

Decision No. 36881

**ORIGINAL**

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )  
 K. K. ATKINSON, dba MARTINEZ-BENICIA )  
 BUS LINE, to sell, and J. R. VAN )  
 ARSDALE, an individual, to purchase, )  
 certain operating rights and equip- ) Application No. 25845  
 ment, and to discontinue temporarily )  
 a portion of the service covered )  
 thereby. )

In the Matter of the Application of )  
 EDWARD A. MILLER, d/b/a MILLER )  
 TRANSPORTATION AND TAXI SERVICE, for )  
 a certificate of public convenience )  
 and necessity to operate a passenger )  
 stage service by automobile stage ) Application No. 25851  
 from Martinez to Concord, thence )  
 from Concord to Avon, and thence )  
 from Avon to the point of beginning )  
 in Martinez, California. )

J. RICHARD TOWNSEND, for applicants in Application  
 No. 25845 and protestant in Application No.  
 25851.

HARRY ENCELL, for applicant in Application No.  
 25851 and interested party in Application  
 No. 25845.

BY THE COMMISSION:

O P I N I O N

J. R. Van Arsdale and K. K. Atkinson by joint application,  
 as amended, request the authority of the Commission for the purchase  
 by the former of the passenger stage operative rights and one  
 30-passenger capacity, 1926 model Pageol stage from the latter for  
 \$1201. The operative rights involved authorize a passenger stage  
 operation between Martinez, Concord and Avon, and between Martinez,  
 Benicia and Benicia Arsenal.

In Application No. 25851 Edward A. Miller requests the  
 Commission to grant to him a certificate of public convenience and

necessity authorizing the operation of passenger stage service between Martinez, Concord and Avon and intermediate points.

A public hearing was had on these applications before Examiner Paul at Concord and Martinez on December 10, 1943, at which these matters were heard on a common record and submitted for decision.

Evidence in Support of Application No. 25845

According to the supplemental agreement attached to the amended application the purchase price involved in this application is \$1201 of which \$1 is the amount paid for the operative right and the remainder the amount paid for the equipment involved.

Van Arsdale testified that he presently owns one 35-passenger Ford stage and one A.C.F. 40-passenger capacity stage which he would use in addition to the 30-passenger capacity Fageol stage he desires to acquire from Atkinson. There is no proposal to change the present fares applying between the points involved. It was shown that Atkinson is presently operating four trips daily except Sundays and holidays between Martinez and Concord, one of which is operated via Avon, as set forth in the margin. Van

(1) Martinez-Concord-Avon-Shell Co.-Martinez

	<u>I.M.</u>	<u>A.M.</u>	<u>P.M.</u>	<u>P.M.</u>	<u>P.M.*</u>
Martinez Lv.	7:00	9:50	1:45	5:30	2:50
Concord Ar.	7:25	10:05	2:00	5:55	3:30
Concord Lv.	7:30				3:30
Avon Ar-Lv	7:45				3:45
Shell Co. Ar-Lv	7:55				
Martinez Ar.	8:00				4:00

Martinez-Shell Co.-Avon-Concord-Martinez

	<u>A.M.</u>	<u>P.M.</u>	<u>P.M.</u>	<u>P.M.</u>	<u>P-A.M.*</u>
Martinez Lv.			4:40		11:45
Shell Co. Ar-Lv			4:45		
Avon Ar-Lv			4:55		12:00
Concord Ar.			5:05		12:15
Concord Lv.	10:20	2:20	5:05	6:15	12:15
Martinez Ar.	10:45	2:45	5:25	6:35	12:30

All schedules daily except Sunday.

\*Operated from November, 1942, until some time after January, 1943.

Arsdale stated that he has made a survey of the public needs for service and after consulting with the personnel officers at the Tidewater Associated Oil Company plant at Avon and the Shell Oil Company plant at Martinez he proposes to rearrange the present schedules and provide service to coincide with the shift changes at these plants and provide for the general public requirements. According to the record the shift changes at the Tidewater Associated Oil Company plant at Avon are 6:45 A.M., 2:45 P.M. and 10:45 P.M.; the shift changes at the Shell Oil Company plant at Martinez are at 8:00 A.M., 4:00 P.M. and 12:00 P.M.

The record shows that service now is and has been continuously provided between Martinez, Concord and Avon by Atkinson since the inception of the service. Evidence was introduced to show that on or about June 15, 1943, E. H. Hapgood, who had theretofore been employed by Atkinson as a driver, obtained a mail contract with the United States Post Office to transport mail between Martinez and Benicia. Thereupon an arrangement was entered into between Atkinson and Hapgood under which Atkinson rented a Studebaker truck to Hapgood at a rental of \$100 a month, Hapgood thereafter conducting in his own name the operation between Martinez and Benicia for the transportation of United States mail, traffic of Railway Express Agency and those passengers who desired transportation between these points. Under this arrangement, according to the testimony of Hapgood, he collected twenty cents one-way fare from each passenger which was turned over to Atkinson. The disposition of the sums received for the transportation of traffic of the Railway Express Agency is not clear. This arrangement was consummated without seeking or obtaining the approval of the Commission. It was shown that regular service for the transportation of passengers between Martinez, Benicia and

Benicia Arsenal, except as provided on the express and mail truck between Martinez and Benicia, was temporarily suspended approximately two months prior to the hearing herein for the following reasons.

The ferry service heretofore operated directly between Martinez and the Benicia Arsenal has been discontinued and the United States Army is now transporting passengers between Benicia and the Arsenal by means of its own equipment, without compensation, in conjunction with the Martinez-Benicia Ferry. Applicant Van Arsdale asserts that as a result thereof there is temporarily no need for passenger service beyond the Benicia Ferry slip on the Martinez side of Carquinez Straits. It cannot be determined how long the Army will continue its service above referred to but in the event it should be discontinued it was shown that public necessity would require applicant to immediately resume passenger service in order to provide adequate transportation for essential war workers. Van Arsdale, therefore, requests that he be authorized temporarily to suspend the transportation of passengers between the Martinez-Benicia Ferry slip and Benicia and Benicia Arsenal until such time as the United States Army abandons its bus service between Benicia and Benicia Arsenal, if he is authorized to acquire the operative rights involved. He would continue express service between Martinez and Benicia.

Evidence in Support of Application No. 25851

In support of Mr. Miller's application evidence was adduced from four public witnesses the chief of whom was the assistant personnel manager of the Tidewater Associated Oil Company refinery at Avon. He stated that his company has about 900 employees approximately 500 of whom are living in the Concord area. About 600 are employed during the day and on each of the other three shifts the number varies from 75 to 100. Upon the approach of gas

rationing in 1942 it was determined that it was desirable to obtain public transportation service to meet the needs of these employees. According to this witness the service provided by Atkinson, the certificated carrier, failed to meet these needs. This situation was never brought to the attention of Atkinson. The witness stated that arrangements were then made with Miller for the establishment of a service to meet the three shift changes, namely, 6:45 A.M., 2:45 P.M. and 10:45 P.M. Thereafter this service was established by Miller and continuously operated to date without obtaining a certificate of public convenience and necessity from this Commission. Miller testified that he established the service pursuant to the request of the Tidewater Associated plant and never filed an application with the Commission requesting a certificate therefor as it was his understanding that it was not necessary. It was shown that approximately 30 passengers are being transported by Miller to and from the Tidewater Associated plant at Avon on each of the three shifts hereinabove referred to. It was stated that Miller's present service adequately cares for the needs of these workers. For this service monthly commutation tickets are sold at \$5 each.

#### Conclusions

A review of this record shows that Van Arsdale is sufficiently experienced and financially able to provide an adequate service between the points involved in this proceeding and should be authorized to acquire the equipment and operative rights as proposed. He has leased station facilities at Martinez which he would use jointly with Pacific Greyhound Lines for which he is presently acting as local agent.

The action of Atkinson in suspending operations between Martinez, Benicia and the Arsenal and "farming out" his passenger

stage express operations between Martinez and Benicia without first obtaining the authority of this Commission is viewed with disfavor to say the least.

We wish to put Van Arsdale upon notice that he will be expected to conduct and provide an adequate service and not engage in any arrangement as shown to exist between Atkinson and Hapgood.

This record clearly shows without doubt that applicant Miller established his presently conducted service between Martinez, Concord and Avon without first applying for and obtaining from this Commission a certificate of public convenience and necessity, as provided for in Section 50 $\frac{1}{2}$  of the Public Utilities Act, which should be immediately discontinued. This should not be confused with Miller's lawfully held operative right over the direct route between Martinez and Avon. His application will be denied.

The purchase price of the operative rights and one piece of equipment, involved in the transfer proposed, is stated to be \$1201 of which \$1200 is said to be the value of the equipment and \$1 the value of the intangibles. Such may be the understanding between the parties, but it should be clearly understood that the authorization hereinafter granted is not an approval of the purchase price in any respect, nor a finding of value for the purpose of rate fixing, issuance of securities, accounting, or for any other purpose. No examination has been made by this Commission, nor by its authorized representatives, of the physical assets involved in this transfer as to their existence, value or ownership.

J. R. Van Arsdale is placed upon 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 to the number of rights which may be given.

O R D E R

A public hearing having been held, evidence adduced, the Commission being fully advised and now finding that public convenience and necessity so require,

IT IS ORDERED as follows:

(1) That K. K. Atkinson is hereby authorized to transfer to J. R. Van Arsdale the operative rights acquired under and created by Decision No. 34619, rendered September 23, 1941, in Application No. 24447, and Decision No. 35376, rendered May 19, 1942, in Application No. 24863, and the equipment described in the supplemental agreement marked Exhibit "B" attached to the amended application herein.

(2) That J. R. Van Arsdale is hereby authorized to acquire from K. K. Atkinson the operative rights and property described in paragraph (1) hercof and thereafter to operate thereunder.

(3) That the authority herein granted is subject to the following condition:

The authority herein granted is subject to the condition that J. R. Van Arsdale, his successors or assigns, shall never claim before this Commission, or any court or other public body, a value for said operative rights or claim as the cost thereof, an amount in excess of that paid to the State as the consideration for such rights.

(4) That J. R. Van Arsdale may suspend until August 1, 1944 the transportation of passengers between the Martinez Ferry slip, Benicia, Benicia Arsenal, Benicia Arsenal barracks and intermediate points.

(5) That applicants K. K. Atkinson and J. R. Van Arsdale shall comply with the provisions of General Orders Nos. 79 and 80 and Part IV of General Order No. 93-A by filing, in triplicate and concurrently making effective, tariffs and time schedules satisfactory to the Commission within sixty (60) days from the effective date hereof and on not less than one (1) day's notice to the Commission and the public.

IT IS FURTHER ORDERED that Application No. 25851 is hereby denied.

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

Dated at Los Angeles, California, this 15<sup>th</sup> day of February, 1944.

Richard L. Baker  
Justus F. Cameron  
Francis L. Havenner

Howard Egan  
COMMISSIONERS