

Decision No. 28383

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )  
VALLEY EXPRESS CO., )  
a corporation, for permission to ) Application No. 20242  
issue preferred capital stock. )

BY THE COMMISSION:

O P I N I O N

~~ORIGINAL~~

Valley Express Co., a corporation, has applied to the Railroad Commission for permission to issue \$50,000. par value of its 5% preferred stock for the purpose of providing working capital.

It appears that Valley Express Co. is a California corporation engaged in the business of transporting property generally in the State of California as an express corporation. During the last three years it has reported the revenues and expenses from its operations as follows:-

I T E M	1932	1933	1934
Charges for transportation	\$251,572.80	\$348,388.43	\$535,396.21
Express privileges . . . . .	134,498.42	198,086.08	316,460.37
Revenue for transportation	\$117,074.38	\$150,302.35	\$218,935.84
Operating expenses . . . . .	113,144.28	140,991.63	199,278.61
Net operating revenue . . . . .	\$ 3,930.10	9,310.72	19,657.23
Uncollectible revenues . . . . .	-	271.61	273.18
Taxes . . . . .	-	2,121.45	3,322.48
Operating income . . . . .	\$ 3,930.10	\$ 6,917.66	\$ 16,061.57
Other income . . . . .	-	-	235.26
Gross income . . . . .	\$ 3,930.10	\$ 6,917.66	\$ 16,296.83
Interest and other deductions:	165.11	2,136.87	1,572.36
Profit for year . . . . .	\$ 3,764.99	\$ 4,780.79	\$ 14,724.47

The corporation at present has outstanding 2641 shares of common stock of the par value of \$25. each and of the aggregate par value of \$66,025.

As of September 30, 1935 its assets and liabilities appear from Exhibit "A" to be as follows:-

<u>A S S E T S</u>		
Fixed assets . . . . .	\$49,412.52	
LESS-Reserve for depreciation . . . . .	<u>27,882.67</u>	\$21,529.85
Investments . . . . .		500.00
Current assets:		
Cash on hand and in bank . . . . .	\$7,665.33	
Accounts receivable . . . . .	47,678.80	
Interline receivable . . . . .	<u>17,024.02</u>	72,368.15
Note due from E. Frasher . . . . .		8,320.74
Due from Valley Motor Lines, Inc. . . . .		60,527.48
Deferred charges . . . . .		<u>11,676.62</u>
	Total assets . . . . .	<u>\$174,922.84</u>

<u>L I A B I L I T I E S</u>		
Capital stock-Common . . . . .		\$ 66,025.00
Long term liabilities . . . . .		1,954.08
Current liabilities:		
Accounts payable . . . . .	\$ 8,459.58	
Accrued payroll . . . . .	8,228.43	
Uncollected C.O.D.'s . . . . .	8,036.49	
Drafts outstanding . . . . .	28,187.36	
Federal income taxes . . . . .	<u>552.11</u>	53,463.97
Surplus . . . . .		<u>53,479.79</u>
	Total liabilities . . . . .	<u>\$ 174,922.84</u>

We are advised that the company in the conduct of its business has found it necessary to tie up considerable cash funds in accounts receivable from shippers and from connecting carriers, as indicated in the foregoing balance sheet, with the result that its available cash frequently is reduced, pending the collection of its accounts receivable, to a balance insufficient to meet its current liabilities.

It is to obtain additional cash working capital that the company has made the present application for permission to issue and sell the 500 shares of preferred stock of the par value of \$50,000. However, from Exhibit "B" attached to the application it appears to

be its intention at this time, at least, to sell only \$25,000. of such stock, leaving the remaining \$25,000. in its treasury as authorized but unissued stock, presumably available for future sale.

According to Exhibit "C" the company's Articles of Incorporation provide for an authorized capital stock of \$250,000., divided into 8500 shares, consisting of 500 shares of preferred stock of the par value of \$100. each and the aggregate par value of \$50,000., and 8,000 shares of common stock of the par value of \$25. each and the aggregate par value of \$200,000.

The holders of the preferred shares shall be entitled to receive cumulative dividends at the rate of 5% per annum, payable semi-annually, in preference and priority to any dividend on any other shares and in the event of the dissolution, liquidation or winding up of the corporation to receive par and all unpaid accumulated dividends before any payment shall be made or assets distributed to the holders of any other of the corporation's shares of stock. The articles further provide for the redemption, at par, of the preferred shares on or before ten(10) years after date of issue of the first of such preferred stock.

With respect to voting privileges the articles provide the following:-

" The holders of these preferred shares shall not be entitled to any vote except:

In the event cumulative dividends on the preferred shares as provided in 1(a) of this Article Fourth, shall be unpaid in whole or in part for a period of three (3) years, then so long as any such cumulative dividends on the preferred shares are in arrears and no longer, the holders of preferred shares issued and outstanding shall be entitled exclusively to notice of shareholders' meetings and exclusively to voting rights, except where otherwise provided by law or otherwise expressly provided in these Articles of Incorporation, but on the payment or declaration and setting apart for a payment of all dividends then accrued to the holders of the outstanding preferred shares, the rights of the holders of preferred shares as such to notice and to vote shall thereupon cease and the exclusive rights of the holders of the Common shares, as such, to notice and to vote is thereupon to recommence, subject to renewal and termination again from time to time on the same terms and conditions.

Each share of whatever class of stock is entitled to vote, shall have one vote."

We do not look with favor on the proposed financial structure in that it provides for a different par value for each of the classes of stock and also it provides if the holders of the preferred stock receive no dividends they must wait for three years before they have any voice in the management of the business. We believe that if the preferred stockholders fail to receive any dividend they should be given the right to vote and that such right should continue until the accumulated dividends have been paid. Accordingly, the order herein will provide that the authority to issue preferred stock will not become effective until applicant has filed with the Commission a copy of an amendment to its Articles of Incorporation which will provide for shares of preferred stock which have the same value as have applicant's shares of common stock and will permit the holders of the preferred shares to vote for any and all purposes if the corporation fails to pay any dividend on its preferred stock.

Because it appears that the company plans at this time to sell only \$25,000. of stock, the order herein will provide that the remaining \$25,000. may be sold only when hereafter authorized in a supplemental order or orders upon further showing being made by the company.

#### ORDER

Valley Express Co. having applied to the Railroad Commission for authority to issue \$50,000. of preferred stock and the Commission being of the opinion that this is not a matter in which a public hearing is necessary, that the application should be granted only upon the conditions set forth herein, and that the money, property or labor to be procured or paid for through the issue of such stock is reasonably required for the purpose specified herein, which purpose is not, in whole or in part, reasonably chargeable to operating expense or to income, therefore,

IT IS HEREBY ORDERED that Valley Express Co. be, and it hereby is, authorized to issue not exceeding \$50,000. par value of its 5% preferred stock and sell on or before June 30, 1936 \$25,000. of said preferred stock for the purpose of providing working capital, and sell the remainder of said preferred stock, to-wit: \$25,000., upon such terms and for such purposes as the Commission will authorize in a supplemental order or orders.

IT IS HEREBY FURTHER ORDERED that Valley Express Co. shall keep such record of the issue of the stock herein authorized as will enable it to file a report, or reports, as required by General Order No. 24, which order, insofar as applicable, is made a part of this order.

IT IS HEREBY FURTHER ORDERED that Valley Express Co. be, and it is hereby, authorized to acquire and hold the stock issued by Valley Motor Lines, Inc. under the authority granted by the decision in Application No. 20243.

IT IS HEREBY FURTHER ORDERED that the authority herein granted will not become effective until Valley Express Co. has filed with the Commission a certified copy of an amendment to its Articles of Incorporation under which amendment the par value of the shares of its preferred stock is the same as the par value of the shares of its common stock and the holders of the preferred stock will be given the right to vote for any and all purposes if the corporation fails to pay any dividend on its outstanding preferred stock, such right to vote to continue until all accumulated dividends have been paid.

DATED at San Francisco, California, this 25<sup>th</sup> day of November, 1935.

Leon Whiteley

M. A. Linn

M. B. Linn

W. H. P. Linn

Commissioners