

Decision No. 27368

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)	
MACDONALD ENGINEERING CO.,)	
a corporation, THE WEBSTER M'F'G' COM-)	
PANY, a corporation, V. R. PENTECOST)	
and H. R. GAITHER, for an order auth-)	Application No. 19602.
orizing the execution of a deed of)	
trust upon the real property herein-)	
after more particularly described.)	

Heller, Ehrman, White & McAuliffe, for applicants.

BY THE COMMISSION:

OPINION AND ORDER

ORIGINAL

The MacDonald Engineering Co., an Illinois corporation, is the owner of property occupied by Oakland Elevator & Mill Co., a California corporation and a public utility, under an oral lease dated March 15, 1927. MacDonald Engineering Co. desires authority to execute a deed of trust similar to that filed in this proceeding as Exhibit "E" to secure the payment of a note for \$180,000.00 payable to The Webster M'F'G' Company. The application is filed by MacDonald Engineering Co. and The Webster M'F'G' Company, neither of which admit that it is engaged in the public utility business in this state.

Attorneys for applicants report that the reason for filing the application is based upon Section 2-1/2 of the Public Utilities Act which defines a warehouseman. Under this section a warehouseman is a corporation or person who owns, controls, operates or manages any building or structure in which property is regularly stored for compensation. Inasmuch as the MacDonald Engineering Co. owns the property on which a warehouse business is conducted and if Section

2-1/2 of the Public Utilities Act is to be strictly construed, the MacDonald Engineering Co. would be a public utility within the meaning of that section and consequently subject to the provisions of Section 51 of the Public Utilities Act. Attorneys for applicants do not regard such a construction reasonable. But they report that title companies take the position that they will not issue a title policy until the Railroad Commission has authorized the execution of the deed of trust. We doubt whether we have any authority to authorize MacDonald Engineering Co. and The Webster M'F'G' Company to execute a deed of trust. However, we have no objection to the execution of such an instrument, therefore,

IT IS HEREBY ORDERED that MacDonald Engineering Co. and The Webster M'F'G' Company be, and they are hereby, authorized to execute on or before December 1, 1934 a deed of trust similar in form to the deed of trust filed in this proceeding as Exhibit "E"; provided that the authority herein granted to execute a deed of trust is granted only insofar as this Commission has jurisdiction under the terms of the Public Utilities Act, and is not intended as an approval of said deed of trust as to such other legal requirements to which said deed of trust may be subject.

DATED at San Francisco, California, this 17th day of September, 1934.

Leon C. White

M. J. Lee

W. B. Lewis

Commissioners.