

Decision No. 25744

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of WILLIAM BOLT, doing business under the name and style of KELLOGG EXPRESS COMPANY to transfer to KELLOGG EXPRESS AND DRAYING CO., a corporation, an operative right for the transportation of property by motor trucks, as a common carrier, between San Francisco, Alameda, Albany, Berkeley, Emeryville, Oakland and Piedmont, and adjacent points, together with certain property and equipment used in conducting said service, and thereupon to abandon said service; the application of KELLOGG EXPRESS AND DRAYING CO., a corporation, to acquire said operative right and property from said WILLIAM BOLT and to issue its capital stock in exchange therefor; and the application of SAN FRANCISCO WAREHOUSE COMPANY, a corporation, engaged in business as a warehouseman to purchase and acquire such capital stock of KELLOGG EXPRESS AND DRAYING CO. issued to said WILLIAM BOLT for said operative right and property.

ORIGINAL

Application No. 18745

Oliver Dibble and Frank Austin,
for applicants.

BY THE COMMISSION:

O P I N I O N

In the above entitled matter the Railroad Commission is asked to make an order authorizing:

1. William Bolt, doing business under the firm name and style of Kellogg Express Company, to transfer his operative right, equipment and office furniture and fixtures to Kellogg Express and Draying Co., a corporation, and to discontinue his public utility operations upon such transfer, and
2. Kellogg Express and Draying Co. to issue \$10,000.00 of its common capital stock in payment, and
3. San Francisco Warehouse Company to acquire the

\$10,000.00 of stock of Kellogg Express and Draying Co.

The application shows that William Bolt was, on and prior to May 1, 1917 and ever since has been, engaged in the operation of motor trucks for the transportation of property, for compensation, as a common carrier, over the public highways between San Francisco, Alameda, Albany, Berkeley, Emeryville, Oakland and Piedmond and adjacent points. The right permitting such business was established by reason of operations prior to and continuously since May 1, 1917, the effective date of the Auto Stage and Truck Transportation Act.

As of December 31, 1932, William Bolt reports his assets and liabilities as follows:

ASSETS

Plant and equipment:		
Land and buildings.....	\$35,674.92	
Revenue freight cars.....	45,688.78	
Furniture.....	2,007.49	
Miscellaneous.....	226.97	\$83,598.16
Cash.....		191.83
Accounts receivable.....		<u>10,314.46</u>
Total assets.....		<u>\$94,104.45</u>

LIABILITIES

Notes payable.....	\$11,290.80	
Accounts payable.....	181.65	
Reserve for bad debts.....	600.00	
Reserve for accrued depreciation.....	51,311.75	
Proprietor's account.....	30,720.25	<u>30,720.25</u>
Total liabilities.....		<u>\$94,104.45</u>

It is reported that William Bolt and Kellogg Express and Draying Co. have entered into an agreement whereby William Bolt will cause to be transferred to the corporation, free of liabilities, his operative right and all the motor trucks, equipment and personal property, including office furniture and fixtures, used in the operation of his transportation business. It appears that

the land and buildings will not be included in the properties transferred.

A copy of the agreement dated March 2, 1933, between the two parties, is filed with the application as Exhibit "D". Among other things, it is provided that Kellogg Express and Draying Co. will lease from William Bolt, for a term of five years, the property known as 201 Second Street, Oakland, at a monthly rental of \$225.00.

The consideration specified in the agreement is the sum of \$10,000.00, payable in 100 shares of common stock of the purchaser of the aggregate par value of \$10,000.00. In support of the price, applicants have filed an inventory (Exhibit "E") of the property and equipment to be transferred, showing seventeen trucks and two trailers with an original cost of \$42,479.00, and an estimated present value of \$11,275.00, and miscellaneous office furniture and equipment of a present value of \$1,806.74. The estimated present value of all the tangible properties to be transferred is stated at \$13,081.74.

The application shows that arrangements have been made whereby San Francisco Warehouse Company will acquire from William Bolt the stock of Kellogg Express and Draying Co. to be issued to him for his properties for the sum of \$10,000.00. It thus appears that San Francisco Warehouse Company through stock ownership will control the operations and service now being given by William Bolt. It is reported that the reason for handling the business in this manner is to enable San Francisco Warehouse Company to keep the transportation service separate and distinct from its present warehouse business in San Francisco.

We have no objection to the program outlined in this application. In passing on the matter, however, we wish to place the purchaser, Kellogg Express and Draying Co. upon notice that an

operating right does not constitute a class of property which should be capitalized or used as an element of value in determining reasonable rates. Aside from its purely permissive aspect, it extends 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.

ORDER

Application having been made to the Railroad Commission for an order authorizing the transfer of certain properties by William Bolt, the issue of \$10,000.00 of stock by Kellogg Express and Draying Co. and the acquisition of such stock by San Francisco Warehouse Company, and the Railroad 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 such 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,

IT IS HEREBY ORDERED that -

1. William Bolt, doing business under the firm name and style of Kellogg Express Company, may transfer to Kellogg Express and Draying Co., a corporation, free of liabilities, the operative right and properties referred to in the foregoing opinion, and upon the acquisition of the same by Kellogg Express and Draying Co. may discontinue his public utility operations; and
2. Kellogg Express and Draying Co. may acquire the

operative right and properties to be transferred by William Bolt, free of liabilities, and may issue in payment therefor \$10,000.00 par value of its common capital stock; and

3. San Francisco Warehouse Company may acquire and hold the \$10,000.00 of stock of Kellogg Express and Draying Co. herein authorized to be issued; and

4. 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 value of said property for rate fixing or any purpose other than the transfer herein authorized.

(b) William Bolt, doing business under the firm name and style of Kellogg Express Company, shall immediately unite with Kellogg Express and Draying Co. in common supplement, to be filed in triplicate, to the tariffs on file with the Commission in the name of Kellogg Express Company, 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) William Bolt, doing business under the firm name and style of Kellogg Express Company, shall immediately withdraw time schedules filed in his name with the Railroad Commission and Kellogg Express and Draying Co. shall immediately file, in duplicate, in its own name, time schedules covering service heretofore given by William Bolt, which time schedules shall be identical with the time schedules now on file with the Railroad Commission in the name of William Bolt, 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 Kellogg Express and Draying Co. 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) Kellogg Express and Draying Co. 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 fifteen (15) days after the date hereof.

DATED at San Francisco, California, this 20th day of March, 1933.

O. J. Leary
Leon Whitely
W. A. C.
M. B. Harris
W. H. ...

Commissioners.