

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

In the matter of the application of MARIN COUNTY ELECTRIC RAILWAYS for a certificate of public convenience and necessity for the construction and operation of a street railway system in Mill Valley and for authority to issue stocks and bonds.

ORIGINAL

Application No. 947.

LOVELAND, Commissioner.

THIRD SUPPLEMENTAL OPINION

On March 26, 1914, this Commission issued an Order in the above entitled matter and on April 7, 1914 issued a Supplemental Order thereon. By the terms of these orders, Marin County Electric Railways was given authority to operate a street railway line in Mill Valley and was given further authority to sell \$67,000.00 of stock under certain conditions for the purpose of obtaining funds to construct its railway line.

Among the purposes for which it was directed that stock might be sold were the following:-

State incorporation fee	\$ 76.25
Cost of franchise	240.95
Printing, stock certificates, etc.	<u>100.00</u>
Total	<u>\$417.20</u>

It was provided further, as a part of Section 7 of the Order of March 26, 1914 in the matter herein, that the sum of \$2,500.00 to be derived from the sale of stock might be paid in cash to Mr. W. Wesley Hicks to reimburse him for expenditures made on behalf of the company.

Said Order of March 26, 1914 provided also that construction work should not begin upon the railway until the applicant should have collected from stock subscriptions the sum of

\$35,000.00 and should have received a Supplemental Order from this Commission authorizing it to begin construction work.

Section (9) of the Order of March 26th provided: "Pending the sale of said \$35,000.00 of stock, no expenditure and no obligation shall be incurred chargeable to Marin County Electric Railways."

Application is now made on behalf of Marin County Electric Railways for authority as follows:-

(1) To issue four shares of its capital stock at par as payment for the incorporation fee, cost of franchises and printing of stock certificates, etc., as noted above, in the sum of \$417.20.

(2) To issue to Mr. W. Wesley Hicks twenty-five shares of its capital stock as full payment in lieu of the sum of \$2,500.00 which was to have been paid in cash for expenditures on behalf of the applicant.

(3) To incur additional expenditures in the sum of \$25.00 per week for a solicitor to obtain stock subscriptions in Mill Valley for a period of three months, and to employ a stenographer at \$12.00 per week.

Applicant's first request to issue four shares of its capital stock at par value to cover the expenditures in the sum of \$417.20, I believe, should be denied at this time. These preliminary expenses should be met by the promoters of this project who, of course, would be entitled to reimbursement under the terms of the Commission's Order if they succeed in their enterprise, when they meet the conditions imposed in that Order.

The second request, that the applicant be authorized to issue twenty-five shares to Mr. Hicks in lieu of the \$2,500.00 proposed to be paid to him in cash, should be granted, but only on the condition that this stock shall be delivered to Mr. Hicks after the street railway system shall have been entirely com-

pleted, including the Throckmorton Avenue branch and the so-called High School branch.

The request of the applicant that it be allowed to employ a solicitor and a stenographer would be in accordance with this Commission's original Order in this matter only in the event that the financial responsibility therefor were assumed by some agency other than the applicant. The Order provides that, pending the sale of \$35,000.00 of stock, no expenditure and no obligation shall be incurred chargeable to Marin County Electric Railways.

This condition was fixed in the Order for the purpose of imposing upon the projectors of this enterprise the responsibility for its successful organization.

This Commission has heretofore found that the promoter of a public utility enterprise is entitled to liberal reward for his service. If the promoter is entitled to his profit, he must be willing to bear his responsibility. The promoter can not escape the rule that there is no profit without risk. He can not play safe for himself and transfer the risk to the future stockholders. He must be at least willing to back his faith to the meager measure of underwriting the organization of the corporation he creates.

The Order in this case required that \$35,000.00 in stock should be sold before construction work should begin. It was originally proposed to use a portion of the funds received from the sale of this stock to pay the salesmen and others employed in the selling campaign. If the applicant did not succeed in selling the amount of stock required, those persons who may have been induced to purchase shares would have suffered the heaviest loss. This risk should not rest with the prospective purchasers of stock. It belongs to the promoters. It may often happen that a promoter risks nothing and if the stock sale is

unsuccessful, the financial loss falls solely upon those whom his efforts have persuaded to invest. It is proper that the expense of preliminary organization and of stock selling should be borne at the beginning by the promoter. If his enterprise fails, it is his loss. If he succeeds, he is then entitled to reimbursement either in stock or in cash from the company's funds. For that reason, I believe all of the expense incident to the stock selling campaign should at this time rest upon the promoters of this enterprise. If they fail to comply with the requirements of the Commission's Order, theirs will be the loss; if they succeed, they will be entitled to reimbursement in the form of stock, as set out in the Commission's Order.

The Order provided that \$3,000.00 in stock should be issued to Mr. W. Wesley Hicks in addition to \$2,500.00 payable in cash. The authorization of an issue of \$3,000.00 in stock to Mr. Hicks for promotion services was based upon the belief that a certain portion of that stock was to be compensation for the sale of the Marin County Electric Railways' securities.

I, therefore, recommend that the third feature of this application, to expend the applicant's moneys for a stock solicitor and stenographer to be employed in a stock selling campaign, be denied.

I, therefore, submit the following form of Order:-

ORDER

Marin County Electric Railways having applied to this Commission for a modification of its Order upon Application No. 947 of March 26, 1914, so as to permit applicant:

(1) To issue four shares of its capital stock at par as payment for preliminary incorporation expenses in the amount of \$417.20;

(2) To issue to Mr. W. Wesley Hicks twenty-five shares of its capital stock as full payment in lieu of the \$2,500.00

which was to have been paid in cash for expenditures on behalf of the applicant;

(3) To incur additional expenditures in the sum of \$25.00 per week for a solicitor to obtain stock subscriptions in Mill Valley for a period of three months and to employ a stenographer at \$12.00 per week;

IT IS HEREBY ORDERED: That the application of Marin County Electric Railways to issue four shares of its capital stock at par as payment for preliminary incorporation expenses, etc., in the sum of \$417.20, be denied at this time without prejudice to the right of applicant to re-apply, as stated in the foregoing Third Supplemental Opinion.

IT IS FURTHER ORDERED: That the application of Marin County Electric Railways to issue to Mr. W. Wesley Hicks twenty-five shares of its capital stock as full payment in lieu of the sum of \$2,500.00 which was to have been paid in cash for expenditures on behalf of the applicant, be granted, on the condition that this stock shall be delivered to Mr. Hicks upon a Supplemental Order from this Commission after the street railway system shall have been entirely completed, including the Throckmorton Avenue branch and the so-called High School branch.

IT IS FURTHER ORDERED: That the application of Marin County Electric Railways to incur additional expenditures in the sum of \$25.00 per week for a solicitor to obtain stock subscriptions and to employ a stenographer at \$12.00 per week, be denied for the reasons set forth in the preceding Third Supplemental Opinion.

The foregoing Third Supplemental Opinion and Order are hereby approved and ordered filed as the Third Supplemental Opin-

ion and Order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 25th
day of April, 1914.

John M. Egan
H. D. Loveland
Alfred G. ...
Max Thelen
Edwin C. Edgerton

Commissioners.