

LEM

Decision No. 18986-

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )  
LAKESHORE HIGHLANDS COMPANY )  
for an order finding that certain )  
property is non-operative. )

Application No. 12449

Fitzgerald, Abbott & Beardsley,  
for applicant.

ORIGINAL

BY THE COMMISSION:

OPINION AND ORDER

Application has been made by Lakeshore Highlands Company for an order finding that certain property is non-operative property of the San Francisco-Oakland Terminal Railways, or of the Key System Transit Company. It appears that the property in question is a portion of that certain real property described in Exhibit "A" attached to the supplemental petition of Hugh Goodfellow et al, Application No. 9367, and referred to in the decision of this Commission, No. 13214, dated February 28, 1924, wherein this Commission approved the omission by said Hugh Goodfellow, Warren Olney and W. I. Brobeck, Trustees, of certain real property from the conveyance of properties held by them to the Key System Transit Company, and the retention of title by said trustees. Subsequently the company executed a first mortgage and a general and refunding mortgage, whose liens, we believe, attach to said properties.

Section forty-nine of Article Seven of the first mortgage reads as follows:-

"Upon the written request of the Company, from time to time, while the Company is not in default hereunder to the knowledge of the Trustee, the Trustee, subject to the conditions and limitations prescribed in this section and not otherwise, shall release from the lien and operation of this indenture any part of the mortgaged properties then subject hereto; provided that no part of the mortgaged properties shall be released, unless at the time of such release it shall no longer be necessary or advantageous to retain the same for use in or in connection with the business of the Company; and provided further that no such release shall be made unless the Company shall have sold or contracted to sell the property so to be released or shall have contracted to exchange the same for other property. Before any such release shall be given, the Company shall file with the Trustee an order or orders in writing requesting the same, executed by the President or Vice President and Secretary or Assistant Secretary of the Company, and specifying the consideration therefor and the terms and conditions of such sale, agreement of sale, or exchange, together with a copy or copies of the resolution or resolutions of the board of directors of the Company, duly certified by its Secretary or Assistant Secretary, authorizing the execution of said order or orders, which resolution shall also state that it is no longer necessary or advantageous to retain the property desired to be sold or exchanged for use in or in connection with the business of the Company; and a certificate of an engineer satisfactory to the Trustee (who may be an engineer employed by the Company) showing that the price realized by the Company upon any such sale, or the fair value of the property to be received by it upon any such exchange, is not less than the fair value of the property sought to be released; and said order or orders and certificate, and a copy or copies of the said resolution or resolutions, certified as aforesaid, shall be a full and complete warrant and authority to the Trustee for the execution and delivery of the said releases; provided always that the same are accompanied by the consent thereto of the Railroad Commission of the State of California or other public body in whom jurisdiction rests, and if no such public body having jurisdiction exists, then that said resolution or resolutions be accompanied by the certificate of the Secretary or Assistant Secretary of the Company showing that such resolution or resolutions was or were adopted by a two-thirds vote of the board of directors of the Company."

The general and refunding mortgage contains a similar provision.

The Railroad Commission has never authorized the Key System Transit Company to release the property referred to herein, from the lien of either of its mortgages. The Commission, however, is of the opinion that the property mentioned is non-operative property.

We are further of the opinion that this application by Lakeshore Highlands Company is not an application made by the seller of real property for authority to transfer the same, as provided by law and the rules of this Commission, and for these reasons

NOW, THEREFORE, IT IS HEREBY ORDERED that the said application be, and the same is hereby, dismissed for lack of jurisdiction.

DATED at San Francisco, California, this 11<sup>th</sup> day of February, 1926.

H. B. Brundage  
C. Seaver  
E. W. Deane  
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Commissioners.