

LEM

Decision No. 16991.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of	)	
J. W. ROPER,	)	
owner of Butte Meadows Telephone and	)	
Telegraph Company for authorization	)	
and permission to sell or mortgage	)	
the said Butte Meadows Telephone and	)	Application No. 12864
Telegraph Company franchise and phy-	)	
sical properties.	)	

Guy R. Kennedy, for applicant.

WEITSELL, Commissioner:

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O P I N I O N

In the above entitled matter the Railroad Commission is asked to make an order authorizing J. W. Roper to execute a mortgage of certain public utility telephone properties to secure the payment of a loan for \$2,500.00 payable on or before three years after date with interest at not exceeding seven percent per annum, or to sell such telephone properties for \$2,500.00.

The application shows that J. W. Roper is the owner of an unincorporated telephone system, known as the Butte Meadows Telephone and Telegraph Company, extending between Chico, Butte County, and Butte Meadows, Tehama County. The properties comprising the system consist of one switchboard with ten lines, and about thirty-six miles of galvanized iron wire and four working stations. Connection is made at Chico with The Pacific Telephone and Telegraph Company.

Applicant estimates the value of his telephone properties at about \$3,500.00. He testified that at present there are no bonds, notes or other evidences of indebtedness outstanding against the system and that he is making the present request to

mortgage his utility properties to obtain funds to liquidate certain indebtedness, consisting of matured and unpaid interest and taxes, incurred in connection with activities and properties other than his telephone system.

The purposes for which the Commission may authorize a public utility to issue securities are set forth in Section 52 of the Public Utilities Act. This section reads in part as follows:-

"A public utility may issue stocks and stock certificates or other evidence of interest or ownership, and bonds, notes and other evidences of indebtedness payable at periods of more than twelve months after the date thereof, for the following purposes and no others, namely, for the acquisition of property, or for the construction, completion, extension or improvement of its facilities, or for the improvement or maintenance of its service, or for the discharge or lawful refunding of its obligations, or for the reimbursement of moneys actually expended from income or from any other moneys in the treasury of the public utility not secured by or obtained from the issue of stocks or stock certificates or other evidence of interest or ownership, or bonds, notes or other evidences of indebtedness of such public utility for any of the aforesaid purposes except maintenance of service and replacements."

The Commission has heretofore held that it had no authority to authorize the owner of public utility property to mortgage the same for the purpose of securing funds for non-utility purposes. (Vol. 8 Opinions and Orders of the Railroad Commission of California, page 403, Vol. 18, Opinions and Orders of the Railroad Commission of California, page 116). Moreover it is doubtful whether the payment of interest and taxes, even if charges against public utility properties can, under Section 52 of the Public Utilities Act, be paid with proceeds obtained from the issue of notes authorized by the Commission. It is not necessary in this case to pass on that point, for here we are asked to authorize the issue of a note and execute a mortgage on public utility property to pay interest and taxes resulting from private transactions. In my opinion the Commission has <sup>no</sup> power to authorize the issue of said note or the execution of said mortgage and therefore I recommend that this application be dismissed insofar as it involves the issue of a note and the execu-

tion of a mortgage.

As an alternative to executing a mortgage, applicant asks permission to sell the telephone system. He reports, in this connection, that he is willing to take \$2,500.00 for the properties and that he believes he can dispose of them at that price. However, it does not appear if applicant has entered into any negotiations or made arrangements for the sale of his properties.

Under Rule V of the Rules of Procedure prescribed by the Commission applications for permission to sell public utility property must be made by all the parties to the proposed transaction. The present petition, therefore, is defective in that it is not made by the purchaser as well as the seller. The request to sell the properties, temporarily should be held in abeyance until applicant has corrected this defect by causing the purchaser to join in and subscribe to the petition and ask permission to purchase the properties. This can be done by a supplemental petition in this proceeding.

Upon the filing of the supplemental petition a further order can be made in this matter passing upon the request to transfer the properties.

I herewith submit the following form of order:-

#### ORDER

J. W. Roper having applied to the Railroad Commission for permission to mortgage or sell a public utility telephone system known as Butte Meadows Telephone and Telegraph Company, a public hearing having been held, and the Railroad Commission being of the opinion that the request to execute the mortgage should be dismissed for want of jurisdiction and that the request to sell the properties should be held in abeyance, temporarily, until appli-

cent has caused the application to conform with the Commission's Rules of Procedure,

IT IS HEREBY ORDERED that the application of J. W. Roper to execute a mortgage of his public utility telephone system, known as Butte Meadows Telephone and Telegraph Company, to secure the payment of \$2,500.00 payable on or before three years after date with interest at not exceeding seven percent. be, and it is hereby, dismissed without prejudice for want of jurisdiction.

The foregoing Opinion and Order are hereby approved and ordered filed as the Opinion and Order of the Railroad Commission of the State of California.

DATED at San Francisco, California, this 25<sup>th</sup> day of June, 1926.

H. B. Brundage

C. S. Jones

Ernest J. Smith

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Commissioners.