

LEM

Decision No. 24931

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

In the Matter of the Application of
H.P.HOLMES,
surviving partner, and HOLMES EXPRESS,
a corporation, for an order authorizing
the sale and assignment of certain oper-
ative rights and other property.

}
} Application No. 18229

In the Matter of the Application of
HOLMES EXPRESS,
a corporation, for an order authorizing
the issue of capital stock.

}
} Application No. 18230.

Thelen & Marris, for applicants.

BY THE COMMISSION:

OPINION AND ORDER

In the above entitled matters the Railroad Commission is asked to make an order authorizing H. P. Holmes, surviving partner of the partnership of H. E. and H. P. Holmes, also doing business under the name of Holmes Express, to sell auto truck operative rights and other properties to Holmes Express, a corporation, and authorizing Holmes Express to issue \$1,000.00 of stock, and to assume the payment of outstanding indebtedness.

The operative rights to be transferred were created by Decision No. 17857, dated January 10, 1927, in Application No. 12354, and permit the operation of an automotive truck service for the transportation of freight as a common carrier between San Francisco, Robertsville, San Jose, Los Gatos, and intermediate points of South San Francisco, Daly City, Colma, Holy Cross, Baden, San Bruno, Lomita

Park, Millbrae, Broadway, Burlingame, San Mateo, Beresford, Belmont, Bel Monti Country Club, San Carlos, Redwood City, Atherton, Menlo Park, Stanford University, Palo Alto, Los Altos, Mayfield, Mountain View, Sunnyvale, Cupertino, Santa Clara, Meridian and Saratoga.

The physical properties included in the transaction consist of eighteen trucks, eight trailers, office equipment, tools, fixtures, etc. The estimated depreciated cost of the trucks and trailers is stated at \$12,650.00 and the value of the other assets at \$3,434.33, as of May 31, 1932, making a total of \$16,084.33, as follows:-

Trucks and trailers	\$12,650.00
Office equipment	286.72
Tools and fixtures.....	186.37
Cash on hand	440.73
Cash in bank	223.20
Accounts receivable.....	2,297.31
Total.....	<u>\$16,084.33</u>

The consideration proposed to be paid for the properties by Holmes Express is the sum of \$1,000.00 in cash plus the assumption of indebtedness of \$18,773.09 as follows:-

Consolidated Package Service Co.....	\$ 36.44
First National Bank of San Jose.....	4,910.00
H. P. Holmes, Personal.....	2,365.45
P. W. Holmes, Personal.....	8,049.35
A. B. Holmes, Personal.....	2,000.00
Shell Oil Company	339.57
Accounts payable	1,072.28
Total.....	<u>\$18,773.09</u>

The corporation proposes to sell \$1,000.00 of stock to H. P. Holmes and P. W. Holmes at par for cash to obtain the funds to make the \$1,000.00 cash payment.

The Commission has given consideration to these applications and while it believes that the transfer of the properties and rights to the corporation should be authorized, it does not look with favor

upon the issue of \$1,000.00 of stock and the assumption of indebtedness of \$18,773.09, a total of \$19,773.09, in connection with the acquisition by the corporation of properties having a reported cost or value of \$16,084.33. The order herein accordingly will authorize the issue of \$1,000.00 of stock and the assumption of the payment of indebtedness in an amount not exceeding \$15,084.33.

In passing on these applications we wish to place the purchaser upon notice that 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 is of the opinion that these are not matters in which public hearings are necessary, that the money, property or labor to be procured or paid for through the issue of \$1,000.00 of stock is reasonably required for the purpose specified herein, which purpose is not, in whole or in part, reasonably chargeable to operating expenses or to income, and that the applications should be granted, as herein provided, therefore,

IT IS HEREBY ORDERED, that H. P. Holmes, surviving partner, be, and he hereby is, authorized to sell and transfer to Holmes Express, a corporation, the operative rights and properties referred to herein.

IT IS HEREBY FURTHER ORDERED, that Holmes Express be, and it hereby is, authorized to issue and sell at par for cash on or before December 31, 1932, \$1,000.00 of its common capital stock and to use the proceeds to pay in part for the operative rights and properties herein authorized to be transferred.

IT IS HEREBY FURTHER ORDERED, that Holmes Express be, and it hereby is, authorized to assume the payment of indebtedness in an amount not exceeding \$15,084.33 in part payment for the operative rights and properties herein authorized to be transferred.

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

1. The consideration to be paid for the property herein authorized to be transferred shall never be urged before this Commission or any other rate fixing body as a measure of value of said property for rate fixing, or any purpose other than the transfer herein authorized.
2. Applicant H. P. Holmes, surviving partner, shall immediately unite with applicant Holmes Express, a corporation, in common supplement to the tariffs on file with the Commission covering service given under certificate herein authorized to be transferred, applicant H. P. Holmes, surviving partner, on the one hand withdrawing and applicant Holmes Express on the other hand accepting and establishing such tariffs and all effective supplements thereto.
3. The rights and privileges herein authorized may not be sold, leased, transferred nor assigned, nor service thereunder discontinued, unless the written consent of the Railroad Commission to such sale, lease, transfer, assignment or discontinuance has first been secured.
4. No vehicle may be operated by applicant Holmes Express unless such vehicle is owned by said applicant or is leased by him under a contract or agreement on a basis satisfactory to the Railroad Commission.

5. Holmes Express shall keep such record of the issue of the stock herein authorized and of the disposition of the proceeds as will enable it to file within thirty(30) days thereafter 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 will become effective upon the date hereof.

DATED at San Francisco, California, this 27th day of

June, 1932.

Clarence
Leon Whitney
W. A. C.
W. B. Lewis
Fred G. Stevens
Commissioners.