

ORIGINAL

GEM

Decision No. 11312

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BEFORE THE RAILROAD COMMISSION OF
THE STATE OF CALIFORNIA,

In the Matter of the Application)
of MODESTO FARMERS UNION, a cor-)
poration, for permission to issue) Application No. 2874
and sell stock.)

N. A. Hawkins, of Hawkins and
Hawkins, for Applicant.

BY THE COMMISSION.

OPINION

This is an application by Modesto Farmers Union, a corporation engaged in conducting warehouses and in buying and selling feed, grain, beans, fertilizers and other merchandise in Modesto, Stanislaus County, and in Ripon, San Joaquin County, for confirmation and ratification by this Commission of the issue of \$21,100 face value of stock heretofore illegally issued, and for authority to issue \$18,900 face value of additional stock at par.

A public hearing was held in Modesto on May 8, 1917, before Examiner Bancroft.

It appears that applicant was incorporated under the laws of the State of California in March, 1916, for the purpose, among others, of taking over the business of a co-

operative association known as Modesto Farmers, Incorporated, which for a number of years prior thereto had been conducting, in a small way, the same sort of business which applicant is now conducting.

Applicant's Articles of Incorporation provide for a total capitalization of \$50,000, divided into 500 shares of stock of the par value of \$100 each.

Upon the organization of applicant, it issued to each of its incorporators, A. B. Shoemaker, J. K. Corson, Nels Hansen, Guy E. Miller and R. A. Carson, 40 shares of the Company's capital stock in exchange for all of the property and assets of Modesto Farmers, Incorporated, and \$1000 cash from each of said incorporators. Applicant's incorporators estimated the property and money so transferred to be worth fully the par value of the stock. Thereafter applicant issued and sold to C. B. Torney, one of its employees, 10 shares of its capital stock at par, and to Maud P. Miller, the wife of Guy E. Miller above mentioned, one share at par.

All of this stock was issued without applicant having obtained authority therefor from this Commission, and, accordingly, all of such issue is void; but it appears from the evidence that all of said stock was issued by applicant in good faith and that the only reason it did not apply to this Commission for authority to issue the same was that its officers did not realize that applicant was a public utility.

At the hearing, applicant submitted figures as of May 1, 1917, showing its total assets, as estimated by

its officers, to be \$41,256.93, and its total liabilities to be \$10,643.84, leaving a balance of \$30,613.09, or approximately \$145 per share, of stock outstanding.

As the issue of all applicant's stock is void, this Commission cannot confirm or ratify same, but it can authorize the issue of stock to take the place of that heretofore illegally issued.

The main difficulty in this application, however, arises from the fact that applicant is conducting a private business in conjunction with a public utility business, and if this Commission should authorize the issue of \$40,000 per value of applicant's stock probably not more than \$5,000 or \$6,000 of the proceeds would be used for the warehouse or public utility business conducted by applicant, while the remainder would be used for buying and selling grain, food-stuffs and other merchandise. As stated by this Commission in the application of Corcoran Mill and Warehouse, reported in Vol. 8, Opinions and Orders of the Railroad Commission of the State of California, p. 796:

"This Commission has consistently encouraged and recommended corporations doing mixed businesses to separate their public utility from their non-public utility businesses. There are cases in which it may not be feasible for old established companies which may be conducting both classes of business to separate the two, although the inconveniences and disadvantages of such a combination are so great that a number of such companies have already effected such separations. When a new company is being formed, however, we should be very slow indeed to authorize it to enter upon a course which experience has shown to be far from satisfactory both to the companies and to this Commission; for obviously the logical time to make such separation is at the outset."

This subject was discussed at some length at the hearing of the present application, and applicant's officers stated that it would be decidedly difficult for them to

separate their public utility from their non-public utility business at this time. At the close of the hearing, however, they stated that they would be willing to separate their two classes of business within a year from date, provided the Commission would permit them to continue in business along their present lines until the separation could be effected without upsetting this season's business.

Under these conditions we are of the opinion that applicant should be authorized to issue new stock in place of that heretofore illegally issued; but on account of the contemplated separation of the two classes of business it will not be feasible for applicant to issue the 189 shares of additional stock as requested in its application.

O R D E R

MODESTO FARMERS UNION, a corporation, having applied to this Commission for the confirmation and ratification of the issue of 211 shares of its capital stock heretofore illegally issued, and for authority to issue 189 additional shares of said stock of the par value of \$100 per share, and a public hearing having been held and the Commission finding that the purposes for which the said stock was issued or the proceeds thereof used were reasonably required for the purposes to which they were devoted, and that such purpose or purposes are not in whole or in part reasonably chargeable to operating expenses or to income,

IT IS HEREBY ORDERED that Modesto Farmers Union, a corporation, be and the same is hereby authorized to issue

211 shares of its capital stock, of the par value of \$100 each, as follows:

To A. B. Shoemaker	40	shares
To J. K. Corson	40	"
To Nels Hansen	40	"
To Guy H. Miller	40	"
To R. A. Carson	40	"
To C. B. Torney	10	"
To Maud P. Miller	1	share

The authority herein granted is granted on the following conditions, and not otherwise, to-wit:

1. Modesto Farmers Union shall not issue or deliver any of said stock until all the certificates for the 211 shares of such stock which said Company has heretofore illegally issued shall have been returned to said Company and cancelled by it.

2. Modesto Farmers Union shall report to the Railroad Commission, within twenty (20) days after the issue of the respective certificates of stock, the face value of the same and the application of the proceeds thereof, all in accordance with this Commission's General Order No. 24, which order, in so far as applicable, is made a part of this order.

3. The authority herein granted shall apply to such stock as shall be issued on or before September 30, 1917.

Dated at San Francisco, California, this 11th day of May, 1917.

Manuel J. DeLeon
Alexander J. DeLeon
Edwin C. DeLeon
Frank R. DeLeon

Commissioners.