

Jose and Santa Cruz via Los Gatos and Alma, and via Big Basin; and San Jose and Campbell and Los Gatos. Auto Transit Company is operating between San Francisco and Santa Cruz via Los Gatos; Santa Cruz and Salinas and Watsonville; Castroville and Monterey; and Watsonville and Hollister.

The record shows that on May 3, 1927, Peerless Stages, Incorporated, and O.A.Moon, J. S. Nickols, C. L. Simonds and George H. Higgins, the owners of all the outstanding stock of Auto Transit Company, entered into an agreement whereby Peerless Stages, Incorporated, agreed to purchase, for \$150,000., the outstanding \$41,310. of stock of Auto Transit Company. Under the terms of the agreement, payment has been or will be made as follows:-

Upon signing of the agreement.....	\$5,000.00	
Within fifteen days after signing of the Commission's order.....	<u>36,913.60</u>	\$41,913.60
Balance as follows:-		
To Geo. H. Higgins, in monthly in- stallments of \$919.10	33,087.60	
To O.A.Moon, in monthly installments of \$919.10	33,087.60	
To C.L.Simonds, in monthly install- ments of \$919.10.....	33,087.60	
To J.S.Nickols, in monthly install- ments of \$326.80.....	<u>8,823.60</u>	
Total.....		<u>108,086.40</u> <u>\$150,000.00</u>

The payments to the three largest stockholders, George H. Higgins, O.A.Moon and C.L.Simonds, are payable over a period of thirty-six months, and those to J.S.Nickols over a period of twenty-four months, deferred payments in all cases bearing interest at the rate of seven percent per annum. Under the agreement, Peerless Stages, Incorporated, has the right at any time to pay the whole of the remainder of the principal sum remaining unpaid, or any part thereof, in greater installments than those specified in the agreement and indicated herein.

The agreement further provides that when the total payments made by Peerless Stages, Incorporated, aggregate the sum of \$125,000 or more, the stock of Auto Transit Company shall be delivered to it upon the execution and issue of three promissory notes, one payable to George H. Higgins, one to O.A. Moon and one to C.L. Simonds, each in an amount equal to one-third of the then remaining unpaid balance of the principal and each bearing interest at the rate of seven percent per annum and payable in monthly installments of \$919.10. These notes will be accepted by the three individuals as full payment for all sums remaining due and unpaid.

In support of the request Joseph B. Held, president and general manager of Peerless Stages, Incorporated, testified that it was proposed to manage the Auto Transit Company line with the same set of executives now in control of the affairs of Peerless Stages, Incorporated, and that in his opinion the acquisition of the stock, as outlined herein, and the consolidation of the two lines under one joint management would result in economies in operation in excess of \$14,000. a year. He testified further that in his opinion the transaction would be in the public interest in that on the portion of the routes where duplicate service is now given, namely; between Los Gatos and Santa Cruz, schedules can be arranged so as to give more frequent service than at present.

* To finance in part the cost of acquiring the stock of Auto Transit Company, Peerless Stages, Incorporated, asks permission to issue and sell preferred stock. It appears that recently applicant has amended its articles of incorporation so as to provide for an authorized issue of \$1,000,000. of stock, consisting of 1,000,000 shares of the par value of \$1.00 each, divided into 500,000 shares of common stock and 500,000 shares of eight percent cumulative preferred stock redeemable on any dividend payment date at 110 percent of par value. It proposes at this time to issue \$150,000. of the preferred stock, to sell it at not less than 80 percent of the par

value thereof and to use \$45,000. of the proceeds to pay for new equipment and \$75,000. to meet in part its obligations under its agreement with the stockholders of Auto Transit Company.

Applicant reports that it has made arrangements to purchase, for \$5,833.30 an 18-passenger Fageol safety coach, and, for \$27,166.80 three 29-passenger Fageol safety coaches, a total cost of \$33,000.10. In addition, the testimony herein indicates that within a few months another unit of equipment should be acquired for the Peerless Stages, Incorporated, routes and also one for the Auto Transit Company routes. The showing as to the expenditures of stock proceeds for new equipment, in excess of the \$33,000.10 was not definite, however, and the order herein will provide that no proceeds may be expended for this purpose, over and above the \$33,000.10, until authorized in supplemental orders.

In considering the request to use stock proceeds to finance in part the cost of the Auto Transit Company stock, we believe that reference should be made to the assets and liabilities of that company. Its last annual report to the Commission shows the assets and liabilities as of December 31, 1926, as follows:-

ASSETS:

Property and equipment	\$88,757.16	
Cash	7,180.23	
Accounts receivable	60.61	
Special deposit	2,400.00	
Total.....		<u>\$98,398.00</u>

LIABILITIES:

Notes payable	\$ 3,500.00	
Accounts payable	2,420.00	
Reserve for taxes	4,457.65	
Reserve for accrued depreciation .	34,889.71	
Sub-total.....		\$45,267.36
Net worth:		
Capital stock	41,310.00	
Surplus	11,820.64	
Sub-total.....		53,130.64
Total.....		<u>\$98,398.00</u>

The Commission does not look with favor upon the issue of eight percent cumulative preferred stock at eighty percent of its par value. The order herein will require that such stock be sold for not less than par. As to the use of the proceeds we believe that the company should be authorized to use not more than \$53,130.00 in payment for the stock of Auto Transit Company. Any payments made in excess of this amount must be obtained from the company's surplus or stockholders and charged to applicant's corporate surplus account.

The order sought by these consolidated applications represents steps preliminary to the absorption of Auto Transit Company by Peerless Stages, Incorporated and their consideration cannot well be divorced from the next logical step, which will be an application by Peerless Stages, Incorporated to take over the property and rights of Auto Transit Company.

The most casual reading of the opinions and orders of this Commission shows that there has been going on of late a process of consolidation of auto transportation companies. Soon the state will be served by a few of these major companies. Gradually, and in the not far distant future, they will take their place as an essential part of the transportation system of the state and there will come the usual rate proceedings as with the larger and more matured utilities.

Here Peerless Stages, Incorporated, through the acquisition of stock of Auto Transit Company, is paying \$150,000.00 for the stock of a company whose balance sheet indicates a net worth of \$53,130.64. It is perfectly obvious that the difference between these sums represents a payment made for the so-called operative right or other intangible property of the Auto Transit Company.

"Operative rights" do not constitute a class of property which should be capitalized or used as an element of value in determining reasonable rates. Aside from their purely permissive aspect, they extend to the holder a full or partial monopoly of a class of business over a particular route. This monopoly feature may be changed or destroyed at any time by the state which is not in any respect limited to the number of rights which may be given. The Commission at the early stages of the development of this kind of transportation should be extremely careful not to lend encouragement to the idea that these rights possess a substantial element of value, either for rate fixing or capitalization.

If the Peerless Stages, Incorporated pays \$150,000.00 for the stock of Auto Transit Company, \$96,870.00 of the purchase price should be paid out of the company's surplus which might otherwise be diverted to the stockholders in the form of dividends. If the stockholders desire to make such a contribution to the corporation that is their concern, but it is the concern of this Commission to see that the public patronizing the utility is not now or in the future called upon to pay this amount or interest upon it, directly or indirectly.

The order herein will require the Peerless Stages, Incorporated to file with the Commission before the order becomes effective a definite and unqualified waiver of any right to claim any value of this operative right, either directly or indirectly, as an element of good will, going concern value or other intangible value.

Moreover, the order will require the vendors of the stock to agree to look exclusively to the surplus of Peerless Stages, Incorporated, for the payment of the stipulated purchase price or to contributions by or assessments on stockholders of Peerless Stages, Incorporated. Under such a stipulation the vendors can not complain if the date of the final payment should be postponed until the normal and properly allowable earnings of Peerless Stages, Incorporated amounted to enough to take care of the obligations.

ORDER

Applications having been made to the Railroad Commission by Peerless Stages, Incorporated, for permission to acquire the stock of Auto Transit Company, to execute an agreement and to issue notes and stock, a public hearing having been held before Examiner Fankhauser and the Railroad Commission being of the opinion that the applications should be granted, as herein provided, and that the money, property or labor to be procured or paid for through the issue of the stock and notes is reasonably required for the purposes specified herein,

IT IS HEREBY ORDERED that Peerless Stages, Incorporated, be, and it hereby is, authorized to purchase the outstanding stock of Auto Transit Company and to enter into the agreement filed in Application No. 13808 and referred to in the foregoing opinion, providing for the payment of the sums in the amounts and in the manner indicated therein, provided that any payments for said stock in excess of \$53,130.00 must be charged to the surplus account of Peerless Stages, Incorporated, and provided further, that the payments required by said agreement are made in accordance with the provisions of this order.

IT IS HEREBY FURTHER ORDERED that Peerless Stages, Incorporated, be, and it hereby is, authorized upon the payment of approximately \$125,000.00 of the purchase price of the stock of Auto Transit Company, to execute three promissory notes, each in an amount equal to one-third of the remaining unpaid balance of the principal amount, each note to be payable in monthly installments of \$919.10 with interest at the rate of seven percent per annum.

IT IS HEREBY FURTHER ORDERED that Peerless Stages, Incorporated, be, and it hereby is, authorized to issue and sell, for cash, at not less than par, \$150,000.00 of its preferred stock and to use not exceeding \$53,130.00 of the proceeds to finance in part the cost of acquiring the stock of Auto Transit Company, \$33,000.10 of the proceeds to pay for the equipment listed in Exhibit No. 5 attached to Application No. 13837, and the remaining proceeds, when authorized to do so by the Commission in supplemental orders, for additional equipment or other purposes as may be authorized.

IT IS HEREBY FURTHER ORDERED that the authority herein

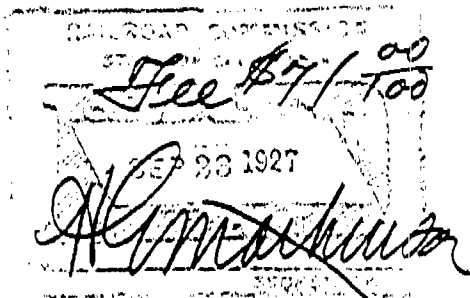
granted to Peerless Stages, Incorporated, to acquire the stock of Auto Transit Company will not become effective until said Peerless Stages, Incorporated, has filed in satisfactory form a stipulation duly authorized by its Board of Directors agreeing that it, its successors and assigns will pay \$96,870.00 of the purchase price of the stock of Auto Transit Company out of surplus available for distribution as dividends to its stockholders or from contributions by or assessments on its stockholders; that none of said payments will be made from cash obtained by borrowing or offset by its reserve for accrued depreciation; that said payments when and as made will be charged to surplus and that no value for the operative rights of Auto Transit Company will ever be claimed in any proceeding before this Commission, or any court, involving rates.

IT IS HEREBY FURTHER ORDERED that the authority herein granted to Peerless Stages, Incorporated, to acquire the stock of Auto Transit Company will not become effective until the vendors, of said stock have filed with this Commission an agreement in satisfactory form wherein they agree for themselves, their successors and assigns to look only to the surplus of Peerless Stages, Incorporated, or to contributions by or assessments on the stockholders of Peerless Stages, Incorporated, for the payment of the aforesaid \$96,870.00 and will not seek to enforce the payment of said sum out of any other funds or property of said Peerless Stages, Incorporated, and that they will accept notes if any are issued which on their face will refer to the above numbered decision so that purchasers thereof will take them with notice.

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

1. The authority herein granted to execute an agreement for the purchase of stock is for the purpose of this proceeding only, and is granted only insofar as this Commission has jurisdiction under the terms of the Public Utilities Act and is not intended as an approval of such agreement as to such other legal requirements to which said agreement may be subject.
2. The authority herein granted to issue stock shall become effective upon the date hereof, but the authority herein granted to enter into a contract calling for payments as indicated in the foregoing opinion shall become effective upon the payment of the fee prescribed by Section 57 of the Public Utilities Act and the filing in satisfactory form of the stipulations referred to herein.
3. Under the authority herein granted no stock may be issued after June 30, 1928.

DATED at San Francisco, California, this 10th
day of ~~August~~ ^{September}, 1927.



Fee No. 24547

[Signature]

[Signature]

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Commissioners.