

DEM

Decision No. 13615.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
 RICHARDS TRUCKING AND WAREHOUSE COM-
 PANY, a corporation, for a permit
 ratifying the issuance and sale of
 certain common stock and preferred
 stock, inadvertently sold and issued
 after the expiration of the time
 previously permitted for the sale
 thereof; for the ratification and
 authorization of a certain loan made
 from the Bank of America without per-
 mission of this Commission being
 first had and obtained; and for rati-
 fication and authorization of certain
 expenses incurred on the sale of its
 stock in excess of the amount there-
 tofore permitted.

ORIGINAL

Application No. 12719

Lewler & Degnan, by Max Felix, for applicant.

BY THE COMMISSION:

OPINION

In this application Richards Trucking and Warehouse Com-
 pany, a corporation engaged in business as a public utility ware-
 houseman and as a common carrier of freight in and between Los
 Angeles and certain other points in Southern California and as a
 local drayage company in Los Angeles, asks

1. That the issue and sale by it of \$4,990.00 of common
 stock and \$7,290.00 of preferred stock made without an order from
 the Railroad Commission, be ratified, authorized and approved;
2. That the expenditure by it of \$2,236.00 in connection with
 the sale of its stock, in excess of the amounts allowed by a former
 order of this Commission, be ratified, authorized and approved;
 and
3. That the incurring of indebtedness by it in the amount

of \$46,000.00 and the creation of a trust to secure the same, be ratified, authorized and approved.

By Decision No. 12149, dated May 29, 1923, in Application No. 8929, the Commission authorized Richards Trucking and Warehouse Company to issue and sell, on or before March 31, 1924, \$375,000. of common stock and \$375,000. of eight percent cumulative preferred stock for the purpose of acquiring or constructing additional properties or for such purposes as might be specified in supplemental orders. The record in this proceeding indicates that up to March 31, 1924, under Decision No. 12149, the company had issued \$111,275. of common stock and \$35,300. of preferred stock, that the time limit was not extended thereafter and that subsequent to March 31, 1924 the company issued in addition \$4,990. of common stock and \$7,290. of preferred stock, making a total issue of \$116,265. of common stock and \$42,590. of preferred.

The issue of this additional stock without an order of the Commission then in effect, we believe to be void. It appears to us that the stock was issued, with no intent on the part of the present management to evade the provisions of any act or to violate the order of the Commission. We do not believe, however, that we can make an order ratifying a void act, and in our opinion it will be necessary for the company to cancel the certificates representing the shares of stock illegally issued and to issue new ones in lieu thereof.

Referring again to Decision No. 12149, it appears that the authority granted therein provides for the sale of the stock at not less than par, but permits the use of an amount not exceeding five percent of the par value of the preferred stock sold and an amount not exceeding ten percent of the par value of the common stock sold to pay commissions and other expenses incident to the sale of the stock. Had the company used the maximum amounts allowed in connection with the sale of the \$116,265.00 of common stock and the \$42,590.00 of preferred, it would have incurred total

expenses of \$13,756.00, whereas it reports actual expenditures of \$15,992.00.

The Commission is now asked to ratify, authorize and approve the use of the expenditures of \$2,236.00 in excess of the amounts allowed for commissions and selling expenses. This request will not be granted. In our opinion the \$2,236.00 should be charged to applicant's surplus account. The order herein accordingly will so direct.

At the hearing applicant asked that its application insofar as it involves the issue of the \$46,000.00 note be dismissed without prejudice. As soon as arrangements have been completed to refund such indebtedness, applicant will file a new application.

ORDER

Richards Trucking and Warehouse Company, having applied to the Railroad Commission for an order ratifying, approving and authorizing the issue of stock and a note and the expenditure of stock proceeds, a public hearing having been held before Examiner Fankhauser and the Commission being of the opinion that the application should be granted only as herein provided,

IT IS HEREBY ORDERED that Richards Trucking and Warehouse Company be, and it is hereby, authorized to issue, on or before June 30, 1926, not exceeding \$4,990.00 of its common stock and \$7,290.00 of its preferred stock in lieu of the stock of like par value issued subsequent to March 31, 1924 without an order from this Commission, provided;

1. That the certificates representing the shares of stock issued without an order be returned to applicant and cancelled, and

2. That applicant keep such record of the issue and delivery of the stock herein authorized as will enable it to file on or before the 25th day of each month 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.

IT IS HEREBY FURTHER ORDERED that Richards Trucking and Warehouse Company within thirty days from the date of this order, shall make an entry on its books of account charging Account 163 "Surplus or Deficit", and crediting Account 109 "Other debit accounts" with the sum of \$2,236.00, representing expenditures for commissions and stock selling expenses in excess of the amounts allowed in Decision No. 12149, and shall file with the Commission a statement indicating that such entry has been made.

IT IS HEREBY FURTHER ORDERED that the application insofar as it asks for an order ratifying, authorizing and approving the incurring of indebtedness and the creation of a trust, be, and it is hereby, dismissed without prejudice.

DATED at San Francisco, California, this 3^d day of May 1926.

H. B. Brundage
C. E. Feaver
E. J. ...

Commissioners.