

Decision No. 39815

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )  
 HERBERT G. NORVELL and WILLARD NEVILLE )  
 co-partners to do business under the )  
 name of AIRPORT TRANSIT for certificate )  
 of public convenience and necessity to ) Application No. 23491  
 operate passenger service between Eleventh )  
 and Eye Streets in the City of Modesto and )  
 the Modesto Municipal Airport outside the )  
 Modesto city limits and intermediate )  
 points and vice versa. )

HERBERT. G. NORVELL and WILLARD NEVILLE in propria persona.

WILLIS KLEINENBROICH, Protestant.

BY THE COMMISSION:

O P I N I O N

This is an application by Herbert G. Norvell and Willard Neville, co-partners, operating under the name and style of Airport Transit, for authority to establish and operate an automotive service as a common carrier of passengers between Eleventh and Eye Streets in the city of Modesto and the Modesto Municipal Airport<sup>(1)</sup> and intermediate points.

A public hearing in this proceeding was had in Modesto before Examiner McGettigan on Wednesday June 26, 1940 where testimony was taken, the matter submitted and it is now ready for decision.

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(1) The Modesto Municipal Airport is located in the unincorporated portion of Stanislaus County, about 3 miles southeasterly from the business center of the city.

Applicant Norvell testified in his own behalf, but presented no public witness testimony. Protestant Kleinenbroich, operating an automotive passenger service within the city of Modesto pursuant to franchise authority from the city, withdrew his protest during the course of the proceedings in this matter when he was advised that applicants' proposed operation would not in any way compete with his existing operations in the city, since applicants propose to operate in a southeasterly direction from the center of the city, serving a portion of the city which is now without public transportation. In fact, the parties agreed that consideration would be given to the establishment of transfer privileges between the two lines in the event that applicants herein were successful in obtaining authority to establish their proposed service.

The record in this proceeding shows that applicants propose to establish, on half-hourly headway, approximately 25 round trips daily except Sundays and Holidays during the hours 6:20 A.M. to 6:30 P.M. The proposed fare is 10 cents with no reduction for school children or other classes of traffic. One Chevrolet 20-passenger bus is to be used in this service, and arrangements for obtaining additional equipment, should the necessity arise, have been made. The route to be traversed is approximately three miles in each direction.

Applicants propose, primarily, to serve a rapidly growing residential district of some 3,000 persons located between Modesto and its airport, most of whom depend upon Modesto for the pursuit of work, trade or entertainment. Additionally, workers in two canneries located in the area are expected to furnish patronage, flying students at the airport will be afforded transportation, and it is also expected that persons patronizing

Legion Park, a swimming, boating and dancing resort on the shores of Lake Modesto, will undoubtedly support this operation.

Norvell, a taxi driver in Modesto for more than two years, testified that he carried passengers daily to and from the district involved and had been approached by a considerable number of persons who expressed a desire that a regular bus service be established in lieu of the taxi service now afforded the district applicants propose to serve. Their position was that taxi rates were too high and service not regular or frequent enough to suit their daily needs for work and pleasure.

Although applicants presented no public witnesses at the hearing, applicant Norvell called the Commission's attention to a number of letters filed in his support and further referred to a petition signed by seventy residents of the district asking for the service as proposed.

In the operation of this service, applicant Norvell will do most of the driving assisted, when necessary, by his partner Neville. Expense of operation was given as approximately ten dollars (\$10) per day and applicants were confident that the necessary 100 daily riders at 10 cents each would be forthcoming to defray this expense. It was expected that, at the outset, the earnings would be sufficient only to meet the out-of-pocket cost of providing the service. It was anticipated, however, that the business would develop and applicants were willing and able to pioneer such a development.

On its face, the proposal does not appear, from this record, to be assured of any material financial success, particularly in view of the rather sparsely settled district and frequency of operation. However, the district represents a substantial portion of the city and residents therein have given assurance of their support. Furthermore, no other common carrier service is now available so that the success or failure of this enterprise will be strictly dependent upon the extent to which the public, having expressed a desire for such service, will actually use it. Applicants are both experienced in passenger transportation work and from the record, interested in and capable of providing a service which, if given support, will undoubtedly fill a definite public need. The application will be granted.

Herbert G. Norvell and Willard Neville are hereby placed upon notice that "operative rights" do not constitute a class of property which should be capitalized or used as an element of value in determining reasonable rates. 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 to the number of rights which may be given.

#### O R D E R

A public hearing having been had in the above-entitled proceeding, evidence having been received, the matter having been duly submitted, and the Commission now being fully advised,

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA HEREBY  
DECLARES that public convenience and necessity require the estab-  
lishment and operation by Herbert G. Norvell and Willard Neville  
of an automotive service for the transportation of passengers, as  
a passenger stage corporation, as such is defined in Section 2½  
of the Public Utilities Act, between Eleventh and Eye Streets in  
the city of Modesto and the Modesto Municipal Airport and inter-  
mediate points, over and along the following route:

On Eye Street to Fourteenth Street; on Four-  
teenth Street to Grand Street; on Grand Street  
to Waterford Road; on Waterford Road to Santa  
Cruz Avenue; on Santa Cruz Avenue to Tuolumne  
Avenue; on Tuolumne Avenue to Modesto Munic-  
ipal Airport. Return on Sierra Avenue instead  
of Tuolumne Avenue to Santa Cruz Avenue to  
Waterford Road to Grand Street to Fourteenth  
Street to "H" Street to Eleventh Street to  
corner of Eleventh and Eye Streets.

IT IS ORDERED that a certificate of public convenience  
and necessity therefor be, and the same hereby is, granted to  
Herbert G. Norvell and Willard Neville, doing business as Airport  
Transit, subject to the following conditions:

1. The authority herein granted shall lapse and be void if applicants shall not have complied with all the conditions within the periods of time fixed herein, unless, for good cause shown, the time shall be extended by further order of the Commission.
2. Applicants shall file a written acceptance of the certificate herein granted within a period of not to exceed thirty (30) days from the effective date hereof.
3. Applicants shall commence the service herein authorized within a period of not to exceed thirty (30) days from the effective date hereof, and shall file, in triplicate, and concurrently make effective on not less than ten (10) days' notice to the Railroad Commission and the public, a tariff or tariffs constructed in accordance with the requirements of the Commission's General Orders and containing rates and rules which in volume and effect shall be identical with the rates and rules shown in the exhibit attached to the application in so far as they conform to the certificate herein granted, or rates and rules satisfactory to the Railroad Commission.

4. Applicants shall file, in triplicate, and make effective within a period of not to exceed thirty (30) days after the effective date of this order, on not less than five (5) days' notice to the Railroad Commission and the public, a time schedule or time schedules covering the service herein authorized in a form satisfactory to the Railroad Commission.

5. The rights and privileges herein authorized may not be discontinued, sold, leased, transferred nor assigned unless the written consent of the Railroad Commission to such discontinuance, sale, lease, transfer or assignment has first been obtained.

6. No vehicle may be operated by applicants herein unless such vehicle is owned by said applicants or is leased by them under a contract or agreement on a basis satisfactory to the Railroad Commission.

The effective date of this order shall be twenty (20) days from the date hereof.

Dated at San Francisco, California, this 9<sup>th</sup> day of July, 1940.

Ray L. Perry  
Frank W. Nelson  
Robert W. Griffith  
W. H. Miller  
Justin J. Coe  
COMMISSIONERS