Difficulties Beset Reorganization of Empire Company

EMPIRE HOUSE BUILT ON SAND

Now Rain Descends, Floods Come, Winds Blow and Hopes are Slight

(Continued from page 5)

ors voted to reduce the weekly cash payments to Keller to $1000, a part of this going to salesmen. It is also known that since July 31, 1931, certain "assets" then extant have been collateraled to secure bills payable or sold to provide cash. It is also known that in August, Keller came to Salem personally and approached a reputable business man offering him $15,000 a year salary to serve the company as treasurer. Whether similar offers were made and accepted is not known but if they were agreed to and additional salaries were drawn upon the weakening "tide of Empire" there is scarcely faint hope that the condition of the Empire Holding corporation had improved an iota since July 31, 1931. There is every reason to believe the corporation's financial position might steadily have been growing worse.

Method of Hiring Salesman Noted

Keller's methods were extremely improvident. Incontrovertible evidence was brought to The Statesman on Saturday showing how Keller hired salesmen. A man driving a cheap car, came to the Empire offices in the Terminal Sales building, and sought a job. Keller hired him. He asked him at once what kind of car he drove. When informed of the light, inexpensive make, Keller was displeased. Taking a phone he quickly negotiated a trade-in deal on a Buick car and sent the newly hired salesman after the car, giving him $20 with which to clean up, buy some new clothes, look like something!

It is also true that prior to April 1931, the bookkeeping methods of the Empire Holding corporation were exceedingly lackadaisical. In that month Ed Adams, a brother of Dr. Wilson R. Adams, vice-president and treasurer of Empire, worked as auditor. Another member of the family, Martin Adams, son of the doctor, and a University of Southern California student, became auditor. Later R. W. Clancy was to protest against this nepotism but without avail. He was to ask again and again but ineffectively that an independent auditor be employed to examine the company's books!

The audit of the state July 31, 1931, confirms this tardiness in starting the bookkeeping on the Empire company. Seventy-five thousand dollars in cash for sales had been received and $65,000 had been spent before the books of the corporation were in sufficiently regular shape to permit an audit!

* * *

Now to answer the question of possible salvage of the Empire company, which resolves itself into an analysis of assets available or projected with which to meet liabilities. **It must be borne constantly in mind that not a single subsidiary to write fire or life or casualty insurance could have started doing business, let alone making money, before $150,000 for each company in cash, state, municipal or federal bonds of gilt-edged first mortgages, had been deposited with the state treasurer!**

The following figures and statements are based on the corporation commissioner's audit July 31, 1931.

The first asset of the company was cash in the banks of $55.59. Then there were stocks and bonds on hand in the total sum of $24,780. Unquestionably this appraisal is high for one item of $8500 is for Reedsport bonds now selling at a small fraction of par on the Portland markets. A large block of bank stock listed is probably unmarketable at the stated value. Such items as the L. I. D. securities of the city of Vancouver, Wash., are not saleable at par as listed. The Statesman feels that a conservative evaluation of these holdings would show this item to be marketable at not to exceed $16,000. It is to be noted that the auditor reveals that the one $200 Liberty bond in this group of assets was sold August 17, indicating the Empire Holding corporation was not making any strenuous attempt to keep a backlog later to be used to qualify its five great subsidiary companies but was marketing its trade-in securities when and if opportunity offered. Fortunately the market for Liberty bonds taken in by salesmen remained good!

Accrued Interest Debatable Asset

The next item listed as an asset was accrued interest of $15,398. This included large blocks of interests on the $15,000 notes of men like Coshow, Adams, Stockman, Keller, Fetty. There is no evidence in the audit that a whit of this interest was paid from month to month as the notes ran. The facts revealed by the audit make this interest item of little if any certain value.

Since interest was to come from notes taken for stock whose entire sale had been clothed under a false oath, or on traded in stocks and mortgages, since there had been no regular collection on subscription notes since the interest on the larger notes was quite well swallowed up by the "modest and prudent" monthly salaries, this item should, in our opinion, be valued at nil.

The next "asset" is $132,454 organization expense. This means C. J. Keller's 7½ percent commissions, it means $73,188, salesmen payments, it means $10,126 organization expenses! Translated from money into possessions it means equities in big cars, large piles of prospectuses, copies of telegrams and wires galore, fumes of thousands and tens of thousands of gallons of gasoline! Although a limited organization expense may be carried as a deferred asset in a corporation, since no operating companies had ever been formed to assume this item, the "asset" has little if any value. Certainly it would pay no Empire printers, would not compensate the modestly paid officers for a month ham and eggs and would not even allow the reupholstering of the red davenport or the replenishing of Keller's little desk stand wherein was stored the treasure he used effectively on salesmen, prospects and himself!

I. H. Fetty's advance of $118.72 is an asset and is probably good although Fetty was still short $18,500 on his $20,000 "cash" payment July 31, 1931 and to have matched Coshow's, Keller's and Adam's payment would have needed to pungle up $500 more!

Assets of Magazine Of Small Value

The assets of the corporation bear a $16,177 advance to the Westerner Publishing company. As The Statesman has explained, this consisted of a few typewriters, some cigars and cigarette stubs and the ashes of hope. Value of the asset: nil.

Furniture and fixtures—green carpet, walnut desks and gilt-lettering on the doors—it was excellent lettering, by no means modest but glaring and garish—are listed at the depreciated value of $16,868. Nothing is shown of moneys due on the furniture but liens there were according to the state's auditor although the exact amount of these does not appear. The item of furniture and fixtures, as far as a marketable equity value of the Empire's multi-colored suites could scarcely exceed $5000 as this one appraised it.

Using the state corporation commissioner's audit, therefore, and making due but liberal allowance for the explanations made in that audit, The Statesman lists the Empire's liquid assets—shown on the left side of the state's balance sheet—as follows:

CASH	$ 55.59
Stocks and bonds	24,780.00
Interest accrued	00.00
Organization expense	00.00
I. H. Fetty advance	118.72
Westerner Pub. Co.	00.00
Furniture Fixtures	500.00
Total assets	$25,454.31

* * *

The immediate liabilities of the corporation as shown by the audit and business men know that while assets may shrink, liabilities seldom do, but often increase when a company's solvency is questioned and creditors hurry in with delayed bills—are as follows:

Notes payable	$ 9000.00
Accounts payable	8039.06
Salary credits	21,926.61
Total liabilities aside from stock	$38,965.67

The notes payable are regular and collectible. One was to R. W. Clancy for actual cash advanced of $4000. The other was to A. E. Kern & Co. for printing. The accounts payable likewise were regular and immediately collectible. They were:

Enlighs-Baker Co.	$ 1.00
Gen. Litho. Co.	65.05
Helwig Chapman & Co.	6,234.32
A. E. Kern & Co.	543.00
Remington Rand Bus. Service	1,546.91
D. C. Wax	126.25
J. E. Harvey	229.26
Gwendolin Weaver	5.00
R. C. Charter	37.67
E. A. Dixon	150.00
Total	$8,939.06

The salary credits, similarly, were due and payable. Every business man knows that salary, duly contracted for, is a claim before any dividends to stockholders and certainly before the return of any capital to a stockholder. The salaries due July 31, 1931, and at that time unpaid, were:

Wilson R. Adams	$ 4,417.23
Dr. R. W. Clancy	50.00
O. P. Coshow	3,968.50
I. H. Fetty	3,878.69
Frank Keller, Jr.	6,424.69
J. H. Stockman	3,187.50
	$21,926.61

Nor was there any agreement in the contracts of the quintet, Adams, Coshow, Fetty, Keller, or Stockman that these salaries were to be applied on stock. The salaries might have been thus used, but the option was with the officers. W. C. Hagerty's contract specified that he was to be able to put $3000 annually of his $6000 drawings back into the tide of Empire and thus to lift himself by his salary bootstraps to a firmer financial rock!

Indicates Salary Claim Retained

Judge Coshow's declarations last week clearly indicate that he considered his salary an immediate obligation, one duly contracted, one which on the books of the company was already long past due. How firmly the judge believed this salary his is revealed in his statement that if he were removed as president a suit on his part would follow to enforce his $108,000 10-year salary as Empire's president! Provided the contracts were legally executed the judge's position seems, in ordinary business procedure, beyond cavil.

* * *

Someone will ask: What about the hundreds and hundreds of thousands of dollars of notes received on stock and not paid? Mr. Stockman suggested, these were "assets" and collectible. But were they or are they? First, over half of the total is in large notes, $5000, $15,000, $20,000, taken from the directorate of Empire. The Statesman put this question to an auditor in the corporation commissioner's office: "How much is the realizable value of the subscription notes, considering that the officers and directors testified to paying the aggregate of $100,000 in cash for their stock and actually paid $7500 down, taking individually commissions of $3000? How much could be collected on these notes or what is their sale value?" The questioner suggested that the $667,116.42 might bring $600. He was laughed off and the auditor suggested $60. It is to be noted in this connection that officers of the Empire Holding corporation report collections on contract notes for stock have virtually ceased since the stock selling permit was canceled November 6!

But could not one find other assets? Evidently the corporation commissioner's auditor could not for he did not list $78,062 in mortgages traded in on stock as an asset, nor did he so list the contracts receivable in the amount of $20,000 nor did he so list open accounts due on stock of $10,065. All of these items he subtracted from the stock sales, later giving the net capital stock issued and paid.

Mortgages Deemed Not Clear Property

Evidently he did not consider the mortgages clearly the property of the Empire company until the stock subscribed by the party trading in the mortgage had been paid for. Legally the mortgage is the Empire's property to do with as it sees fit, just as a down cash payment was the company's. But the auditor noted the fact that many of these mortgages were rag-tag specimens; taxes long since due, interest unpaid, security impaired. Not all the mortgages were poor; some widows, orphans, hard-working professional men had parted with gilt-edged security. The auditor appraises these mortgages not at $78,062 but at $55,050.

Contracts receivable of $20,000 were not considered as assets by the auditor in his balance sheet nor were open accounts of $10,065. The latter consisted either of post-dated checks or else were simply salesmen's reports that such and such a party had agreed to buy stock on a future date, whereupon the "deal" went into the books.

In addition to current liabilities of $38,965.67, there appear on the balance sheet liabilities to stockholders in the total of $165,987.94. Of this, stock issued and paid for is $74,100, which undoubtedly is Empire stock given in trade for marketable bonds or mortgages or for cash. The other item constituting the $165,987.94 total is net paid stock equities of $91,887.94.

Thus towards paying this $165,987.95, the company had:

Assets	$25,454.31
Liabilities	38,965.67
NET DEFICIT	$13,511.36

THEREFORE IF THE 850 SHAREHOLDERS OR EQUITY SHAREHOLDERS HAD BEEN WILLING JULY 31, 1931, TO PUT $13,511.36 INTO THE EMPIRE HOLDING CORPORATION, THE COMPANY COULD HAVE PAID ALL ITS KNOWN BILLS AND RETIRED FROM THE FIELD LEAVING ITS $164,987.94 THE EXACT SUM OF NOTHING. IT COULD HAVE ALSO RETURNED $78,000 IN MORTGAGES TO THE PEOPLE FROM WHOM IT HAD OBTAINED THEM!

Now if one is generous and does not adopt the balance sheet of the corporation commissioner's own auditor, slightly more pleasant results are forthcoming. Assume that the mortgages are the property of the Empire Holding company, that mulcted, disgusted, hurt stock subscribers do not sue, attach, and demand return of these mortgages. Give these mortgages the liberal appraisal of $55,050. Sell them on the present market. The results are these:

Sale of securities	$55,050.00
Pay current liabilities*	13,511.36
Left for company use	$34,438.64

*Including salaries by contract to officers.

If the company thus desired to go into the insurance business, towards the $150,000 minimum needed it would have $34,438 or 23 per cent.

To obtain this $34,438 to go into the insurance business the expense outlay would have been as shown by the audit:

Organization expense and commissions	$132,454.30
Westerner	16,292.46
Notes payable (cleaned up)	9,000.00
Accounts payable (paid)	8,939.06
Salaries completed	21,926.61
Total paid	$188,612.43

This would mean that these "modestly paid" officers and that this "prudently" administered company, instead of confining its organization expenses to 20 per cent, had at the close of business July 31, 1931, $34,438.64 available for its first, great, vast subsidiary company and that this had been obtained at a cost of $188,612.43!

The expense allowed on the permit issued December 10, 1930, by Corporation Commissioner Mark D. McCallister was 20 per cent!

The expense incurred and accrued up to July 31, 1931, to provide $34,438.64 for the subsidiary companies, provided assets had been liquidated about as appraised by the auditor, was 548 per cent of the total moneys available for the subsidiary company!

These facts, bear in mind, adopt the theory that the mortgages trade-in were unqualified assets of the Empire, to be marketed, when, if and how that corporation desired!

We quote again:

26 And every one that heareth these sayings of mine, and doeth them not, shall be likened unto a foolish man, which built his house upon the sand.

27 And the rain descended, and the floods came, and the winds blew, and beat upon that house; and it fell; and great was the fall of it.

* * *

If instead of proceeding with the securing of $150,000 to start a subsidiary company, the Empire group should elect to dissolve and to pro rate assets on hand, including mortgages, how much could be received?

There would be $165,987 in stock over which the thin assets would need to be spread. To this would have to be added $78,062, for if the mortgages were taken as assets of the Empire Holding company and sold, the shareholders' equities would be increased by just that much amount. The figures would therefore be as follows:

Shareholders' equity July 31	$165,987.94
Added equity by acceptance of mortgages and application to stock	78,062.65
Total obligations to stockholders	$244,049.59
Available for distribution	$34,438.64
Per $100 share available	$ 14.13

The Statesman wishes it distinctly understood that these calculations are based on the state audit made July 31, 1931, and that succeeding stock sales and expenses may have materially altered this ratio. The figures are also based on conservative, liquidating value of Empire assets and on the assumption that the company, before repaying its shareholders any funds, would pay its general and note creditors and its legally hired and contracted for officers in full.

* * *

Thus far one possibility has been overlooked. Should the Empire shareholders on December 7, 1931, care to go actually into one line of insurance business, they might very logically seek to obtain FROM COSHOW, ADAMS, KELLER, STOCKMAN and FETTY, PAYMENT IN CASH FOR THE BALANCE DUE ON THEIR 100,000 stock subscriptions which more than a year ago, November 14, 1930, these selfsame five men solemnly swore had been paid in FULL IN ACTUAL MONEY!

With this money on hand the Empire would be materially nearer its goal of starting one insurance company.

Paying all its bills and notes and salaries up to July 31, 1931, and assuming that income had balanced outgo since that time, the outlook would then be:

Funds on hand after selling assets	$ 34,438.64
PAYMENTS IN FULL, Adams, Keller, Stockman, Fetty	92,500.00
Remainder needed to form company	23,062.00
Total 1st class investments or cash needed to form company	$150,000.00

* * *

Can the quintet of organizers make such payment? The Statesman does not purport to be a financial rating bureau. It quotes herewith the "net worth" of the men indicated on their solemnly made statement November 14, 1930. Coshow, no statement; Fetty, $75,000; Adams, $50,000; Stockman, no statement; Keller, $100,000.

Since January 1, 1931, the monthly salaries paid these five men while perhaps "modest and prudent" should have been ample to maintain ordinary living expenses and to have left their original "net worth" untouched.

Certainly Keller, making $10,000 annually as sales counsellor, and with an easily controlled brother, C. J. Keller, receiving seven and one-half per cent commission under his contract on the sale of more than $800,000 total stock, should be able to pay!

Adams, a successful doctor, it would seem was well able to pay.

Judge Coshow in six and one-half years on the Oregon bench drew salary approximating $48,750 for the period from the Oregon taxpayers. He is known to have on deposit in one financial institution in Salem at a recent audit between $7000 and $8000.

Fetty's financial standing is only known to The Statesman through his statement of net worth sworn to November 14, 1930.

Stockman made no statement on financial worth. He has already told this writer he is willing to do anything possible to make up his subscription. Officials at the state capital say Stockman has long been an applicant for a legal position at salaries ranging from $2400 to $3600. What his average yearly earnings in Portland have been are not known.

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Company has not Earned Anything

It should be observed that the Empire Holding corporation never made one cent in its 12 months' history from the actual operation of the businesses in which it was to engage. Obviously this was impossible since it never sold a life or fire or casualty, insurance policy, never examined a title or wrote title insurance and never engaged in the mortgage loan business! It was indeed a ghost ship, sans engines, sans hulk, sans rudder, sans everything except "modest and crudently paid" officials!

Virtually every cent spent by Empire was from capital investment; money men, women, many of very small means, had "invested" to become part of the backlog each individual so earnestly and rightfully craves as protection against hardship, disaster and inescapable old age!

The only approach to operating income was $15,758 which came, according to the report, from interest earnings on subscriptions or on stocks taken in. But this was not from any business in which the company was to engage and even this comparatively small sum was spent immediately and overspent by $4767, the funds going out in a separate list of expenses of which for salaries the amount was $14,977.47!

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Tuesday The Statesman will outline plans for reorganization being proposed by Dr. R. W. Clancy. It will discuss the quandary stockholders find themselves in. It will reprint a portion of a supreme court statement by Judge Coshow. It will mention the judge's policy on the responsibility of directors of a corporation when in 1931 he thought some of his own property was involved!

TROUBLE LOOMS IN EMPIRE!

R. W. Clancy, (lower left) who paid $10,000 in cash to the company, is irked by policy of the $100,000 stock buying quintet. This week he is reported to have had a fist fight with Jay H. Stockman, (upper right) Empire's counsel. Clancy is to lead a group of stockholders in an effort to oust the present directors at the December 7 meeting of Empire shareholders. He is busy now gathering proxies. Frank J. Keller, Jr., (lower right) sales counsellor, is reported to have resigned and is variously reported as selling stock in the Cornucopia mines in Washington or selling stock in another Oregon concern. Stockman and O. P. Coshow (upper left) both visited friends in Salem, Stockman discussing the matter for an hour with an attorney. Coshow was reported to The Statesman as a somewhat silent onlooker at the conference although he greeted many friends here.

Salient Portions Oregon Code on Perjury, Fraud, False Statements

INQUIRIES have come to The Statesman for succint data on the Oregon laws relating to the conduct of business institutions, especially as regards stock sales. Other inquiries have come regarding the code's provision on false oaths. The Statesman herewith presents excerpts from the Oregon Blue-Sky law and other relevant portions of the state's code.

SECTION 25-1320. PENALTIES FOR BLUE SKY LAW VIOLATION:

Any corporation, partnership, association, joint stock company, trust or unincorporated organizaztion which shall violate any of the provisions of this act shall be deemed guilty of a crime and, upon conviction thereof, **shall be fined for each offense not more than $10,000.** Any person other than a corporation, partnership, association, joint stock company, trust or unincorporated organizzation who shall violate any of the provisions of this act shall be deemed guilty of a crime and, upon conviction thereof, shall be punished for each offense by **imprisonment in the penitentiary for not more than five years or in the county jail for not more than one year, or by a fine of not more than $5,000, or by both fine and imprisonment.**

SECTION 25-1302. STATEMENT REQUIRED.

This section requires every applicant for a permit to present a "full statement of facts, duly verified by the executive officers of the issuer and three directors or trustees thereof."

SECTION 25-1325 SCHEMES TO DEFRAUD—OVERT ACT PUNISHED:

Any person who shall, alone or in conjunction with others, devise, or attempt to devise, any scheme or artifice to defraud any person by securing subscriptions for, or by promoting or negotiating the issuance, transfer, distribution or sale of any security, and who shall, for the purpose of executing or attempting to execute such scheme or artifice, commit any overt act within this state, shall be guilty of a crime and, upon conviction thereof, shall be punished as provided by section 25-1320, Oregon Code, and the amendments thereof.

SECTION 25-1326. FRAUDULENT REPRESENTATIONS OR CONCEALMENT PUNISHED.

Any person with intent to induce the purchase of any of the securities herein mentioned who shall, by the use of any writing or token, or note or memorandum thereof, knowingly or recklessly, with intent to deceive or defraud, make any false statement, or knowingly or recklessly, with intent to deceive or defraud, conceal any facts materially affecting the value of any such securities, shall be guilty of a crime and, upon conviction thereof shall be punished as provided by section 25-1320, Oregon Code, and the amendments thereof.

SECTION 25-1312. ADVERTISING SECURITIES—REGULATIONS AND RESTRICTIONS.

It shall be unlawful for any issuer, dealer or broker, or his agent, to issue, circulate or deliver any advertisement, pamphlet, circular or other document in regard to such securities as are not within the exceptions in said sections 25-1302—25-1308, Oregon Code . . . until after such issuer, dealer or broker shall have been issued a permit to sell such securities in the state of Oregon, as provided in this act, **and it shall be unlawful for any such issuer, dealer or broker or his agents to issue, circulate or deliver any such advertisement, pamphlet, circular or other document.**

SECTION 14-402. PERJURY.

This section provides that "every person convicted of the crime of perjury, committed otherwise than in a proceeding before a court of justice, or convicted of the crime of subornation of perjury, however committed, shall be punished by imprisonment in the penitentiary not less than two nor more than five years."

Too Late to Classify

Horses and mules. Trial allowed. Jackson Barn, Woodburn, Ore. W. H. Street.