

Decision No. ✓.

ORIGINAL

Decision No. 3197

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

In the matter of the application of)
PETALUMA AND SANTA ROSA RAILWAY COM-) Application No. 2103.
PANY for an order authorizing the)
issue of stock.)

Edwin T. McMurray for applicant.

BY THE COMMISSION.

O P I N I O N.

This is an application on behalf of Petaluma and Santa Rosa Railway Company for an order authorizing the issue by applicant of 165 shares of its capital stock to George P. McNear, in pursuance of an agreement made and entered into between applicant and George P. McNear in July, 1912.

A public hearing was held on March 7, 1916, in San Francisco and from the evidence it appears that, prior to December 24, 1907, all of applicant's capital stock, consisting of 10,000 shares of common stock of the par value of \$100.00 each, had been issued as fully paid up although it had in no case so far as this Commission could ascertain brought more than \$40.00 per share.

In December, 1907, applicant levied an assessment of \$10.00 per share upon said outstanding stock and at the subsequent assessment sale applicant bought in 224 shares of said stock which it still holds.

Ever since the construction of applicant's railroad, its yards and passenger station at Petaluma have been situated upon a portion of the block of land commonly known as Block No. 7 of

East Petaluma which applicant leased from George P. McNear at a rental of \$50.00 per month under a ten year lease. On or about July 27, 1912, the lease having almost expired, applicant entered into an agreement with George P. McNear to purchase said property for \$9,500.00 upon the condition that said McNear would purchase from applicant 165 shares of its capital stock at \$25.00 per share. The sale of the stock was accordingly concluded and thereupon applicant paid said McNear the \$4,125.00 received from the sale of said stock and a note for the remaining \$5,375.00.

Applicant did not, however, obtain an order from this Commission authorizing the issue of said 165 shares of stock, as its officers mistakenly believed that the Public Utilities Act did not apply to the issue, by a public utility corporation, of its stock which it had bought in at an assessment sale. When applicant realized that it had acted illegally in attempting to issue said stock, it cancelled said certificate and filed the present application with this Commission for authority to issue stock in lieu thereof.

There is no question in our minds but that this Commission has the same authority over the issue of stock which has been bought in by a corporation upon an assessment sale as over stock which has never before been issued. Moreover, it has been the policy of this Commission not to authorize any corporation to issue stock at less than 80% or 85% of its par value, and we feel that the circumstances of this case as presented at the hearing do not warrant us in departing from this policy.

In authorizing stock to be issued in lieu of stock theretofore unlawfully issued, the Commission follows the same policy with reference to the amount to be received for the sale of the stock as in cases where the Commission's authority is sought in the first instance.

O R D E R.

PETALUMA AND SANTA ROSA RAILWAY COMPANY having applied to this Commission for an order authorizing the issue at \$25.00 per share to George P. McNear of 165 shares of its capital stock of the par value of \$100.00 per share in pursuance of a certain contract entered into between applicant and said McNear on July 27, 1912, and a public hearing having been held, and it appearing that said contract did not receive the approval of this Commission, and that the application should be denied for the reasons set forth in the foregoing Opinion,

IT IS HEREBY ORDERED that this application be and the same is hereby denied.

Dated at San Francisco, California, this 25th day of March, 1916.

Max Thelen

H. B. Loveland

W. G. Brown

Edwin C. Edgerton

Franz R. Dehn

Commissioners.