

Decision No. 32116

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of

FRESNO CITY LINES, INC.,
a corporation,

(formerly Fresno Traction Company)
for an order authorizing applicant
to issue its promissory note, to execute
a chattel mortgage covering certain
of applicant's properties to secure
the repayment of said note, and to
use the proceeds of said note for the
purposes specified herein.

ORIGINAL

Application No. 22770

Pillsbury, Madison & Sutro, by Hugh Fullerton,
for Applicant.

BY THE COMMISSION:

OPINION

In this proceeding, the Commission is asked to enter its order authorizing Fresno City Lines, Inc., formerly Fresno Traction Company, to issue its promissory note for the sum of \$79,906.92 to pay in part the cost of twenty Yellow Motor Coaches and to execute a chattel mortgage to secure the payment of such note.

As of April 30, 1939, Fresno City Lines, Inc. reports assets and liabilities as follows:

ASSETS

<u>Current Assets</u>		\$17,186.27
Cash on demand and on hand	\$16,425.29	
Accounts receivable	462.32	
Dwe from employees	298.66	
<u>Prepaid Expenses</u>		3,589.36
<u>Fixed Assets</u>		96,120.51
Motor Coaches	93,270.53	
Machinery and Equipment	1,988.11	
Furniture and Fixtures	861.87	
<u>Other Assets</u>		10,409.25
Retired equipment in Suspense	734.00	
Unamortized Bond Discount	9,675.25	
		<hr/>
TOTAL ASSETS		<u>\$127,305.39</u>

LIABILITIES

<u>Current Liabilities</u>		\$116,197.21
Accounts payable - trade	\$ 3,080.21	
Accrued salaries and wages	3,796.82	
Accrued taxes, insurance and expenses	9,265.16	
Sundry creditors	220.97	
Due to affiliated companies	99,834.05	
<u>First Mortgage 5% Bonds (outstanding)</u>		427,000.00
<u>Unearned Revenue</u>		1,497.27
<u>Reserve For Coach Maintenance</u>		141.87
<u>Common Stock</u>		100,000.00
<u>Additions to Property Through Surplus</u>		21,141.31
<u>Deficit</u>		<u>538,672.27</u>
TOTAL LIABILITIES		<u>\$127,305.39</u>

It is of record that no depreciation had accrued on the company's motor coaches as of April 30, 1939. As of that date, the original cost of its machinery, equipment, furniture and fixtures is reported at \$4,393.53 on which the accrued depreciation amounted to \$1,543.55 leaving the depreciated cost of machinery, equipment, furniture and fixtures at \$2,849.98.

All of applicant's outstanding bonds are owned by the Pacific City Lines, Inc. The bonds are no longer a lien on its properties.

The testimony shows that the Fresno City Lines, Inc., bought recently, at a cost of \$94,010.49, twenty (20) yellow motor coaches, Model 1204, each having a capacity of twenty-five (25) passengers. It has made arrangements to borrow from the Anglo-California National Bank of San Francisco \$79,908.92 for the purpose of paying in part the purchase price of said coaches. As evidence of this loan it desires to issue to the bank, its note payable in monthly installments, with the first installment of \$1,653.92 being payable on August 1, 1939, and the balance being due in 47 equal monthly installments of \$1,665.00 each

was given by posting for not less than five (5) days nor more than ten (10) days as provided by subdivision 2, section 692, Code of Civil Procedure, governing sales of nonperishable personal property had under execution; such notice was not posted for at least twenty (20) days nor was it published as required by subdivision 3 of that section relating to execution sales of real property. Following the sale, the sheriff on April 10, 1939, issued to applicant a purported "Certificate of Sale of Personal Property" reciting that at a sale had on that day, pursuant to "due and legal notice," there had been sold at public auction to applicant herein, the highest bidder, "all the right, title and interest" of Lee, the judgment debtor, "in and to the following described personal property, to-wit: one Certificate of Public Convenience and Necessity No. 652, issued by the Railroad Commission of the State of California, to Charles B. Lee and Farmers Trucking Service";

Pursuant to authority granted by this Commission, applicant is now engaged as a highway common carrier in the transportation of fresh fruits and vegetables from Niland and Calipatria to Los Angeles. Admittedly, it is able to conduct the service authorized by the certificate which it seeks to acquire. Operations under the latter certificate, it was shown, have been carried on continuously by Lee, service thereunder never having been abandoned.

Applicant, on the one hand, urges that the transfer should be approved because the sale was held pursuant to the notice provided by law. The certificate granted to Lee, it asserts, must be regarded as personal property of a character subject to sale upon execution. The protestants, on the other hand, oppose this contention, some alleging that the certificate is a franchise

which may be sold only pursuant to the notice provided by law
(1)
for sales of real property under execution, while others assert
it is merely a privilege which may be reached only through the
medium of a creditor's bill. They further contend that were the
certificate subject to sale upon execution, applicant, a public
utility, should have secured from the Commission, prior to such
sale, its approval of the purchase. In reply applicant asserts
the sheriff's sale is but the initial step, which must be followed
by an appropriate application to the Commission for approval of
the transfer. On behalf of protestants, it is said that Lee is
insolvent and contemplates initiating bankruptcy proceedings in
the near future. Should this occur, they allege, the purported
execution sale may be attacked as constituting a preference for-
bidden by the Bankruptcy Act.

In this proceeding, the Commission's authority is
invoked under section 50-3/4(c), Public Utilities Act, which
reads in part:

"*** Any right, privilege, franchise, or
permit held, owned, or obtained by any highway
common carrier may be sold, assigned, leased, trans-
ferred, or inherited as other property, only upon
authorization by the Railroad Commission.* * *"

In matters of this kind, the Commission is concerned
primarily with questions affecting the public interest. It is

(1) Code of Civil Procedure, sections 724a to 724e, inclusive,
relating to sales of franchises on execution.

called upon to determine whether the proposed transfer will be injurious to the rights of the public.

Hanlon v. Eshleman, 169 Cal. 200, 203

In a proceeding such as this, the Commission is not required, nor has it the authority, to determine questions of title. These issues must be litigated in the courts.

Re Pacific Gas and Electric Company, 16 CRC 184, 186.

Re United Stages, Inc., 21 CRC 1, 5.

Re Pickwick Stages System, 28 CRC 785, 786.

Hanlon v. Eshleman, supra.

Re Benjamin Walters, dba Island Transportation Company
39 CRC, 667, 671, 672.

Re James A. Ross, dba Jim Ross Livestock Transportation,
Decision No. 26498, on Application No. 19067, dated November 6,
1933. (unreported)

In the light of these authorities, we shall not undertake in this proceeding to pass upon the validity of the execution sale under which applicant claims title to the operative right now sought to be transferred. The sufficiency of the notice of sale, the status and character of the operative right itself, its susceptibility of sale under execution, the existence or absence of a right to redeem, and the liability of the sale to invalidation because it may be a forbidden preference under the Bankruptcy Act, are questions to be presented to the Civil Courts for determination.

Because of the questions which have been raised concerning the validity of the sale and the apparent cloud thus cast upon applicant's title, we do not deem it advisable in this proceeding, particularly in the face of threatened and impending attacks upon this transaction, to authorize the transfer at this time. Rather,

we believe the public interest will best be served by awaiting the final determination of these matters by the proper tribunals. Accordingly, the application will be denied without prejudice.

As the statute clearly provides, the operative right may be transferred only with the Commission's consent. In each instance the Commission will determine whether the transfer is justified by the circumstances. Here, as we have pointed out, it will not be authorized until certain preliminary questions have been determined by the courts. However, following the disposition of these questions, the Commission will entertain a renewal of the application should it then appear that the operative right still retains its vitality, and will authorize the transfer should it be warranted by the surrounding conditions.

Jurisdiction of the matter will be reserved for the purpose of considering a supplemental application presenting these facts.

O R D E R

A public hearing having been held in the above entitled proceeding, evidence having been received, the matter having been duly submitted, and the Commission being now fully advised:

IT IS HEREBY ORDERED that the application in the above entitled proceeding be and it is hereby denied, without prejudice, however, to the renewal of such request for the approval of the transfer of said operative right, by supplemental application filed herein, following the final determination by any court or courts of competent jurisdiction of the validity of the purported sale under execution of said operative right, jurisdiction of this proceeding being hereby expressly reserved for

the purpose of entertaining and determining such supplemental application.

The effective date of this order shall be twenty (20) days from the date hereof.

Dated at San Francisco, California, this 27th day of June, 1939.

Raymond H. Field
Henry P. Miller
Carl H. Rice
H. Hall
Justus F. Calver
Commissioners

and payable on the first day of each calendar month thereafter, with interest at the rate of $3\frac{1}{2}\%$ per annum, payable monthly, on the unpaid balance of the note.

Applicant desires to secure the payment of such note by the execution of a chattel mortgage, a copy of which is filed in this proceeding as Exhibit B. The chattel mortgage will be a lien on the twenty (20) Yellow Motor Coaches recently acquired by it. Payment of the note will be further secured by its endorsement by the Pacific City Lines, Inc., which owns all of the outstanding stock of applicant, of San Jose Railroads, of Stockton Railroads and Butte City Lines, Inc. We have examined the proposed chattel mortgage and find the same to be in satisfactory form.

No one appeared at the hearing held on June 16th by Examiner Fankhauser, to protest the granting of this application.

ORDER

The Commission having considered the request of Fresno City Lines, Inc., formerly Fresno Traction Company, for permission to issue its note for the sum of \$79,908.92 and to execute a chattel mortgage to secure the payment of such note, and it having considered the evidence submitted at the hearing had on this application, and it being of the opinion that the money, property or labor to be procured or paid for by the issue of said note is reasonably required for the purpose specified herein, and the expenditures for such purpose are not in whole or in part reasonably chargeable to operating expenses or to income, therefore,

IT IS HEREBY ORDERED, that Fresno City Lines, Inc., be, and it is hereby authorized to issue after the effective date hereof, and on or before August 1, 1939, its promissory note in the principal amount of \$79,908.92, and to secure the payment of said note by executing a chattel mortgage in, or substantially in, the same form as that filed

in this proceeding as Exhibit B.

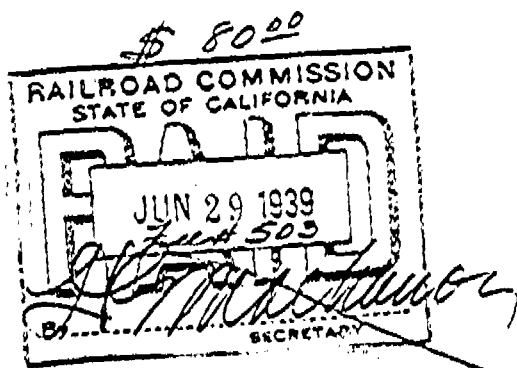
IT IS HEREBY FURTHER ORDERED, that Fresno City Lines, Inc., shall use the proceeds realized from the issue of said note to pay in part the cost of the twenty (20) Yellow Motor Coaches referred to in the foregoing Opinion and more particularly described in this application.

IT IS HEREBY FURTHER ORDERED, that the authority herein granted to execute a chattel mortgage is for the purpose of this proceeding only, and 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 chattel mortgage as to such other legal requirements to which it may be subject.

IT IS HEREBY FURTHER ORDERED, that the authority herein granted will become effective when Fresno City Lines, Inc. has paid the fee prescribed by Section 57 of the Public Utilities Act, which fee is Eighty (\$80.00) dollars.

IT IS HEREBY FURTHER ORDERED, that within thirty (30) days after the execution of the chattel mortgage and note herein authorized, Fresno City Lines, Inc. shall file with the Railroad Commission a copy of said chattel mortgage and of said note.

DATED at San Francisco, California, this 27th day of June, 1939.



[Signature]
[Signature]
[Signature]
[Signature]
Justus J. Caswell
COMMISSIONERS