisions of General Order No. 51 and other regulations of this Commission.
2. Sierra Van & Storage Company, a corporation, hereafter shall not transfer, assign, lease, sell, hypothecate or discontinue the rights and privileges it is herein authorized to acquire.
3. No vehicles may be operated by Sierra Van & Storage Company, a corporation, unless such vehicles are owned by such corporation or are leased by it on a basis satisfactory to this Commission.
4. Sierra Van & Storage Company shall keep such record of the issue and delivery of the stock herein authorized as will enable it to file, within

thirty (30) days after such issue and delivery, a verified report, as required by the Railroad Commission's General Order No. 24, which order insofar as applicable, is made a part of this order.

5. The transfer of the operative rights, the cancellation and filing of time schedules, tariffs, rates and classifications and the issue of stock shall be made not later than ninety (90) days from the date hereof, unless such time hereafter is extended by further order of the Commission.
6. The authority herein granted will become effective upon the date hereof.

IT IS HEREBY FURTHER ORDERED that this application insofar as it involves the issue of \$10,000. of stock be, and it is hereby, dismissed without prejudice.

DATED at San Francisco, California, this 21st day of January, 1926.

L. D. Brundage
C. C. Weaver
George D. Squires
Ernest W. Scott

Commissioners.