

ORIGINAL

Decision No. 39774

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Board of Directors,
OCEANO BEACH WATER COMPANY, a cor-
poration, acting as Trustees, to
transfer water system at Oceano,
San Luis Obispo County, to MORT P.
CARLEY and MARGARET A. CARLFY.

Application No. 27747

O P I N I O N

The directors of a suspended corporation request authority to transfer a water system. A certificate of public convenience and necessity was issued to Oceano Beach Water Company in 1922. (Dec. No. 10384, App. No. 7760.) Authorization to transfer the system was granted in 1943, but the transfer was never consummated. (Dec. No. 36730, App. No. 25875.)

The present application alleges that the corporation has become defunct for nonpayment of franchise tax,⁽¹⁾ and its board of directors seek authority to transfer its operative rights and properties for \$2,000 in cash, no value being placed upon the operative rights. Escrow instructions, attached to the application, state that corporate taxes have not been paid for a number of years, and that the corporation has been suspended. It provides that the title company will furnish to the purchasers a report showing the title to be vested in the corporation, subject to taxes of the fiscal year 1946-1947, and to the lien of any corporation taxes. No policy of title insurance will be issued.

(1) The Secretary of State has advised the Commission that the corporation was suspended on March 16, 1933 for failure to pay its franchise taxes.

Under the Civil Code (sections 399-401) directors of a dissolved corporation shall continue to act as a board with full powers to wind up and settle its affairs, and may execute bills of sale and deeds of conveyance in the name of the corporation. (Sec. 6A Cal. Jur. 1482, 1491.) The situation is somewhat different as to a suspended corporation. Under section 32 of the Bank and Corporation Franchise Tax Act (Stats. 1929, p. 19, as amended; Deering's General Laws, Act 8488); if taxes are not paid, the corporate powers of a domestic corporation are suspended and incapable of exercise "for any purpose or in any manner except for the purpose of amending the articles of incorporation to set forth a new name." Before 1929 every contract entered into by a suspended corporation was declared to be void, but since 1929 the tax act has provided that such contracts are voidable, at the instance of any party other than the taxpayer. (Depner v. Joseph Zukin Blouses, 13 Cal. App. (2d) 124, 129.)

The Supreme Court has pointed out that the Commission may not wholly disregard other laws representing the legislative policy of the state, even though the enforcement of such policy is outside the proper scope of the Commission's functions. "To be sure, the commission was never intended to be an instrument for the vindication of the taxing power, but it could not flout the tax laws or collude in their evasion." (Sale v. Railroad Commission, 15 Cal. (2d) 612, 621.)

Aside from the Court's admonition in the Sale case and the provisions of the statute mentioned; there would appear to be no objection to the granting of transfer authorization. However, under the circumstances the issuance of definitive authorization appears of questionable propriety until such time as applicants have shown, by the filing of an amended application, that franchise taxes and delinquent charges thereon have been paid.

Q. R. D. F. R.

Good cause appearing; IT IS ORDERED that Application No. 27747

is hereby denied, such denial, however, being without prejudice to the filing of an amended application for transfer authorization, together with appropriate certification by the Franchise Tax Commissioner to the effect that all franchise taxes and delinquent charges thereon have been paid.

This order shall become effective on the date hereof.

Dated, San Francisco, California, this 23rd day of December

1946.

Harold D. Kula
Justin F. Green
Francis D. ...
... Lowell
A. B. ...
Commissioners