

ORIGINAL

Decision No. 67249

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of

DON HEMSTED'S VAN & STORAGE,
INC., a California corporation

For Permission to Accept Transfer
of Permits Issued by the Public
Utilities Commission of the State
of California to Don Hemsted,
an Individual.

Application No. 45776
Filed September 16, 1963
and Amendment
Filed April 24, 1964

O P I N I O N

This is an application for an order of the Commission (1) authorizing Don Hemsted, an individual, to sell and transfer his highway common carrier certificate of public convenience and necessity and prescriptive operative right as a public utility warehouseman, together with related assets, to Don Hemsted's Van & Storage, Inc., and (2) authorizing said corporation, in acquiring said assets, to assume outstanding indebtedness and to issue \$13,800 par value of its capital stock. In addition, the application, as amended, seeks authority for the corporation to issue two five-year unsecured 7% notes in the principal amount of \$2,500 each in payment for said operative rights. However, applicants have advised us that the notes will be demand notes, and they now request that the application be dismissed insofar as it relates to the issuance of notes for operative rights.

By Decision No. 44624, dated August 8, 1950, in Application No. 30546, the Commission granted to Don Hemsted, doing business as Don Hemsted's Van and Storage, a certificate of public convenience and necessity authorizing the establishment and operation of service as a highway common carrier for the transportation of used household goods, new furniture and household appliances, subject to certain exceptions, in portions of northern and central California. By Decision No. 61780, dated April 4, 1961, in Case No. 6909, the Commission determined that Don Hemsted possesses a prescriptive operative right as a public utility warehouseman for the operation of 8,000 square feet of storage or warehouse floor space at Redding, exclusive of the expansion permissible under Section 1051 of the Public Utilities Code.

Don Hemsted's Van & Storage, Inc. is a California corporation organized on or about April 16, 1963. It proposes to issue \$13,800 par value of its capital stock to Don Hemsted on the basis of a June 1, 1963 pro forma balance sheet, summarized as follows:

<u>Assets</u>	
Current assets	\$16,122.00
Investments	1,000.00
Fixed assets (depreciated) -	
Revenue equipment	9,570.80
Service cars and equipment	2,992.96
Other equipment	1,436.20
Furniture and fixtures	<u>686.22</u>
 Total	 <u>\$31,808.18</u>
<u>Liabilities</u>	
Current liabilities	\$10,898.21
Contracts payable - Noncurrent portion	7,052.59
Capital stock	13,800.00
Capital surplus	<u>57.38</u>
 Total	 <u>\$31,808.18</u>

Don Hemsted proposes to withhold from the transfer the improved real property located at 2529 Angelo Avenue, Redding. Such property provides terminal and storage facilities which Don Hemsted and Marian Hemsted, his wife, propose to lease to Don Hemsted's Van & Storage, Inc. Upon the transfer of the operative rights and related personal property to said corporation, the lease may be consummated without authorization by this Commission.

The Commission has considered this application and finds that: (1) the proposed transfer would not be adverse to the public interest; (2) the money, property or labor to be procured or paid for by the issue of the shares of stock herein authorized is reasonably required for the purpose specified herein; (3) such purpose is not, in whole or in part, reasonably chargeable to operating expenses or to income; and (4) applicant

corporation now intends to issue demand notes instead of the long-term notes proposed in the application. On the basis of these findings we conclude that the application should be (1) dismissed insofar as it seeks authority to issue notes, and (2) granted in all other respects. A public hearing is not necessary.

Don Hemsted's Van & Storage, Inc. is 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, such rights extend to the holder a full or partial monopoly of a class of business. This monopoly feature may be modified or canceled 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 operative rights and other assets to be transferred. So far as the rights are concerned, the authorization granted is for the transfer of only the highway common carrier certificate of public convenience and necessity and the prescriptive operative right as a public utility warehouseman now held by Don Hemsted. The transfer of permitted operative rights must be the subject of a separate application, or applications.

O R D E R

IT IS ORDERED that:

1. On or before October 31, 1964, Don Hemsted may sell and transfer, and Don Hemsted's Van & Storage, Inc. may purchase and acquire, the operative rights and property referred to in the application. For accounting and bookkeeping purposes, applicants may consummate the transfer as of June 1, 1963.

2. Don Hemsted's Van & Storage, Inc. may assume the outstanding liabilities referred to in this proceeding, and may issue and sell not to exceed \$13,800 par value of its capital stock at not less than its par value, in part payment for said properties.

3. Within thirty days after the consummation of the transfer herein authorized, Don Hemsted's Van & Storage, Inc. shall notify the Commission, in writing, of that fact and within said period shall file with the Commission a true copy of any bill of sale or other instrument of transfer which may be executed to effect said transfer.

4. Don Hemsted's Van & Storage, 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.

5. Don Hemsted's Van & Storage, Inc. shall amend or reissue the tariffs on file with the Commission, naming rates and rules governing the highway common carrier and public utility warehouse operations herein to show that it has adopted or established, as its own, said rates and rules. The tariff filings shall be made effective not earlier than ten days after the effective date of this order on not less than ten days' notice to the Commission and the public, and the effective date of the tariff filings shall be concurrent with the consummation of the transfer herein authorized. 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 Orders Nos. 61-A and 80-A.

6. Concurrently with the effective date of tariff filings for warehouse operations required by Ordering Paragraph 5 hereof, the prescriptive operative authority set forth in Decision No. 61780, dated April 4, 1961, in Case No. 6909, is hereby revoked and in place and stead thereof a prescriptive operative right as a public utility warehouseman is hereby stated for Don Hemsted's Van & Storage, Inc., as more particularly set forth in Appendix A attached hereto.

7. In providing service pursuant to the warehouse operative authority set forth herein, Don Hemsted's Van & Storage, Inc. shall comply with and observe the following service regulation:

Within thirty days after the effective date hereof, it shall file a written acceptance of the operative right herein stated. By accepting such operative right, it is placed on notice that it will be required, among other things, to file annual reports of its operations. Failure to file said reports, in such form and at such time as the Commission may direct, may result in a cancellation of the operative right set forth in Appendix A hereof.

8. The real property to be withheld from transfer shall not be relieved of its devotion to the public use and its status as public utility operative property shall continue as though no transfer of operative rights had taken place, anything in any lease or any contract or agreement to the contrary notwithstanding.

9. This application is dismissed insofar as it seeks authority to issue notes.

10. The effective date of this order is the date hereof.

Dated at San Francisco, California, this 26th day of May, 1964.

William W. Bennett
President
John C. Mitchell
Arvid W. Berg
George A. Hoover
Frederick B. Holdhoff
Commissioners

Appendix A

DON HEMSTED'S VAN & STORAGE, INC.
(a corporation)

Don Hemsted's Van & Storage, Inc. possesses a prescriptive operative right as a public utility warehouseman for the operation of storage or warehouse floor space as follows:

<u>Location</u>	<u>No. of Square Feet of Floor Space</u>
Redding	8,000

(The floor space shown above is exclusive of the expansion permissible under Section 1051 of the Public Utilities Code.)

End of Appendix A

Issued by California Public Utilities Commission.

Decision No. 67249, Application No. 45776.