

LEM

Decision No. 24630

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
LAWRENCE WAREHOUSE COMPANY,)
a corporation, and HASLETT WAREHOUSE)
COMPANY, a corporation, for an order)
authorizing the sale and assignment)
of certain property and authorizing)
said parties to enter into agreement)
of December 29, 1931.)

ORIGINAL

Application No. 17934

Thelen & Murrin, by Max Thelen,
for Lawrence Warehouse Company.

W. F. Williamson, Wallace & Vaughan, by
W. R. Wallace, for Haslett Warehouse Company.

BY THE COMMISSION:

O P I N I O N

In this application the Railroad Commission is asked to enter its order;

1. Authorizing Lawrence Warehouse Company, hereinafter sometimes referred to as the Lawrence Company, to sell to Haslett Warehouse Company, hereinafter sometimes referred to as the Haslett Company, certain equipment and personal property specified in Exhibit "B" filed in this proceeding;

2. Authorizing Lawrence Warehouse Company to sell to Haslett Warehouse Company its operative rights to engage as a transportation company in the operation of motor trucks between points in the East Bay cities, and also to transfer a certain certificate of public convenience and necessity to operate a cold storage warehouse in Oakland, which certificate was granted by Decision No. 21214, dated June 10, 1929;

3. Authorizing Lawrence Warehouse Company to transfer to Haslett Warehouse Company the right to occupy certain premises which are demised under certain leases, which are specified in the agreement of December 29, 1931, filed in this proceeding as Exhibit "A";

4. Granting a certificate to Haslett Warehouse Company to engage in the warehouse business in the City of Oakland and to add to its warehouse service in the City and County of San Francisco; and

5. Authorizing Lawrence Warehouse Company and Haslett Warehouse Company to enter into said agreement dated December 29, 1931.

It is of record that the Lawrence Company is a California corporation engaged as a warehouseman in the operation of a public warehouse business in the City and County of San Francisco and in the City of Oakland and elsewhere in the State of California; in the local drayage business between points in the City and County of San Francisco; in the local drayage business in the so-called East Bay cities in the County of Alameda; and in the business of a transportation company engaged in the operation of motor trucks between points located in said East Bay cities and in other business enterprises.

The Haslett Company is a corporation which is engaged as a warehouseman in the operation of a public warehouse business in the City and County of San Francisco and elsewhere in the State of California and also in the states of Oregon, Utah and Idaho; in the local drayage business between points in the City and County of San Francisco and in other business enterprises.

The agreement of December 29, 1931 contemplates that for the term of years mentioned therein, the Haslett Company will conduct and operate under its sole control and direction the public warehouse business, except ^{the} Drumm Street public warehouse, and local drayage business of Lawrence Company in San Francisco and the East Bay cities. This application further contemplates that the Lawrence Company will sell to the Haslett Company at a cost of not exceeding \$40,000.00 that certain personal property consisting of warehouse equipment and auto trucks,

described in Exhibit "B" filed in this proceeding; and also its operative rights to conduct a transportation business between the East Bay cities, to which reference will be made hereafter, and its right to conduct a cold storage warehouse business in the City of Oakland at Water and Webster Streets.

Under the terms of the agreement the Haslett Company is given the right to conduct and operate under its sole control and direction for a period of twenty years all of the public warehouse and drayage business heretofore operated in San Francisco by the Lawrence Company, except the Drumm Street public warehouse. As a consideration for the transfer of such rights and privileges it shall pay to the Lawrence Company 50 percent of the operating economies effected during the first ten years of the agreement through the joint operation by the Haslett Company of its former business, and that of the Lawrence Company as more fully set forth in the agreement, provided that after such payments have been made for the first ten years or the total sum of \$300,000.00 has been paid to the Lawrence Company, no further payments need be made during the ^{remainder of the} ~~remaining~~ twenty years.

Further, under the terms of the agreement the Haslett Company may conduct and operate under its sole control and direction for a period of ten years, (may be extended for ten years additional) all of the public warehouse and drayage business heretofore operated by the Lawrence Company in Alameda County. In consideration for these rights and privileges the Haslett Company will pay \$30,000.00 per annum, payable in monthly installments of \$2,500.00, subject to adjustment as the net revenue from the operation of said Alameda County business falls below or exceeds \$2,500.00 monthly.

Through the proposed transaction Haslett Company will be given possession of the following warehouses:

NAME OF WAREHOUSE	LOCATION	FLOOR SPACE IN SQUARE FEET
Standard Warehouse	5th & Kirkham Sts., Oakland	67,500
East End Warehouse	Foot of 22nd Ave., Oakland	57,760
Gibson Terminal	Water & Webster Sts., Oakland	123,000
Lawrence #19	2nd & Brannan Sts., San Francisco	1,480 104,030- NFM
Caldwell Warehouse	2nd & Brannan Streets, San Francisco	63,770
Manufacturers' Agents Building	200 Davis Street, San Francisco	60,000

With the exception of the Gibson Terminal the warehouses have been operated by the Lawrence Company prior to the effective date of Section 50-1/2 of the Public Utilities Act. By Decision No. 21214 dated June 10, 1929, Application No. 15543, (Vol. 33, Opinions and Orders of the Railroad Commission of California, page 170) the Commission granted the Lawrence Company a certificate of public convenience and necessity to operate a cold storage warehouse business in the City of Oakland at Water and Webster Streets (Gibson Terminal).

In view of the fact that the Haslett Company has at this time no right to operate warehouses in Oakland, and is by this transaction adding more than 50,000 square feet of warehouse space to its San Francisco warehouse space, it is asking for a certificate of public convenience and necessity to engage in the warehouse business in Oakland and enlarge its operations in San Francisco.

While Haslett Warehouse Company asks for a certificate of public convenience and necessity to operate warehouses in Oakland and to add warehouse space in San Francisco, it does not appear to be its intention at this time to acquire any additional warehouse facilities in addition to those to be acquired from Lawrence Warehouse Company under the agreement of December 29, 1931. On this point the record containing the testimony of J.W. Howell, secretary of the Haslett Warehouse Company, reads as follows:

"EXAMINER FANKHAUSER: Let me ask you this question: Supposing this agreement were entered into, and two years hence it were set aside, would the Haslett Warehouse Company, under those conditions, maintain it had an operative right in Oakland?"

MR. THELEN: I will have to ask Mr. Howell to answer that question. I represent both parties here, and I want to be very careful in that the witnesses representing each party will have to answer any questions applying definitely to that party.

DIRECT EXAMINATION

MR. THELEN: Q. Do you understand the question, Mr. Howell?
A. It was not our intention to acquire any greater rights than the contract would give us. I mean by that we had no intention of extending our operations beyond those already covered by the Lawrence Warehouse Company. I believe the way the contract is drawn, there is a cancellation feature covering the Oakland business which would, according to the contract terms, permit us to continue in business over there even though the Lawrence might again begin over, or continue on where they had left off. I don't think that would be our intention, and I have forgotten the precise reason that was put in. It was some reason serving our mutual interests. But I believe we agreed to continue on one leasehold we had over there. As a practical matter I doubt if we would ever continue over there if the Lawrence reassumed business again. At any rate, we did not expect to extend our operations beyond those now covered by the Lawrence.

EXAMINER FANKHAUSER: Q. Well, would this be a fair conclusion to make from your statement, that in the event this contract is cancelled Haslett would withdraw from the warehouse business in Oakland?

A. I would say now 'Yes' it would be a fair statement to make. I don't believe there is room for the two of us, and I don't think any possible change in affairs would occur which would be worth our while to try to continue if the contract were cancelled and Lawrence continued again over there."

It might be said further that no showing was made of any necessity to increase the public warehouse space in San Francisco and Oakland and the certificate of public convenience and necessity to be granted herein to Haslett Warehouse Company will permit it to add to its public warehouse facilities only such space as it acquires from Lawrence Warehouse Company, it being understood that with the granting of such certificate the right of Lawrence Warehouse Company to operate a public utility warehouse business in San Francisco and Alameda Counties will be restricted or limited to the Drumm Street Warehouse it now operates, unless hereafter it is authorized to increase its space.

The \$40,000.00 which the Haslett Company has agreed to pay the Lawrence Company for warehouse equipment, trucks and other personal property is payable in annual installments of \$5,000.00, with interest on the decreasing balances at the rate of five percent per annum. The purchaser is given the privilege within the first year of the agreement to pay the unpaid balance of said \$40,000.00 by the issue at par of its five percent cumulative preferred stock. The stock is to be preferred as to assets and as to dividends, is to constitute the senior security of the Haslett Company and to be callable at par. It shall have no voting power except when dividends thereon are not paid for seven consecutive quarterly annual periods. At this time the Haslett Company does not ask to issue any of the stock.

The Haslett Company has further agreed to pay in cash monthly amounts equivalent to those being amortized by the Lawrence Company on account of improvements made by the Lawrence Company to leased properties. The total unamortized balance at this time is stated at \$14,909.89. By Decision No. 24489 dated February 15, 1932, in Case No. 3016, the Commission found as a fact that the Lawrence Company on May 1, 1917 and continuously thereafter was, and is, operating a common carrier trucking service between the termini of Oakland, Emeryville, Albany, Piedmont, Berkeley and Alameda, and ordered that said Lawrence Warehouse Company in the alternative either discontinue its common carrier trucking service between the termini of Oakland, Emeryville, Albany, Piedmont, Berkeley and Alameda or file with this Commission its rates, rules and regulations covering such service, within thirty days after the date of this order and in other respects comply with the provisions of the Auto Stage and Truck Transportation Act. The time for the filing of said tariffs was extended and the same have not yet been filed. However, by letter addressed to the Commission under date of April 12, Lawrence Warehouse Company states that the necessary tariffs are in the process of preparation and will be filed in the near future.

In the same decision the Commission found as a fact that the Lawrence Company in the solicitation of freight service from San Fran-

cisco to the various East Bay cities, mentioned in the Commission's decision, and in the performance of said service from East Bay cities to San Francisco, is acting as an express corporation within the scope of Section 2(k) of the Public Utilities Act, and ordered the Lawrence Company in the alternative to either discontinue its present trans-bay express service or file with the Commission its rates, rules and regulations covering such express service within thirty days from the date of this order and in all other respects comply with the provisions of the Public Utilities Act. The said express tariffs were duly filed on April 12, 1932, effective April 12, 1932.

It should be understood that whatever operative rights the Haslett Company may acquire by virtue of the agreement of December 29, 1931, and this decision, will be acquired subject to the terms and conditions of the Commission's order in Case No. 3016 and to such other terms and conditions as the Commission may from time to time prescribe. By letter addressed to the Commission under date of April 12, 1932, Haslett Warehouse Company manifested an intention to fully comply with the requirements of Decision No. 24489/^{issued}in Case No. 3016.

It appears from the testimony herein that the proposed plan of applicants should result in decreased operating costs and in better service to the public. Therefore, this application will be granted subject to the provisions of the order herein. The order will also authorize Lawrence Warehouse Company to transfer its express rights and business to Haslett Warehouse Company. It should be noted, however, that the agreement of December 29, 1931 calling for payments for personal property in the amount of \$40,000.00 in annual installments of \$5,000.00 is, in our opinion, an evidence of indebtedness coming within the meaning of Section 52-b of the Public Utilities Act, and requiring the payment of the fee prescribed by Section 57 of the Public Utilities Act.

In making this order we wish to place the purchaser of the operative rights upon notice that such 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 impart to the holder a full or partial monopoly of a class of business over a particular route. This monopoly feature can be changed or destroyed at any time by the state which is not in any respect limited in the number of rights it may give.

O R D E R

Lawrence Warehouse Company and Haslett Warehouse Company having applied to the Railroad Commission for an order, as indicated in the foregoing opinion, a public hearing having been held before Examiner Fankhauser and the Railroad Commission being of the opinion that the application should be granted, as herein provided, therefore,

IT IS HEREBY ORDERED, that Lawrence Warehouse Company and Haslett Warehouse Company be, and they are hereby, authorized to execute and enter into an agreement substantially in the same form as that dated December 29, 1931 and filed in this proceeding as Exhibit "A".

IT IS HEREBY FURTHER ORDERED, that Lawrence Warehouse Company be, and it hereby is, authorized to sell to Haslett Warehouse Company the equipment and personal property set forth in Exhibit "B" filed in this proceeding; to transfer to Haslett Warehouse Company its operative rights to engage as a transportation company in the operation of motor trucks between points in the East Bay cities, and its rights to engage in an express business, as recognized by Decision No. 24489 dated February 15, 1932, in Case No. 3016, and subject to the terms of said decision, as amended; and the certificate of public convenience and necessity, permitting it to operate a cold storage warehouse in the City of Oakland at Water and Webster Streets, granted by Decision No. 21214 dated June 10, 1929.

IT IS HEREBY FURTHER ORDERED, that Lawrence Warehouse Company be, and it hereby is, authorized to transfer and assign to Haslett Warehouse

Company the right to occupy its warehouses which are demised under certain leases referred to in the said agreement of December 29, 1931.

THE RAILROAD COMMISSION HEREBY DECLARES that present and future public convenience and necessity require, and will require, the operation by Haslett Warehouse Company as a public utility warehouseman of all the warehouses and properties referred to in said agreement of December 29, 1931; therefore,

IT IS HEREBY FURTHER ORDERED, that a certificate of public convenience and necessity be, and it hereby is, granted to Haslett Warehouse Company to operate and conduct a public utility warehouse business in the City of Oakland and in the City and County of San Francisco in the premises referred to in said agreement of December 29, 1931 or in other premises of approximately the same dimensions in the event it abandons the use of any of the premises referred to in said agreement of December 29, 1931, provided that this certificate insofar as it authorizes Haslett Warehouse Company to engage in a public utility warehouse business in the City of Oakland, and enlarge its operations and service in the City and County of San Francisco, shall remain in effect only during such time as the said agreement of December 29, 1931 shall remain in effect, except that upon the termination of the said agreement of December 29, 1931, the certificate granted by Decision No. 21214 dated June 10, 1929 shall remain in the possession of Haslett Warehouse Company, if it acquires the same under the authority herein granted.

IT IS HEREBY FURTHER ORDERED, that the authority herein granted is subject to the following conditions:-

1. Lawrence Warehouse Company and Haslett Warehouse Company shall within thirty(30) days from the date of the transfer of the rights and properties as herein authorized, join in common supplement to the tariffs now on file in the name of Lawrence Warehouse Company, said Lawrence Warehouse Company on the one hand withdrawing

and Haslett Warehouse Company on the other hand adopting as its own such tariffs and all respective supplements thereto.

2. The rights and privileges herein authorized to be transferred may not hereafter be sold, leased, transferred nor assigned, nor service thereunder discontinued, unless the written consent of the Railroad Commission has first been secured.
3. No vehicle may be operated by Haslett Warehouse Company unless such vehicle is owned by said company or is leased by it under a contract or agreement on a basis satisfactory to the Commission.
4. The consideration which Haslett Warehouse Company has agreed to pay for the aforesaid properties or for their use, shall not be urged before this Commission as establishing the value of said properties or any other properties of the parties to the said agreement of December 29, 1931, for the purpose of fixing rates, of issuing securities or of determining charges to warehouse property or equipment accounts.
5. Within thirty(30) days after acquiring any of the properties herein authorized to be transferred, Haslett Warehouse Company shall file with the Commission a statement containing a general description of the properties/^{so}acquired, and showing the amount paid therefor.
6. The authority herein granted will become effective twenty (20) days from the date hereof, provided that Haslett Warehouse Company has paid the fee relating to the issue

and execution of evidence of indebtedness, as provided
under Section 57 of the Public Utilities Act.

DATED at San Francisco, California, this 18th day of April,
~~1932~~

1932.

C. J. Leamy
Leon Whipple
W. J. Cunn
V. B. Lyman
Fred G. Stewart
Commissioners.

See \$40 ⁰⁰/₁₀₀

RAILROAD COMMISSION
STATE OF CALIFORNIA

APR 15 1932

[Signature]

SECRETARY

See \$ 23531