

Decision No. 30618

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of SAN DIEGO MUNICIPAL WAREHOUSING CORPORATION, LTD. for an order authorizing the corporation to sell a certain tide land lease and certain other assets; for an order authorizing change of its capital stock structure from \$500,000. divided into 5,000 shares of the par value of \$100. each, to 5,000 shares without nominal or par value and authorizing the exchange of its issued and outstanding shares of par value stock for new no par value stock; and for an order authorizing the reduction of its stated capital and distribution of reduction surplus to its stockholders.

ORIGINAL

Application No. 21634

James G. Pfanstiel, for applicant; also for estate of J. C. Allison, deceased.
H. E. Daniel, Assistant City Attorney, for City of San Diego, and for Harbor Department of the City of San Diego, interested parties.
C. P. Von Herzen, for Lyon Van & Storage Co. of San Diego, and for Bekins Van Lines, Inc. of San Diego, interested party.
Harold W. Dill, for Truck and Warehouse Association of San Diego and Imperial Counties, interested party; also for C. & R. Transfer, protestant; also for the Pacific Transfer, Van & Truck Company, Inc., protestant.

BY THE COMMISSION:

FIRST SUPPLEMENTAL OPINION

The Commission by Decision No. 30523 dated January 17, 1938 authorized San Diego Municipal Warehousing Corporation, Ltd. to sell to the City of San Diego the leasehold estate created by the lease dated August 16, 1929, together with the warehouse buildings now located thereon and all equipment and tangible personal property located therein or thereon. By the same decision the Commission authorized applicant to re-classify its stock and reduce the stated value of its stock from \$100,000.00 to \$1,000.00 represented by 40 shares of its common capital stock without nominal or par value.

Paragraph V of applicant's petition reads:-

"That after such recapitalization and distribution, applicant proposes to carry on a limited warehousing business in co-operation with the Harbor Department of the City of San Diego, on Municipal Pier No. 1, Shed No. 2, in San Diego, California, which have been used by applicant for a number of years in connection with its warehousing business; that the carrying on of such limited business by applicant, in cooperation with the Harbor Department of the City of San Diego, is desired by the Harbor Commission of the City of San Diego in support of the efforts of the City of San Diego and said Harbor Commission for the future development of water traffic at said Harbor.

A hearing was held in San Diego on matters referred to in said Paragraph V on February 3rd before Examiner Fankhauser.

At such hearing counsel for applicant stated that applicant's petition was prepared by former counsel for applicant and that said Paragraph V did not set forth accurately applicant's plan of operation. The record shows that applicant intends to continue in the warehouse business. It will conduct such business in leased buildings under the control of the Harbor Department of the City of San Diego. R. A. Wheeler who, with Joseph O'Brien, plans to acquire the stock of San Diego Municipal Warehousing Corporation, Ltd. testified that he intends to limit the warehouse operation to business that would develop the port facilities of the City of San Diego. In general, he would store only commodities that move in or out of San Diego by vessel. Mr. H. B. Daniel, assistant city attorney for the City of San Diego and for the Harbor Department of the City of San Diego stated that "if and when Mr. Wheeler and his associates acquire the control of the San Diego Municipal Warehousing Corporation, Ltd. that the Harbor Commission will make, with that corporation, an agreement for space on Pier No. 2, or the present so-called Allison Warehouse, and any other pier or shed under the control of the Commission that they may desire to permit to be used, and that the terms of that lease or agreement will, to an extent, limit or restrain the permittees of the corporation to the handling and warehousing of water borne commodities primarily." The consideration to be paid by applicant for the use of the premises has not yet been determined.

The testimony shows that applicant has no intention of establishing what in the record is called an "uptown warehouse". It therefore does not seem necessary to determine whether the certificate of public convenience and necessity granted by Decision No. 20486 dated November 16, 1928 in Application No. 14821 permits applicant to engage in an "uptown warehouse" business.

C. P. Von Herzen appearing for Lyon Van & Storage Co. of San Diego and for Bekins Van Lines, Inc., requested that the hearing be continued until such time as the tentative verbal agreement between applicant and the City of San Diego is reduced to writing. The hearing had on this application was not held for the purpose of revoking applicant's certificate of public convenience and necessity. A further hearing on this application seems unwarranted. If applicant should enter into a questionable agreement, the matter should be brought to the Commission's attention through the filing of a formal complaint.

FIRST SUPPLEMENTAL ORDER

The Commission has considered the testimony submitted at the hearing had on February 3rd and is of the opinion that no further order should be entered in this proceeding.

DATED at San Francisco, California, this 14th day of February, 1938.

Walter H. Hare
Leon Whidell
Frank H. Hare

Commissioners.