

ORIGINAL

Decision No. 54877

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application)	
of HOMER HELLER conducting as sole)	
owner a certain Automobile Passenger)	
and Limited Express Stage Line under)	
the name of HOMER HELLER COMPANY)	Application No. 38856
between Escondido and Oceanside,)	(and Amendment)
California, to change the name)	
and legal entity to PALOMAR STAGE)	
LINES, INC. and to issue 100 Shares)	
of Stock.)	
-----)	

O P I N I O N

Homer Heller, applicant herein, is engaged in operating an automobile passenger and limited express stage line between Escondido and Oceanside under a certificate of public convenience and necessity acquired by him under authorization granted by Decision No. 41514, dated April 27, 1948, in Application No. 29254^{1/}. In this application, he reports that he desires to transfer his operative rights and equipment to Palomar Stage Lines, Inc., a corporation he has organized to take over the rights and equipment and to continue the operations, and he seeks the Commission's approval of the transaction.

The corporation joins in the application and seeks authorization to issue \$10,000 par value of stock in payment for rights and equipment and for working capital as follows:

Buses and equipment	\$5,000
Operating cash	500
Operative rights	<u>4,500</u>
Total	<u>\$10,000</u>

^{1/} Homer Heller's financial statements show gross revenues and net losses during the last five years as follows:

<u>Year</u>	<u>Gross</u>	<u>Net</u>
1952	\$9,783	\$(3,909)
1953	9,033	(2,108)
1954	9,563	(4,921)
1955	9,070	(5,028)
1956	9,541	(4,905)

As indicated by the tabulation this application involves the capitalization of operative rights to the extent of \$4,500. In this connection, the attention of applicant is directed to Section 820 of the Public Utilities Code, which reads as follows:

"The commission shall have no power to authorize the capitalization of the right to be a corporation, or the capitalization of any franchise or permit, or the right to own, operate, or enjoy any such franchise or permit, in excess of the amount (exclusive of any tax or annual charge) actually paid to the State or to a political subdivision thereof as the consideration for the grant of such franchise, permit, or right. No contract for consolidation or lease shall be capitalized, nor shall any public utility issue any bonds, notes, or other evidences of indebtedness against or as a lien upon any contract for consolidation or merger."

The application contains no showing of the amounts, if any, that were paid to the state or to a political subdivision as the consideration for the grant of the operative rights and a review of the carrier's annual reports indicates that no amounts are included in the accounts for such payments. In the absence of any showing on this point, we cannot accept the \$4,500 assigned to operative rights as a proper basis upon which to predicate an order authorizing the issue of stock.

It appears to us and we so find that the transfer of the properties and the operations to the new corporation will not be adverse to the public interest. However, on the basis of the information now before us, the maximum amount of stock which we can authorize, because of the provisions of Section 820 of the Public Utilities Code, is \$5,500. The order herein will so provide.

Applicants are hereby placed on notice that operative rights, as such, do not constitute a class of property which may be capitalized or used as an element of value in rate fixing for any amount of money in excess of that originally paid to the state as the

consideration for the grant of such rights. Aside from their purely permissive aspect, they extend to the holder a full or partial monopoly of a class of business over a particular route. This monopoly feature may be changed or destroyed at any time by the state, which is not in any respect limited as to the number of rights which may be given.

The action taken herein shall not be construed to be a finding of the value of the rights and equipment herein authorized to be transferred.

ORDER

The Commission having considered the above entitled application and being of the opinion that a public hearing is not necessary, that the money, property or labor to be procured or paid for by the issue of \$5,500 par value of stock herein authorized is reasonably required by applicant for the purposes specified herein, and that such purposes are not, in whole or in part, reasonably chargeable to operating expenses or to income; therefore,

IT IS HEREBY ORDERED as follows:

1. Homer Heller may transfer to Palomar Stage Lines, Inc., his operative rights and equipment as set forth herein.
2. Palomar Stage Lines, Inc., in payment therefor may issue not exceeding \$5,500 par value of its common stock.
3. None of the stock authorized by paragraph 2 hereof shall be sold or issued unless and until the corporation first shall have selected an escrow holder and said escrow holder shall have been first approved in writing by the Commission, and when issued all

documents evidencing any of said stock shall forthwith be deposited with said escrow holder, to be held as an escrow pending the further written order of the Commission... The receipt of said escrow holder for said documents shall be filed with the Commission, and the owner or persons entitled to said stock shall not consummate a sale or transfer of said stock, or any interest therein, or receive any consideration therefor, until the written consent of the Commission shall have been obtained so to do.

4. The application of Palomar Stage Lines, Inc., so far as it involves the issue of \$4,500 par value of stock for operative rights is denied.

5. On not less than five days' notice to the Commission and to the public, effective concurrently with the consummation of such transfer, applicants shall supplement or reissue the tariffs with the Commission naming rates, rules and regulations governing the common carrier operations here involved to show that Homer Heller has withdrawn or canceled and Palomar Stage Lines, Inc., has adopted or established as its own, said rates, rules and regulations. The tariff filings made pursuant to this order shall comply in all respects with the regulations governing the construction and filing of tariffs set forth in the Commission's General Order No. 79.

6. Palomar Stage Lines, Inc., shall file with the Commission a report, or reports, as required by General Order No. 24-A, which order, insofar as applicable, is made a part of this order.

7. The authorization herein granted will become effective

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twenty days after the date hereof and, if not exercised, will expire on September 30, 1957.

Dated at San Francisco, California, this 22nd day of April, 1957.

[Signature]
President
[Signature]
[Signature]

Commissioners