

ORIGINAL

Decision No. 59540

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

IN THE MATTER OF THE APPLICATION)

of)

C. H. ECKHART AND HOWARD C. ECKHART,)
copartners doing business as ECKHART)
SEED COMPANY, to transfer to ECKHART)
SEED COMPANY, a corporation, and of)
ECKHART SEED COMPANY, a corporation,)
to acquire public warehousing rights)
and to issue stock.)

Application No. 41763

O P I N I O N

This is an application filed on December 17, 1959, for an order of the Commission (1) authorizing the sale and transfer of warehouseman operative rights, properties and business from C. H. Eckhart and Howard C. Eckhart to Eckhart Seed Company, a corporation, and (2) authorizing said corporation to assume the payment of indebtedness and to issue \$143,000 par value of capital stock to finance the acquisition of said warehouseman operative rights, properties and business, together with related nonutility properties and business.

C. H. Eckhart and Howard C. Eckhart, copartners doing business as Eckhart Seed Company, are engaged in business as public utility warehousemen at Spence near the City of Salinas, where they conduct a seed business also. For the 11 months ended November 30, 1959, they report a net operating profit from their combined utility and nonutility operations of \$57,429.54. A balance sheet of Eckhart Seed Company, a copartnership, at November 30, 1959, summarized from Exhibit A attached to the

application, is as follows:

<u>Assets</u>	
Current assets	\$179,898.32
Fixed assets - depreciated	93,658.00
Prepaid insurance	4,570.32
Goodwill	<u>14,373.09</u>
Total	<u>\$292,499.73</u>

<u>Liabilities and Net Worth</u>	
Current liabilities	\$124,762.61
Fixed liabilities	24,460.15
Net worth	<u>143,276.97</u>
Total	<u>\$292,499.73</u>

Pursuant to authority granted by Decision No. 51247, dated March 29, 1955, in Application No. 36780, C. H. Eckhart and Howard C. Eckhart executed a mortgage of chattels and a deed of trust, and issued a 6% note in the principal amount of \$59,660 in favor of American Trust Company, on which the balance has been reduced to \$29,830, of which \$5,966 is included in current liabilities and \$23,864 in fixed liabilities. In addition, the current liabilities include three unsecured promissory notes aggregating \$50,000, in addition to which a fourth note in the amount of \$10,000 was issued under date of December 3, 1959, all in favor of American Trust Company.

Eckhart Seed Company, a corporation, was organized on or about November 17, 1959, for the purpose of acquiring the seed and warehouse business and operative rights owned and conducted by C. H. Eckhart and Howard C. Eckhart. In connection with its request to issue \$143,000 par value of stock, it appears that the reported net worth of \$143,276.97 reflects \$14,373.09 of goodwill.

We are of the opinion that the issue of stock in payment for goodwill is not one of the purposes contemplated by Section 817 of the Public Utilities Code, and it does not appear that there is sufficient information now before us upon which we can base an order authorizing the issue of \$143,000 of stock.

We find that the transfer of the operative rights, properties and business to the new corporation will not be adverse to the public interest; but upon a full review of this proceeding we are of the opinion that the maximum amount of stock we can authorize is \$129,000, and the order herein will so provide.

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

O R D E R

The Commission having considered the above-entitled matter 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 \$129,000 par value of stock herein authorized is reasonably required by applicant corporation for the purpose specified herein, and that such purpose is not, in whole or in part, reasonably chargeable to operating expenses or to income; therefore,

IT IS HEREBY ORDERED as follows:

1. C. H. Eckhart and Howard C. Eckhart may sell and transfer the warehouseman prescriptive operative rights, properties and business referred to in this application, to Eckhart

Seed Company, a corporation.

2. Eckhart Seed Company, a corporation, may assume the payment of outstanding liabilities and, on or after the date hereof and on or before April 30, 1960, may issue, at par, not to exceed \$129,000 par value of its capital stock for the purpose set forth in this application.

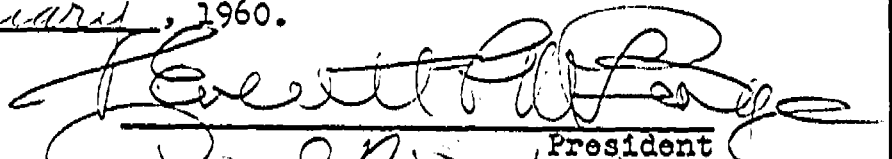
3. This application, insofar as it involves the issue of an additional \$14,000 par value of stock, is denied.

4. 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 now on file with the Commission, insofar as they name rates, rules and regulations governing the operations here involved, to show that C. H. Eckhart and Howard C. Eckhart have withdrawn or canceled and that Eckhart Seed Company, a corporation, concurrently has adopted or established, as its own, said rates, rules and regulations. The tariff filings made pursuant to this order in all respects shall comply with the regulations governing the construction and filing of tariffs set forth in the Commission's General Order No. 61.

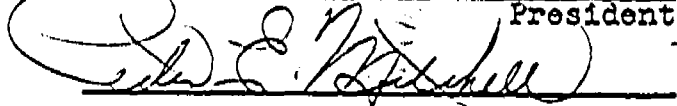
5. Eckhart Seed Company, a corporation, shall file with the Commission a report, or reports, as required by General Order No. 24-A, which order, insofar as applicable, is made a part of this order.

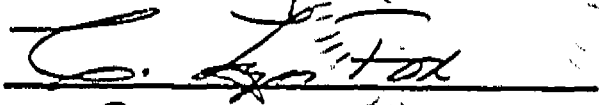
6. This order shall become effective on the date hereof.

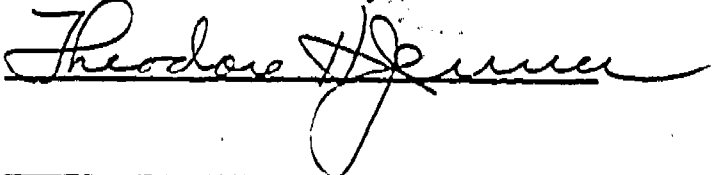
Dated at San Francisco, California, this 26th day of January, 1960.



President







Commissioners