

Decision No. 22828.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
MODERN WAREHOUSES, INC.
for an order authorizing the appli-
cant to transfer its real property
and to diminish its capital stock.

ORIGINAL

Application No. 16780

Harry B. Fogarty, for applicant.

BY THE COMMISSION:O P I N I O N

In this application Modern Warehouses, Inc. asks permission to transfer its real estate and buildings to a corporation to be hereafter organized, to reduce its capital stock, and to distribute the stock of the new proposed corporation which it will receive in payment for its properties to its present stockholders, in proportion to their respective holdings.

It is our opinion that we have no jurisdiction over the diminution of applicant's outstanding stock or over the distribution of the stock which it will receive in payment for its properties. We will therefore dismiss this portion of applicant's request without prejudice.

Applicant is engaged in conducting a public utility warehouse business at 26500 McKinley Ave., Los Angeles. It owns at this location real property on which a warehouse building has been constructed, which has a floor space of 24,000 square feet. The

building in general is 300 feet long and 80 feet wide and is of brick, concrete and wood construction.

The Modern Warehouses, Inc. as of June 30, 1930 reports its assets and liabilities as follows:-

<u>A S S E T S</u>		
Current assets		\$3,714.57
Cash	\$ 75.87	
Special deposits	12.00	
Accounts receivable	<u>3,626.70</u>	
Property		70,358.85
Land	20,000.00	
Building	43,781.32	
Warehouse equipment	4,861.79	
Furniture and fixtures	678.35	
Automobiles	<u>1,037.39</u>	
Prepayments		218.23
Warehouse equipment	15.20	
Taxes	9.20	
Stationery	31.36	
Insurance	<u>163.85</u>	
	Total assets	<u>\$74,291.65</u>
<u>L I A B I L I T I E S</u>		
Current liabilities		\$ 1,695.67
Accounts payable-trade creditors	399.15	
Notes payable	500.00	
Accruals	<u>796.52</u>	
Long term debt		36,000.00
Capital stock		25,000.00
Reserve for depreciation		8,335.21
Dividends payable		494.80
Surplus		<u>2,765.97</u>
	Total liabilities	<u>\$74,291.65</u>

It is the intention of applicant to transfer to a corporation to be hereafter organized, its real estate and buildings and have such new corporation assume the payment of the \$36,000.00 of long term debt. In addition to the assumption of the indebtedness the new corporation will pay to applicant the sum of \$27,750.00 in stock, to represent applicant's equity in the real estate and buildings. This stock in turn would be distributed to applicant's stockholders in proportion to their respective holdings.

The record shows that applicant has outstanding \$25,000.00 of stock which is owned by the following stockholders:-

M. D. Ealy	\$16,100.
John B. Berman	200.
H. B. Fogarty	4,800.
H. W. Trueblood	3,800.
C. E. Jackson	100.
Total.....	<u>\$25,000.</u>

The testimony shows that all of applicant's stockholders are agreeable to the transfer of the properties covered by this application. It further shows that applicant has encountered difficulties heretofore in obtaining unsecured credit from banks because of the fact that its financial statement showed a long term indebtedness of \$36,000.00. It is believed that by transferring this indebtedness to another corporation which will be controlled by the same stockholders as control applicant, that applicant will be able to secure credit to carry on its warehouse operations more readily than under existing conditions. Mr. K. B. Van Meter, manager of the Western Avenue and Santa Barbara Branch of the Bank of America, testified that his bank had refused to extend credit to applicant because of its indebtedness. While he was not in a position to state whether such credit would be extended if the indebtedness were transferred to another corporation he did believe that it would facilitate the extension of credit to applicant if the transfer is made.

It is the plan of the new corporation to lease the land and buildings which it will acquire from applicant to applicant at a rental of \$500.00 per month. The new corporation will pay the taxes on the property, the insurance and provide for depreciation on the building. Prior to the acquisition of the land and buildings by applicant, applicant was paying rent at the rate of \$750. per month. The testimony of H. B. Fogarty shows that the company

will be in a position to pay the \$500. rent per month and to continue its warehouse operations even though it does not own the building in which such business will be conducted. We believe the transfer of the properties should be authorized subject to the condition that such authority will not become effective until applicant has filed with the Commission a copy of the lease under which it will obtain access to and possession of the real estate and warehouse building and the Commission has found such lease to be satisfactory.

O R D E R

Modern Warehouses, Inc. having applied to the Commission for permission to transfer its real estate and buildings to a corporation to be hereafter organized, and to diminish and distribute capital stock, a public hearing having been held before Examiner Fankhauser, and the Commission being of the opinion that the transfer of the real estate and buildings, as proposed by applicant, should be authorized, subject to the conditions of this order, and that it has no jurisdiction over the diminution of applicant's outstanding stock or over the distribution of stock which it will receive in payment for its properties, and that therefore this portion of applicant's request should be dismissed without prejudice.

IT IS HEREBY ORDERED that Modern Warehouses, Inc. be, and it is hereby, authorized to sell and transfer on or before November 1, 1930 its real estate and buildings, referred to in this application, to a corporation to be hereafter organized, upon condition that such corporation will issue to applicant in part payment for the aforesaid properties, \$27,750.00 par value of its common capital stock, and

assume the payment of \$36,000.00 of long term debt, of applicant, and upon the further condition that such new corporation will lease said real estate and buildings to applicant for a period of ten years at a rental of not exceeding \$500.00 per month.

IT IS HEREBY FURTHER ORDERED that this application insofar as it involves the diminution of applicant's outstanding stock and the distribution of stock which it will receive in payment for its properties, be, and it hereby is, dismissed without prejudice.

IT IS HEREBY FURTHER ORDERED that the authority herein granted will become effective when applicant has filed with the Commission a copy of the proposed lease under which applicant will obtain access to, and possession of, the aforementioned real estate and buildings and the Commission has found such lease to be in satisfactory form.

DATED at San Francisco, California, this 2d day of September, 1930.

C. C. Seaver

Leon Abbott

John B. Kautz

Commissioners.