

LEM

Decision No. 24205.

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
LOS ANGELES-LONG BEACH DESPATCH LINE)
for permission to take over business) Application No. 17709
and property and to issue shares of)
its capital stock.)

John C. Scott, for applicants.

BY THE COMMISSION:

O P I N I O N

In this application, as amended at the hearing had on October 29th before Examiner Fankhauser, William Gissler, Jr., engaged in the marine transportation business under the name of Los Angeles-Long Beach Despatch Line, asks permission to sell the properties used in such business, together with said business, to Los Angeles-Long Beach Despatch Line, a corporation. The corporation asks permission to issue 315 shares of its common stock and 100 shares of its preferred stock.

It is of record that for a period of five years prior to February 28, 1931, William Gissler, Jr. was engaged as a freight agent and broker for marine business at the port of San Francisco, and that during such period he had an average/annual gross income of about \$15,000.

During the month of February, 1931, he chartered a vessel and established a common carrier marine transportation business between San Francisco and Long Beach. He has since and is now engaged in conducting such business. At the present time he operates in said business a vessel known as "The Stetson". This vessel makes

one round trip a week and carries freight only. He is operating the vessel under a month to month charter basis. To satisfactorily equip the vessel and make it suitable for the business in which he is using the same, he has, according to his testimony, spent \$3,600. Approximately \$1,000.00 additional was expended in acquiring dock and wharf privileges at Long Beach and in acquiring necessary office furniture, fixtures, supplies and facilities for the handling of freight. His total cash outlay is reported at \$4,600.00. In Exhibit No. 1 he reports his operating revenues from the time he began operating between San Francisco and Long Beach to September 24, 1931, at \$54,233.94, and his operating expenses at \$58,774.15. His net loss for the period amounts to \$4,540.21.

The Los Angeles-Long Beach Despatch Line, a corporation, has an authorized stock issue of 1,000 shares of no par value. The authorized stock is divided into 500 shares of common and 500 shares of preferred. The holders of the preferred stock shall have no voting powers. They are entitled to an annual dividend of \$8.00 per share, which dividend shall be cumulative from and after the original date of issuance of the certificate representing the shares for which such certificate is issued. Any unpaid dividend on the preferred shares shall be payable before any dividend shall be declared upon or set aside for the holders of common stock. The preferred stock may be redeemed at any time after five years by paying for each share the sum of \$105.00, together with unpaid dividends, if any. In the event of a dissolution of the corporation resulting in a distribution of the assets to the share holders of the corporation, the preferred stock shall take precedence over common stock, that is, no distribution shall be made to the shares of the common stock unless and until the preferred stock has been satisfied. The Articles of In-

corporation do not indicate to what extent the holders of the preferred stock shall be permitted to share in the distribution of the assets.

Applicant corporation asks permission at this time to issue and sell at \$90.00 per share, 100 shares of its preferred stock. It further asks that it be permitted to expend twenty percent of the proceeds received from the sale of such stock to pay commissions. The balance of the proceeds would be used by the company to pay in part for the properties which William Gissler, Jr. intends to transfer to applicant corporation, to pay indebtedness which it will assume on account of the acquisition of such properties and to provide itself with necessary working capital. We regard the terms and conditions under which applicant corporation proposes to issue its preferred stock as unreasonable. Furthermore, we question the propriety of permitting the company to issue preferred stock on any basis, because its business cannot yet be regarded as being a paying proposition. The company should not issue cumulative preferred stock at a time when it is doubtful that it can pay dividends on such stock.

The value of the business, property and rights which William Gissler, Jr. proposes to transfer to applicant corporation are submitted as follows:

Goodwill.....	\$20,000.00
Value of charter.....	1,000.00
Value of terminal rights at Long Beach.....	5,000.00
Investment in equipment and other physical proper- ties as aforesaid.....	4,600.00

The goodwill value of \$20,000.00 is not based upon the business established by William Gissler, Jr. between Long Beach and San Francisco, but rather upon his five years experience as a broker and freight agent. It does not follow from the fact that he may have enjoyed a gross income of \$15,000.00 per annum as a marine

broker and freight agent that his management of applicant corporation represents to such corporation an asset worth \$20,000.00. The testimony shows that the charter which is said to have a value of \$1,000.00 can be cancelled by the owner of the boat on thirty days notice. Neither the \$1,000.00 charter value nor the \$5,000.00 assigned as the value of the terminal rights at Long Beach were justified. If we are furnished with definite information showing the amount of expenses incurred in securing the terminal rights at Long Beach and the nature and extent of such rights, we will be glad to give the matter of authorizing the issue of stock against such rights further consideration. Upon the record as now before us, we cannot permit applicant corporation to issue any preferred stock, nor can we permit it to issue 315 shares of its common stock against the aforesaid assets. We believe that its common stock issue should be limited to 265 shares and that such stock should be issued on a basis of \$25.00 per share.

O R D E R

William Gissler, Jr. and Los Angeles-Long Beach Despatch Line, a corporation, having asked the Commission to enter its order, as indicated in the foregoing opinion, the Commission having considered the request of applicants and being of the opinion that William Gissler, Jr. should be permitted to transfer the properties described in Exhibit "D" to Los Angeles-Long Beach Despatch Line, a corporation, and that such corporation should be permitted to issue on a basis of \$25.00 per share, 265 shares of its common stock, that the money, property or labor to be procured or paid for through the issue of such stock is reasonably required by Los Angeles-Long Beach Despatch Line, a corporation, for the purposes herein stated, and that the expenditures for

such purposes are not, in whole or in part, reasonably chargeable to operating expenses or to income, and that this application, insofar as it involves the issue of 100 shares of preferred stock and 50 shares of common stock should be denied without prejudice, therefore,

IT IS HEREBY ORDERED as follows:

1. William Gissler, Jr. may, on or before December 31, 1931, sell and transfer to Los Angeles-Long Beach Despatch Line, a corporation, the properties and business described in Exhibit "D" filed in this proceeding.
2. Los Angeles-Long Beach Despatch Line, a corporation, may, on or before December 31, 1931, issue to said William Gissler, Jr. in payment for the properties described in said Exhibit "D", provided the same are transferred free and clear of all indebtedness, 225 shares of its common capital stock, said stock to be issued on a basis of \$25.00 per share. If Los Angeles-Long Beach Despatch Line, a corporation, assumes the payment of any indebtedness of said William Gissler, Jr. or buys any of the aforesaid properties subject to any indebtedness, the number of shares of stock issued by said Los Angeles-Long Beach Despatch Line, a corporation, said stock to be issued on a basis of \$25.00 per share, in payment for said properties, shall not exceed the difference between \$5,625.00 and the indebtedness assumed or the amount of indebtedness subject to which the said properties were acquired.
3. Los Angeles-Long Beach Despatch Line, a corporation, may issue and sell for cash at \$25.00 per share, forty shares of its common stock and use the proceeds to pay organization expenses, and provide itself with working capital. Said forty shares include such shares as Los Angeles-

Long Beach Despatch Line, a corporation, may have to issue to qualify its incorporators.

4. This application insofar as it involves the issue of 100 shares of preferred stock and 50 shares of common stock be, and the same is hereby, denied without prejudice.
5. Los Angeles-Long Beach Despatch Line, a corporation, shall keep such record of the issue and sale of the stock herein authorized and of the disposition of the proceeds, 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.
6. The authority herein granted to transfer properties and issue and sell stock will become effective upon the date hereof. For all other purposes this order shall become effective twenty(20) days after the date hereof.

DATED at San Francisco, California, this 9th day of November, 1931.

C. C. Keary
Leon White
M. J. Carr
M. B. Hayes
Fred G. Stewart
Commissioners.