

Decision No. 25844

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of  
HOLMES WAREHOUSE CO.,  
a corporation, to purchase from Ham-  
mond Lumber Company, a corporation,  
two registered Public Grain Ware-  
houses and Equipment, situated at  
Oxalis, Fresno County, California,  
and at South Dos Palos, Merced County,  
California; and to purchase from  
Miller & Lux Incorporated, a corpora-  
tion, a registered Public Grain Ware-  
house, now being operated by Lumber &  
Supply Co., Inc., a corporation, and  
the Equipment therein, situated at  
Firebaugh, Fresno County, California;  
and to make, execute and deliver its  
Promissory Notes secured by Mortgages  
as part payment for said properties;  
and to issue and sell its shares of  
Preferred and Common Capital Stock.

Application No. 20278

ORIGINAL

In the Matter of the Application of  
MAIM & ANGLE LUMBER COMPANY, LTD.,  
a corporation, to sell, and Hammond  
Lumber Company, a corporation, to  
purchase, and thereupon to sell to  
Holmes Warehouse Co., a corporation,  
two registered Public Grain Ware-  
houses and Equipment, situated at  
Oxalis, Fresno County, California, and  
at South Dos Palos, Merced County,  
California.

Application No. 20284

BY THE COMMISSION:

O P I N I O N

The above entitled applications involve the transfer of public utility warehouse properties to Holmes Warehouse Co., a new corporation, and the issue by Holmes Warehouse Co. of stock and notes and the execution of a mortgage in the amounts and for the purposes hereinafter stated.

It appears that Holmes Warehouse Co. is a corporation organized by G. C. Holmes under the laws of the State of California on or about October 26, 1935 for the purpose of engaging in the

business of storing and warehousing grain, rice and other commodities. Under its Articles of Incorporation, Holmes Warehouse Co. may engage in other business activity.

At this time it proposes to purchase certain warehouses located at Oxalis and Firebaugh in Fresno County and at South Dos Palos in Merced County, on the following terms and conditions:-

OXALIS WAREHOUSE:

Cash . . . . .	\$2,500.00
Note, one year 6% interest secured by mortgage . . . . .	2,500.00
Total purchase price . . . . .	<u>\$5,000.00</u>

SOUTH DOS PALOS WAREHOUSE:

Cash . . . . .	\$2,500.00
Note, one year 6% interest secured by mortgage . . . . .	2,500.00
Total purchase price . . . . .	<u>\$5,000.00</u>

FIREBAUGH WAREHOUSE:

Cash . . . . .	\$ 750.00
Contract-3 installments of \$500. each payable Nov. 4th annually commencing Nov. 4, 1936 . . . . .	1,500.00
Total purchase price . . . . .	<u>\$2,250.00</u>

The Oxalis and South Dos Palos warehouses heretofore have been owned and operated as public utility warehouses by Malm & Angle Lumber Company, Ltd. In order to liquidate certain indebtedness that company has arranged to transfer the two properties to Hammond Lumber Company at a consideration of \$5,000. each. The latter company, in turn, has entered into an agreement to transfer the properties to G. C. Holmes or his nominee, for a total consideration of \$10,000. payable \$5,000. in cash and \$5,000. by a promissory note payable one year after date with interest/semi-annually at the rate of 6% per annum, secured by a first mortgage, a copy of which is filed in Application No. 20278 as Exhibit "F".

The Firebaugh warehouse is owned by Miller & Lux, Incorporated, but has been operated by Lumber & Supply Co., Inc. as a public utility warehouse, under a lease arrangement terminating on May 31,

1936. The applications show that Miller & Lux, Incorporated has agreed to sell the Firebaugh warehouse, and certain unimproved real property to G. C. Holmes for \$2,250.00, payable \$750.00 in cash and \$1,500.00 under the terms of a contract in three equal yearly installments, commencing one year after date, with interest at the rate of 6% per annum. Lumber & Supply Co., Inc., the present lessee of the warehouse, has agreed, upon termination of its lease, to transfer its warehouse business at Firebaugh to Holmes Warehouse Co.

Under the plans shown in the application the purchaser will be called upon to pay \$5,750.00 in cash in acquiring the three warehouse buildings and will incur indebtedness of \$6,500.00, a total purchase price of \$12,250.00. We are advised by G. C. Holmes that he estimates the present value of the physical properties at \$16,925.93 and that approximately \$2,250.00 must be expended forthwith for improvements and additions to the buildings and for new equipment.

G. C. Holmes has designated Holmes Warehouse Co., a corporation, as his nominee to take possession of the three warehouses from Hammond Lumber Co. and Miller & Lux, Incorporated. Arrangements have been made whereby Holmes Warehouse Co. will issue 80 shares of its no par common stock at \$100.00 a share, a total of \$8,000.00, to G. C. Holmes to reimburse him for the cash payments of \$5,750.00 to the present owners of the properties and for the \$2,250.00 expended, or to be expended, for the improvements and additions, and will execute the mortgage, notes and contract in evidence of the deferred payments.

To provide working capital the corporation asks permission to issue and sell 50 shares of preferred stock, which has a par value of \$100.00 a share, at par, for cash, making a total of \$5,000. The Articles of Incorporation of Holmes Warehouse Co. provide that the preferred stock will carry cumulative dividends at the rate of 7% per annum, payable semi-annually or at such other intervals as the

Board of Directors may from time to time determine and that the preferred stock will be non-voting except in the event cumulative dividends on such stock shall be unpaid, in whole or in part, for a period of two years, in which case, and for so long a period as any such cumulative dividends are in arrears, the holders of preferred shares shall be entitled exclusively to notice of shareholders' meetings and exclusively to voting rights.

We do not believe the holders of preferred stock in the event they receive no dividend should be required to wait two years before they can participate in the management of the company's affairs. The Articles of Incorporation of Holmes Warehouse Co. should be amended so as to require said corporation to pay dividends on its preferred stock semi-annually and that if any semi-annual dividend is not paid, the holders of the preferred stock shall have the right to vote for any and all purposes, such right to vote to continue until all cumulative dividends have been paid. The holders of preferred stock need not be given the exclusive right to vote, during the period they receive no dividends. But they should be accorded the same voting rights and privileges as are given to the holders of the common stock. The order herein will provide that the authority herein granted to Holmes Warehouse Co. to issue preferred stock will not become effective until it has filed with the Commission an amendment to its Articles of Incorporation giving the holders of preferred stock the right to vote if and when it fails to pay dividends on said stock.

#### O R D E R

Applications having been filed with the Railroad Commission, as indicated in the foregoing opinion, and the Commission being of the opinion that these are not matters in which public hearings are necessary, that the requests of applicants should be granted, as

herein provided, and that the money, property or labor to be procured or paid for through the issue of the stock and notes herein authorized is reasonably required for the purposes specified herein, and that the expenditures for such purposes are not, in whole or in part, reasonably chargeable to operating expenses or to income,

IT IS HEREBY ORDERED as follows:-

1. Malm & Angle/<sup>Lumber</sup>Company, Ltd. may, after the effective date hereof and prior to June 30, 1936, sell to Hammond Lumber Company the warehouse properties at Oxalis and South Dos Palos now operated by them and referred to in the foregoing opinion and in Application No. 20284.
2. Hammond Lumber Company may in turn, on or before June 30, 1936, sell said warehouse properties to Holmes Warehouse Co. for \$10,000.00, payable as indicated in the foregoing opinion and in Application No. 20278.
3. Lumber & Supply Co. Inc. may, after the effective date hereof and prior to June 30, 1936, transfer its warehouse business in the Firebaugh warehouse properties, referred to in the foregoing opinion and in Application No. 20278, to Holmes Warehouse Co.
4. Malm & Angle Lumber Company, Ltd. and Lumber & Supply Co. Inc. upon transfer of the warehouse properties and business at Oxalis, South Dos Palos and Firebaugh, may discontinue their public utility warehouse operations at those points, provided such warehouse operations are undertaken by Holmes Warehouse Co.
5. Holmes Warehouse Co. in part payment for the properties referred to in these proceedings and for the improvements and additions aggregating \$2,250.00 to be installed by G.C. Holmes, may issue, after the effective date hereof and prior to June 30, 1936, to G. C. Holmes at \$100.

a share, not exceeding 80 shares of its common capital stock.

6. Holmes Warehouse Co. in further payment for said properties may, after the effective date hereof and prior to June 30, 1936, execute a mortgage substantially in the same form as that filed with Application No. 20278, as Exhibit "F", and issue its promissory note in the principal amount of \$5,000.00, payable one year after date of issue with interest at 6% per annum, and execute an agreement with Miller & Lux, Incorporated, providing for the payment of \$1,500. in three annual installments commencing November 4, 1936; provided that the authority herein granted to execute a mortgage is for the purpose of this proceeding only, and is granted insofar as this Commission has jurisdiction under the terms of the Public Utilities Act, and is not intended as an approval of said mortgage as to such other legal requirements to which said mortgage may be subject.
7. Holmes Warehouse Co. may, after the effective date hereof and prior to June 30, 1936, issue and sell 50 shares of its preferred stock at \$100. a share and use the proceeds for working capital.
8. Malm & Angle Lumber Company, Ltd. and Holmes Warehouse Co. shall join in common supplement to its tariffs on file with the Railroad Commission in the name of Malm & Angle Lumber Company Ltd., naming rates for warehousing at Oxalis and South Dos Palos, said Malm & Angle Lumber Company, Ltd. on the one hand withdrawing and Holmes Warehouse Co. on the other hand adopting and establishing as its own said tariffs and all effective supplements thereto.

9. Lumber & Supply Co. Inc. and Holmes Warehouse Co. shall join in common supplement to the tariffs on file with the Railroad Commission in the name of Lumber & Supply Co., Inc., naming rates for warehousing at Firebaugh, said Lumber & Supply Co. on the one hand withdrawing and Holmes Warehouse Co. on the other hand adopting and establishing as its own said tariffs and all effective supplements thereto insofar as they name rates at Firebaugh.
10. Holmes Warehouse Co. shall keep such record of the issue of the stock and notes herein authorized and of the disposition of the proceeds, as will enable it to file within thirty (30) days after such issue, a verified report, as required by the terms of the Railroad Commission's General Order No. 24, which order, insofar as applicable, is made a part of this order.
11. The authority herein granted to execute a mortgage, issue a note and enter into an agreement for the payment of \$1,500. to Miller & Lux Incorporated will not become effective until Holmes Warehouse Co. has paid the minimum fee prescribed by Section 57 of the Public Utilities Act, which fee is Twenty-five (\$25.00) Dollars; the authority herein granted to issue preferred stock will not become effective until Holmes Warehouse Co. has filed with the Commission a copy of an amendment to its Articles of Incorporation requiring the said Holmes Warehouse Co. to pay the dividend on its preferred stock semi-annually and permitting the holders of the preferred stock of said Holmes Warehouse Co. to vote for any and all purposes

in the event any of said semi-annual dividends are not paid, said right and privilege to vote to continue until all cumulative dividends on said preferred stock have been paid; in other respects the authority herein granted will become effective upon the date hereof.

*18 PM*

DATED at San Francisco, California, this 16<sup>th</sup> day of December, 1936.

Leon Whitney

W. H. Carr

W. B. Harris

W. H. [unclear]

Samuel R. [unclear]

Commissioners.

Fee \$ 25.00

[Signature]

Fee # 31749