

Decision No. 21184.

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)	
WARD HUNT)	
for authorization for giving mortgage))	Application No. 15640
to secure note payable.)	

BY THE COMMISSION:

O P I N I O N

In this proceeding the Railroad Commission is asked to make an order approving the execution by Ward Hunt of a mortgage and note in the principal amount of \$9,000.00 due on or before May 10, 1933, with interest at the rate of seven percent per annum.

It appears that Ward Hunt is engaged in the business of operating a public utility warehouse, chiefly for the storage of wheat, barley and rice, in Dunnigan, Yolo County. The warehouse building is located on land leased from Southern Pacific Company and has a floor space of 32,000 square feet and a capacity of 8,000 tons.

Information on file in the office of the Commission indicates that the properties referred to formerly were operated by a co-partnership known as Thomas, Stephens and Mattei, of Woodland. The co-partnership, however, discontinued its operations, filing its cancellation of its tariffs and rates with the Commission on June 11, 1928, in accordance with the Commission's requirements. Thereafter, it appears, Ward Hunt purchased the building for \$14,000.

from Brown and Collins, of Woodland, entered into a lease of the real property for a period of seven years, at a rental of \$150.00 a year, and filed with the Commission his warehouse Tariff No. 1, effective June 15, 1928, naming the rates, rules and regulations for the storage of commodities at the Dunnigan Warehouse.

Of the purchase price it is reported that applicant paid \$5,000.00 in cash and borrowed the balance of \$9,000.00 from The Bank of Yolo. The moneys thus borrowed were evidenced by a note dated June 18, 1928, due on or before May 10, 1933, with interest at the rate of seven percent per annum and secured by mortgage of the warehouse building. It is reported that \$1,000.00 has since been paid on the note, leaving \$8,000.00 now outstanding.

Applicant did not apply to this Commission to execute the note and mortgage and in our opinion such instruments are void, because of the provisions of Section 51 and 52 of the Public Utilities Act, which provide that a public utility warehouseman may not execute a mortgage covering public utility properties, nor issue a note, or other evidence of indebtedness, payable more than twelve months after date of issue, unless authorized to do so by this Commission. It clearly appears, however, that applicant's failure to obtain such permission was through inadvertence and with no intent to evade the provision of the Public Utilities Act. When the matter of obtaining authorization was called to his attention he filed the present application.

In making the application, however, applicant asks that the present note and mortgage be allowed to remain outstanding until 1933. As we have stated, such note and mortgage, in our opinion, are void and we do not believe that we can now make an order in effect approving or ratifying void instruments. The order

herein accordingly will authorize applicant to execute a note and mortgage to evidence and secure the indebtedness due The Bank of Yolo, referred to herein. The copy of the mortgage filed with the application appears to be in satisfactory form.

ORDER

Ward Hunt, having applied to the Railroad Commission for an order approving a note and mortgage, and the Commission being of the opinion that this is not a matter in which a public hearing is necessary, and that it cannot approve the issue of the note and mortgage referred to herein, but that it should authorize applicant to issue a note and mortgage at this time and that such issue is reasonably required for the purpose specified herein, which purpose is not, in whole or in part, reasonably chargeable to operating expense or to income,

IT IS HEREBY ORDERED as follows:-

1. Ward Hunt may issue his promissory note in the principal amount of not exceeding \$8,000.00 payable on or before May 10, 1933, with interest at not exceeding seven percent per annum, for the purpose of paying or refunding the indebtedness now outstanding in favor of The Bank of Yolo, which is referred to in the preceding opinion.

2. Ward Hunt may execute a mortgage substantially in the same form as the mortgage filed in this proceeding, for the purpose of securing the payment of the note he is herein authorized to issue, provided that the authority herein granted to execute a mortgage 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 said mortgage as to such other legal requirements to which it may be subject.

3. Within thirty days after the execution of the note and mortgage herein authorized, Ward Hunt shall file with the Commission a copy of each.

4. The authority herein granted will become effective when applicant has paid the minimum fee prescribed by Section 57 of the Public Utilities Act, which fee is Twenty-five (\$25.00) Dollars.

DATED at San Francisco, California, this 4th day of

June, 1939.

Thos D. Hunt

C. Seamy

Leon Whitely

M. G. Cur

Commissioners.

Fee \$ 25.00
W. D. Mitchell
Fee # 27573