

Decision No. 25681

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of FRANK CHAPMAN WILLSON, WILLIAM QUIMBY WRIGHT and GODFRED THUESSEN, as trustees, associates doing business under the firm name and style of BAY SHORE FREIGHT LINES and BAY SHORE FREIGHT LINES INC., a corporation, organized and existing under the laws of the State of California, to transfer from said trustees to said corporation all of the property and assets including the permit of public convenience and necessity heretofore granted to said trustees by the Railroad Commission of the State of California, held in the name of said trustees for the operation and transportation business of said Bay Shore Freight Lines; and application to issue the capital stock of said Bay Shore Freight Lines Inc. to the persons entitled thereto.

ORIGINAL

Application No. 18687

Rea and Caldwell, for applicants.

BY THE COMMISSION:

O P I N I O N

In this application the Railroad Commission is asked to make an order authorizing Frank Chapman Willson, William Quimby Wright and Godfred Thuesen, as trustees, associates doing business under the firm name and style of Bay Shore Freight Lines, to transfer rights and properties to Bay Shore Freight Lines, Inc., a corporation, and authorizing the corporation to issue 2,500 shares of common stock without par value.

Frank Chapman Willson, William Quimby Wright and Godfred Thuesen, as trustees, are engaged in the business of transporting freight by motor boats between San Francisco, Oakland and Alameda and Port South Shore, Santa Clara County, and by auto trucks between Port

South Shore and Gilroy, San Jose, Los Gatos, Saratoga and intermediate points.

The service performed by the present operators formerly was rendered by South Shore Port Company, a corporation, which was, however, adjudged a bankrupt by the District Court of the United States for the Northern District of California on March 24, 1927. Thereafter, under authority granted by Decision No. 18821, dated September 20, 1927, A. A. Peters, as trustee in bankruptcy, transferred the properties formerly held by South Shore Port Company to the three individuals, applicants herein, as trustees for the unsecured creditors of the bankrupt corporation. (See Decision No. 18821, Vol.30, Opinions and Orders of the Railroad Commission of California, Page 395).

The application shows that since 1927 the three trustees have held the property in trust for certain persons, representing former creditors of South Shore Port Company, whose names and the amount of whose investments in Bay Shore Freight Lines are as follows:

<u>NAME</u>	<u>AMOUNT</u>
Atlas Imperial Engine Co.	\$ 3,882.47
W. J. Onway	846.86
Bruer-Seimer Co.	1,251.53
F. L. Emerson	1,540.16
Lewis A. Gould	1,695.25
J. H. Hartley	3,729.95
Martha K. Jagels	12,001.90
Godfred Thuesen	19,799.95
J. A. Vogel	2,351.18
F. C. Willson	37,092.49
W. Q. Wright	14,605.56
O. W. Whaley	41,376.65
Joseph Koos	4,713.07
Ernest W. Carlson	711.78-2/3
Harry E. Nicholson	711.78-2/3
Charles Chelman	711.78-2/3
Total.....	<u>\$147,022.38</u>

It now is planned to cause the transfer of the properties from the three trustees to a new corporation, Bay Shore Freight Lines, Inc., and the issue by the corporation of all of its authorized capital stock, namely 2,500 shares without par value, to the above named persons to be distributed to each in proportion to the amount of his investment. It appears that transfer will be made free and clear of encumbrances and indebtedness.

In making this application, applicants have filed a financial report showing assets and liabilities of Bay Shore Freight Lines as of December 31, 1932, as follows:

#### A S S E T S

<u>Property and equipment:</u>	
Intangibles .....	\$ 7,849.96
Motor ships .....	55,685.96
Trucks and trailers .....	30,460.18
Solicitors cars .....	162.00
Wharves, docks, terminals.....	78,019.47
Office equipment .....	633.45
Total.....	\$ 172,811.02
Accounts receivable .....	12,245.70
Cash .....	5,981.57
Total assets.....	<u>\$ 191,038.29</u>

#### L I A B I L I T I E S

Partners' account .....	\$ 147,022.38
Accounts payable .....	12,143.78
Payroll payable .....	1,606.60
Reserve for depreciation .....	33,288.88
Surplus- debit balance .....	3,023.35
Total liabilities.....	<u>\$ 191,038.29</u>

Among the properties to be transferred are two certificates of public convenience and necessity heretofore granted by this Commission. By Decision No. 12648, dated September 24, 1923, the Commission granted to one J. J. Hubert a certificate to operate an automobile truck line as a common carrier of freight between Port South Shore and Palo Alto, Mayfield, Mountain View, Sunnyvale, Santa

Clara, San Jose, Cupertino, Saratoga, Los Gatos, Campbell, Alviso, Coyote, Morgan Hill, San Martin and Gilroy over all roads and highways and for a distance of two miles on either side of roads or highways traversed in reaching such communities. Thereafter by Decision No. 13189, dated February 20, 1924, J. J. Hubert was authorized to transfer the certificate to South Shore Port Company.

The other certificate was obtained by Decision No. 14923, dated May 14, 1925, which authorized South Shore Port Company to establish service by vessels and auto trucks for the transportation of property between Oakland and Alameda, on the one hand, and Port South Shore and the other points in Santa Clara County on the other hand.

The certificates thus obtained by South Shore Port Company, as stated herein, passed into the possession of the three trustees, present applicants, under the authority granted by Decision No. 18821, dated September 20, 1927.

For the purpose of this proceeding, we do not believe it necessary to make an analysis of the transferors' accounts, and while the order herein will authorize the transfer of the properties in accordance with the application, such order is not to be construed as an approval by the Commission of the amounts set forth in the balance sheet for the purpose of fixing rates.

In making this order, we wish to place Bay Shore Freight Lines, Inc. 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 by the state at any

time, which is not in any respect limited to the number of rights which may be given.

ORDER

Application having been made to the Railroad Commission for an order authorizing the transfer of properties and the issue of stock, and the Commission being of the opinion that this is not a matter in which a public hearing is necessary, that the application should be granted, as herein provided, and that the money, property or labor to be procured or paid for through the issue of the stock 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, therefore,

IT IS HEREBY ORDERED as follows:

1. Frank Chapman Willson, William Quimby Wright and Godfred Thuesen, as trustees, associates doing business under the firm name and style of Bay Shore Freight Lines, may transfer to Bay Shore Freight Lines, Inc., on or before April 30, 1933, the properties of Bay Shore Freight Lines, including the certificates of public convenience and necessity held by them, property, equipment and other assets, such transfer to be made free and clear of liens and encumbrances.
2. Bay Shore Freight Lines, Inc., a corporation, may issue, on or before April 30, 1933, not exceeding 2,500 shares of its common capital stock without par value, in full payment for the properties and assets to be acquired under the authority herein granted.
3. The authority herein granted is subject to the following conditions:

(a) The consideration to be paid for the property herein authorized to be transferred shall never be urged before this Commission or any other public body as a measure of the value of said property for the purpose of fixing rates.

(b) Bay Shore Freight Lines shall immediately unite with Bay Shore Freight Lines, Inc. in common supplement, to be filed in triplicate, to the tariffs on file with the Commission in the name of Bay Shore Freight Lines, the former on the one hand withdrawing, and the latter on the other hand accepting and establishing such tariffs and all effective supplements thereto.

(c) Bay Shore Freight Lines shall immediately withdraw time schedules filed in its name with the Railroad Commission and Bay Shore Freight Lines, Inc. shall immediately file, in duplicate, in its own name, time schedules covering service heretofore given by Bay Shore Freight Lines, which time schedules shall be identical with the time schedules now on file with the Railroad Commission in the name of Bay Shore Freight Lines, or time schedules satisfactory to the Railroad Commission.

(d) The rights and privileges herein authorized to be transferred 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.

(e) No auto truck may be operated by Bay Shore Freight Lines, Inc., unless such vehicle is owned by said applicant or is leased by it under a contract or agreement on a basis satisfactory to the Railroad Commission.

(f) Bay Shore Freight Lines, Inc. shall keep such record of the issue of the stock herein authorized 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.

(g) The authority herein granted will become effective upon the date hereof.

DATED at San Francisco, California, this 14<sup>th</sup> day of  
FEBRUARY, 1933.

W. A. Linn

W. B. Harwin

W. A. Linn

W. B. Harwin

W. A. Linn

Commissioners.