

Decision No. 37024

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of HERBERT G.)	
NORVELL and WILLARD NEVILLE, a copartnership,)	
to sell and MARY MARITZEN and E. B. OSTHUES to)	Application
purchase an automobile passenger line operated)	No. 25846
between 11th and Eye Streets, Modesto, Califor-)	
nia, and Modesto Municipal Airport outside the)	
corporate city limits of Modesto, California.)	

WILLARD NEVILLE

BY THE COMMISSION:

O P I N I O N

This is an amended application of Herbert G. Norvell and Willard Neville, co-partners, doing business under the firm name of Airport Transit, to sell, and Mary Maritzen and E. B. Osthues to purchase, the operative right granted to said Norvell and Neville in Decision No. 35411, dated May 6, 1942.

The order in said decision authorized the operation of a passenger stage service between the corner of 11th and "I" Streets, in the city of Modesto, and the Modesto Municipal Airport, a distance of 2.6 miles, over a specified route. This is the operative right which it is now proposed to transfer.

The transferees operate a passenger bus service between the city of Modesto and Hammond General Hospital and intermediate points. This service would be consolidated with the transferor's operation making a continuous service from the Hospital to Modesto Airport, which is now rendered by the two services.

An agreement was entered into between the parties on October 15, 1943, by the terms of which the buyers agree to pay the sellers the sum of \$8,000 as consideration for the property proposed

to be transferred. It is alleged that the sum of \$2,933.50 represents the value of the equipment and \$5,066.50 the value of the operative right. Included in the equipment are two buses with seating capacity respectively of 20 and 24 passengers. The entire purchase price is to be paid if and when the transfer is approved by this Commission and the City Council of Modesto.

With the application there are submitted statements compiled by applicants showing total operating receipts of \$28,144.41 for the twenty-four months period ending December 31, 1943, and total operating expenses of \$20,165.75 for the same period.

The city of Modesto favors the proposed transfer and the consolidation of the two operating rights.

We are of the opinion that the public interest will be served by authorization of the transfer as the consolidation of the two operations will result in better service to the public. The application will be granted.

Mary Maritzen and E. B. Osthues are 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

Application having been made in the above-entitled matter and the Commission being duly advised, and hereby finding that public convenience and necessity so require,

IT IS ORDERED that Herbert G. Norvell and Willard Neville are hereby authorized to sell and transfer to Mary Maritzen and E. B. Osthues the operative right granted by Decision No. 35411, dated May 6, 1942, in Application No. 24825 and Mary Maritzen and E. B. Osthues are hereby authorized to purchase and acquire said right and thereafter to operate thereunder, subject to the following conditions:

- (a) That the purchasers do not charge more than \$2,933.50 of the purchase price to Tangible Capital Accounts, nor more than \$50, which represents the filing fee paid in Application No. 24825, to Intangible Capital Account. The remainder of the purchase price, to-wit, \$5,016.50 shall be charged to the Proprietors' Investment Account.

IT IS FURTHER ORDERED that applicants herein shall comply with the rules of the Commission's General Order No. 79 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 five (5) days' notice to the Commission.

The effective date of this order shall be the date hereof.

Dated at San Francisco, California, this 25th day of April, 1944.

Richard L. Kahan
Justin F. Quinn
Francis R. Havener
Thomas W. O'Connell
David H. Lawrence
COMMISSIONERS