

ORIGINAL

Decision No. 49762

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

| | | |
|------------------------------------|---|-------------|
| Application of CAMP & FELDER |) | |
| COMPRESS COMPANY, a California | : | |
| Corporation, for permission to |) | Application |
| mortgage personal property | : | No. 35147 |
| necessary or useful in perfor- |) | |
| mance of its duties to the public. | : | |
| ----- |) | |

O P I N I O N

Camp & Felder Compress Company, applicant herein, is a California corporation engaged in operating a cotton compress in Kern County and a public utility warehouse. In this application it seeks authorization to execute a mortgage of chattels and two promissory notes in the aggregate principal amount of \$200,000.

The application shows that S. A. Camp Ginning Company, a California corporation, and W. D. Felder & Company, a Texas corporation, heretofore have organized applicant and also two nonutility corporations, named Camp & Felder Development Company and Camp & Felder Terminal Company, to carry on their activities in Kern County. The three subsidiaries, according to the application, conduct their operations at one site and have different functions to perform in the ultimate compressing of cotton. The stock of all three is held in equal proportions by S. A. Camp Ginning Company and W. D. Felder & Company.

2,7-7 From the application it appears that S. A. Camp Ginning Company and W. D. Felder & Company each have advanced \$100,000 to the compress company, the development company and the terminal company to enable those companies to conduct their respective operations, and

that now S. A. Camp Ginning Company and W. D. Felder & Company are insisting that their respective indebtedness be reduced to two promissory notes in the sum of \$100,000 each, one of which shall be payable to S. A. Camp Ginning Company and the other to W. D. Felder & Company, both notes to be payable on demand but not later than January 1, 1955, together with interest at the rate of 5% per annum. Both notes will be secured by a mortgage of chattels on the property owned by the three subsidiary companies:

It is contemplated that applicant, Camp & Felder Development Company and Camp & Felder Terminal Company jointly and severally will sign both notes. They will execute one mortgage of chattels, each pledging its personal property to S. A. Camp Ginning Company and W. D. Felder & Company to secure the payment of the two notes. The form of the mortgage provides in part as follows:

It is also agreed that if the Mortgagors fail to make any payment on either one, or both, of said promissory notes above mentioned, and in the manner provided for in said respective promissory notes, or shall fail to make payment of any other moneys secured hereby, or should fail to perform any terms hereof, then the Mortgagees may take possession of all of said property herein mortgaged, using all necessary force so to do and may immediately proceed to sell the same in the manner provided for by law, and that Mortgagees shall determine which property herein mortgaged shall be sold first, and from the proceeds from said sale pay the whole amount of the debts secured by this mortgage and all costs of sale, including counsel fees, not exceeding 10% upon the amount due, paying the surplus to the Mortgagor whose property has been sold.

This application is governed by Article 5 of the Public Utilities Code, which refers to security transactions, and by Article 6, relating to encumbrance of utility property. Under the provisions of Article 5, a public utility, among other things, may issue notes for the acquisition of property, for the construction, completion, extension or improvement of its facilities, for the improvement or maintenance of its service, for the discharge or lawful refunding of its obligations, for the reorganization or readjustment of its

indebtedness or capitalization upon a merger, consolidation or other reorganization, for the retirement of or in exchange for one or more outstanding stocks or stock certificates or other evidence of interest or ownership of such public utility or bonds, notes, or other evidences of indebtedness of such public utility, or for the reimbursement of moneys actually expended from income or from other money in its treasury for any of the aforesaid purposes.

Under the arrangements now under contemplation, Camp & Felder Compress Company, a public utility warehouseman, in effect will mortgage its property to secure the payment of not only its own indebtedness but also that of two separate nonutility corporations and will execute notes representing, in part, borrowings by such other corporations. A reading of Article 5 clearly shows its meaning to be that obligations incurred by a utility for its purposes may be refunded through the issue of securities authorized by the Commission. In our opinion there is nothing in the code which would permit the Commission to authorize a utility to issue notes in payment or in evidence of indebtedness incurred by other corporations. It further appears to us that the code authorizes the encumbrance of utility properties only for specific purposes connected with the functions and activities of such properties and in our opinion there is no provision which would permit the Commission to approve the mortgaging of the utility property of Camp & Felder Compress Company to secure the payment of indebtedness of Camp & Felder Development Company and Camp & Felder Terminal Company.

For the reasons set forth above we have concluded that we are without authority to grant this application. Accordingly, an order will be entered dismissing it.

O R D E R

The Commission, having considered the above entitled matter and being of the opinion that it has no jurisdiction in the premises; therefore,

IT IS HEREBY ORDERED that Application No. 35147 of Camp & Felder Compress Company be, and it hereby is, dismissed without prejudice.

This opinion and order will become effective 20 days after the date hereof.

Dated at Los Angeles, California, this 9th day of March, 1954.

R. E. [Signature]
President

Justus J. [Signature]

[Signature]

[Signature]

[Signature]
Commissioners