

Decision No. ✓

ORIGINAL

Decision No. 1886

BEFORE THE RAILROAD COMMISSION
OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
SAN RAFAEL AND SAN ANSELMO VALLEY)
RAILWAY COMPANY for an order author-)
izing S. J. Norton to assign and)
transfer certain street railroad)
franchises to said company, and of)
said railway company to issue)
stocks and bonds.)

Application
No. 770.

HEBLEN, Commissioner.

SUPPLEMENTAL OPINION

On November 11, 1913, this Commission made an order in this proceeding authorizing San Rafael and San Anselmo Valley Railway Company to issue \$55,000.00 par value of stock and \$45,000.00 face value of bonds upon certain specified conditions. One of those conditions provided that "all moneys secured from the sale of stock and bonds shall be deposited by San Rafael and San Anselmo Valley Railway Company in a bank or banks in Marin County, California, as trust funds, on the express condition that if the total sum of \$50,000.00 shall not be so deposited in all of said banks within one year from the date of this order, or such further time as the Railroad Commission may grant, said moneys shall be repaid to the persons who paid them, either in toto or diminished by their retable proportions of such small expenditures as the Railroad Commission in the meantime may have authorized." This condition was inserted in the order for the purpose of securing to purchasers of applicant's stock and bonds a return of their money in the event that the project was not carried through to completion. On September 24, 1914, the railway

company filed a petition with this Commission setting forth that it is impossible to sell enough stock and bonds to insure the successful completion and operation of the line, and requesting the Commission to hold a hearing to determine the proper disposition to be made of such moneys as have been collected from the sale of applicant's stock, and deposited in banks in accordance with the Commission's order. Applicant has obtained various subscriptions to its stock but has obtained no subscriptions to its bonds. In accordance with applicant's petition, the Commission held a hearing in San Rafael on October 12, 1914, and the matter is now ready for decision.

I shall first consider the amount of money collected by applicant and deposited in banks; second, the debts which applicant has incurred and whether they should be paid from this fund; and, finally, the manner in which the remainder of the fund shall be returned to the persons who paid their money into the fund.

Applicant has issued two calls upon the subscribers to its stock. The first call was for the payment of 10%, and the second for 20% of the par value of the stock subscribed. The moneys paid to applicant in response to these calls have been deposited in The First Bank of San Anselmo and The Marin County National Bank of San Rafael as follows:

The First Bank of San Anselmo

First call	\$1010.00	
Second "	<u>780.00</u>	
Total		\$1790.00

The Marin County National Bank of San Rafael

First call	\$1790.00	
Second "	<u>1330.00</u>	
Total		<u>3120.00</u>

Grand Total \$4910.00

This statement shows that applicant has collected \$4,910.00 from the sale of its stock. Allowance must be made

from this sum for the payment of such expenses as applicant has properly and justly incurred. The remainder must be returned to the stockholders in accordance with the Commission's order.

It is necessary now to determine the proper sum to be allowed applicant for the payment of bills rendered to it. The following bills have been presented:

1. S. J. Norton for cash advanced,-

Cost of San Rafael franchise	\$25.00	
" " Marin County "	25.00	
" " San Anselmo "	50.00	
Acknowledgments of franchise bonds	43.00	
Fee for Articles of Incorporation	76.25	
" on order of Railroad Commission	45.00	
Acknowledgment on order of R.R.C.	1.00	
Sign (painted)	5.00	
Typewriting applications	10.95	
Stamps	3.50	
Total		\$284.50

2. San Rafael Journal	137.00	
3. San Anselmo Herald	32.00	
4. Toccin Publishing Co.	594.50	
5. The Independent Publishing Co.	141.00	
6. Sausalito Publishing Co.	45.00	
7. Edward I. Butler	500.00	
8. Geo. L. Richardson	58.50	
9. Payot, Strafford & Kerr	6.50	
10. C. S. Whitaker	25.00	
Total		1539.50

11. S. J. Norton,-

Services as promoter and stock salesman October, 1912, to July, 1913, inclusive	1100.00	
Services in obtaining franchises	120.00	
Total		1220.00

Grand Total \$3044.00

I desire to give separate consideration to each of these bills to determine whether the expense represented thereby is a proper one, and, if so, whether the amount of the bill is proper. The first bill represents cash advanced by S. J. Norton, the promoter of this enterprise, for the various items there specified. These items include moneys paid to the cities of San Rafael and San Anselmo and to the County of Marin for franchises granted applicant to construct and operate a street railway system within their limits. The fees collectible by the Secretary of State upon the filing

of applicant's articles of incorporation, and by the Railroad Commission upon the making of its order authorizing the sale of bonds are also included. Certain moneys were also advanced to pay notaries' fees and for typewriting. Applicant also procured a large painted sign which was hung in front of its office in San Rafael. I believe no one will question the propriety of these expenses, and, as they appear to be not excessive, I recommend the payment in full of the bill of \$284.50 presented by S. J. Norton.

The San Rafael Journal presented a bill for \$137.00. This is made up of an item of \$75.00 for five publications of Ordinance No. 106 of the City of San Anselmo, this being applicant's franchise to operate its street railway in that city. Other items amounting to \$62.00 represent advertisements in the Journal and stationery purchased by applicant. S. E. Olmsted, proprietor of the Journal, testified at the hearing that the item of \$75.00 for publishing the franchise ordinance should be eliminated from this bill, as this item is covered by the bill of \$32.00 presented by the San Anselmo Herald, in which paper the publications were actually made by arrangement with the Journal management. With this revision, I believe these bills are proper and should be allowed. I accordingly recommend the payment of \$62.00 to The San Rafael Journal and \$52.00 to the San Anselmo Herald.

The Tocsin Publishing Company submitted a bill for \$594.50. This sum consists chiefly of items for publishing in the Marin County Tocsin, Ordinance No. 3 of the City of San Rafael and Ordinance No. 162 of the County of Marin, these being franchises granted to applicant. The remainder of the bill represents advertisements and stationery. Edward W. Netherton, manager of the Tocsin Publishing Company, has voluntarily agreed to accept one-half of this bill in full payment thereof. This is a very commendable attitude to display, and I recommend the payment of \$297.25

in settlement of the claim of the Tocsin Publishing Company.

Other creditors of applicant have expressed a willingness to reduce their claims to any amount suggested by the Commission. These creditors are M. F. Cochrane, manager of the Independent Publishing Company, which presented a bill of \$141.00 for publishing applicant's franchise and various advertisements in the San Rafael Independent, Edward I. Butler, who has presented a bill of \$500.00 for legal services rendered to applicant from the time this enterprise was first conceived, and George L. Richardson, who has a claim of \$58.50 for the preparation of certain engineering data and blue prints for the proposed road. All of these men, realizing that this enterprise has largely been a community enterprise, have stated that they are willing to bear a portion of the loss. They are willing to accept any amount suggested by the Commission in full payment of their claims. The Commission appreciates the public spirit of the men who make this offer. I recommend a reduction in these claims on the same basis as that of the Tocsin Publishing Company, and shall allow \$70.50 to the Independent Publishing Company, \$250.00 to Edward I. Butler and \$29.25 to George L. Richardson.

Payot, Stratford & Kerr have presented a claim of \$6.50 for a minute book purchased by applicant, Sausalito News Publishing Company a claim of \$45.00 for publishing the Marin County franchise, and C. S. Whitaker \$25.00 for services rendered as secretary of applicant and in typewriting the minutes of eight meetings of the board of directors. I am of the opinion that each of these claims is proper and reasonable in amount and I shall make allowance for their payment in full.

S. J. Norton has presented a bill amounting to \$1220.00 for services rendered in promoting the enterprise, selling stock, and obtaining franchises. I have given very careful consideration

to this item. When applicant first appeared before the Commission seeking authority to issue stock and bonds, Mr. Norton and others testified that this was a community enterprise. These men owned land in the district to be served by the road. It was not expected that the road would pay for a number of years. These land owners looked for their reward in the enhanced value of their lands, due to the construction of the road. In the order of the Commission authorizing applicant to issue stock and bonds, it was provided that certain sums might be paid to Mr. Norton for promotion services when \$50,000.00 had been collected from the sale of stock and bonds, and further sums when the railway was completed and in operation. The opinion of the Commission expressly stated, however, that "it does not seem reasonable that a promoter should receive his fee before he has demonstrated that his enterprise is successful and is of public service." Under all of these circumstances, I can not recommend the payment to Mr. Norton of any sum for promotion services. He, like others, hoped by the construction of this road to increase the value of land in which he is interested. He proceeded under the Commission's order which provided for promotion fees only in the event that the road was completed and put in operation. I can not escape the conclusion that, although Mr. Norton has expended considerable time and energy in promoting this road, he should not be compensated from moneys paid in by the stockholders on the express condition that if the enterprise were not successful the ~~max~~ moneys paid would be returned after paying such small expenses as, in the opinion of the Commission, were properly incurred. This is the chance Mr. Norton took in case the enterprise failed, as it has done. As already stated, however, Mr. Norton should be reimbursed for such moneys as were properly advanced by him for necessary expenses. This is taken care of in the \$284.50 for which allowance has been made.

These are all the bills which have been presented and, as revised, amount in all to \$1,102.00, which should be paid from the \$4,910.00 available. I shall now consider the manner of disposing of the remaining \$3,808.00. As already mentioned, the money on deposit represents two calls upon the stockholders. \$2,800.00 was obtained by the first call and \$2,110.00 by the second call. Provision is to be made for the payment of bills amounting to \$1,102.00. I believe that all of this amount should be paid from the \$2,800.00 collected on the first call, and that all moneys paid on the second call should be returned in full to the stockholders in the amounts in which the money was deposited. There is \$2,800 first-call money from which \$1,102.00 is to be taken to pay the bills allowed. There is \$1,790 first-call money on deposit in The Marin County National Bank of San Rafael. I accordingly recommend that all creditors be paid the amounts allowed them, from the first-call funds deposited in this bank. This will leave \$688.00 first-call funds on deposit in The Marin County Bank for distribution to the stockholders. In order to avoid confusion, this sum should be transferred to the First Bank of San Anselmo and added to the \$1,010.00 first-call funds already deposited there. This bank may then distribute the total sum of \$1,698.00 ratably to all stockholders who paid first-call funds into either The Marin County National Bank of San Rafael or The First Bank of San Anselmo. This will provide for the disposition of all the moneys collected from the sale of stock. The two banks should make verified reports to the Commission each week until all the money on deposit has been paid out, stating the amount of money paid out during the preceding week and the persons to whom the money was paid.

I submit herewith the following form of supplemental order:

SUPPLEMENTAL ORDER

This Commission having, on November 11, 1913, made an order in this proceeding authorizing San Rafael and San Anselmo Valley Railway Company to issue \$55,000.00 par value of stock and \$45,000.00 face value of bonds on certain conditions, one of which was that applicant should not begin the construction of its road until \$50,000.00 had been procured in cash from the sale of the securities authorized to be issued, and had been deposited in banks in Marin County, California, and that if such sum was not so collected and deposited within one year from the date of the order or such further time as this Commission should allow, such money as had been collected should be returned to the purchasers of securities after provision was made for the payment of such expenses as, in the opinion of the Commission, applicant had properly incurred, and applicant having, on September 24, 1914, filed with this Commission its supplemental petition setting forth that it is impossible to sell enough stock and bonds to construct the street railway system as planned, and asking this Commission to make its supplemental order directing the manner in which the moneys collected from the sale of securities should be disbursed, and it appearing that \$4,910.00 has been collected from the sale of stock and that no moneys have been collected from the sale of bonds, and it appearing further that this sum of \$4,910.00 was obtained in response to two calls upon the purchasers of stock, and has been deposited in banks in Marin County as follows:

The First Bank of San Anselmo,-		
First call	\$1010.00	
Second "	780.00	
Total		\$1790.00
The Marin County National Bank of San Rafael,-		
First call	\$1790.00	
Second "	1550.00	
Total		3120.00
Grand Total		\$4910.00

and it appearing that this money is to be returned to the stockholders in accordance with the Commission's order,

IT IS HEREBY ORDERED that The First Bank of San Anselmo and The Marin County National Bank of San Rafael be and they are hereby authorized and directed to pay out Seven Hundred Eighty (780) Dollars and One Thousand Three Hundred Thirty (1330) Dollars, respectively, to stockholders of applicant who have deposited money in response to applicant's second call for payment upon stock sold, this money to be paid out to each party in whose name the money was deposited, and in an amount equal to the sum deposited.

IT IS FURTHER ORDERED that The Marin County National Bank of San Rafael be and it is hereby authorized to pay out of the One Thousand Seven Hundred Ninety (1790) Dollars deposited with it by applicant's stockholders in response to applicant's first call for payment on stock sold, the following sums to the following creditors of applicant:

S. J. Norton	\$284.50
San Rafael Journal	62.00
San Anselmo Herald	32.00
Tocsin Publishing Co.	297.25
The Independent Publishing Co.	70.50
Sausalito Publishing Co.	45.00
Edward I. Butler	250.00
Geo. L. Richardson	29.25
Payot, Stratford & Kerr	6.50
C. S. Whitaker	25.00
	<u>\$1102.00,</u>

and said bank is directed to deposit the remaining Six Hundred Eighty-eight (688) Dollars of this sum of One Thousand Seven Hundred Ninety (1790) Dollars with The First Bank of San Anselmo, and to furnish said bank with a complete statement setting forth the names of the parties who have deposited money in this fund of One Thousand Seven Hundred Ninety (1790) Dollars and the amount deposited by each.

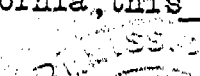
IT IS FURTHER ORDERED that The First Bank of San Anselmo be and it is hereby directed to credit the sum of Six

Hundred Eighty-eight (688) Dollars which the Marin County National Bank of San Rafael is herein directed to deposit with The First Bank of San Anselmo to the fund of One Thousand Ten (1010) Dollars representing the moneys in the last named bank deposited by stockholders of applicant in response to the first call for payment on applicant's stock, and said The First Bank of San Anselmo is further directed to pay out all of said aggregate fund of One Thousand Six Hundred Ninety-eight (1698) Dollars to the stockholders of applicant who deposited money in either of said banks in response to applicant's first call for payment upon its stock, the amount of money to be repaid to each depositor in the ratable ^{pro}portion ~~ix~~ which the aggregate fund to be distributed, i.e., One Thousand Six Hundred Ninety-eight (1698) Dollars bears to the aggregate of such deposits, i.e., Two Thousand Eight Hundred (2800) Dollars.

IT IS FURTHER ORDERED that each of said banks shall, on each Monday, make a verified report to this Commission stating the amount of money paid out under the terms of this order during the preceding week, the persons to whom such money was paid and the amount paid to each.

The foregoing supplemental opinion and order are hereby approved and ordered filed as the supplemental opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 19th day of October, 1914.


Wm. G. Gordon
H. H. Ireland
Edwin A. Edgerton
Marion Shelton

Commissioners.