

Decision No. 37555

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

In the matter of the Application of ANTHONY B. DUNPHY, an individual, doing business as "BELVEDERE GARDENS BUS LINE" and FRANK J. RICE, an individual, doing business as "H and A AUTO LINES," for permission to sell and assign certain passenger stage operative rights and property and to withdraw from conducting passenger stage service in Belvedere Gardens, Los Angeles County, California, and BELVEDERE TRANSIT, INC., a California corporation, for permission to acquire said passenger stage operative rights and property and conduct said passenger stage service in Belvedere Gardens, Los Angeles County, California, and for authority to issue certain securities.

Application
No. 26476

BY THE COMMISSION:

O P I N I O N

Anthony B. Dunphy, doing business as "Belvedere Gardens Bus Line," and Frank J. Rice, doing business as "H and A Auto Lines," ask permission to transfer their operative rights and bus properties to Belvedere Transit, Inc., a California corporation.

Anthony B. Dunphy is operating a local passenger stage service in an unincorporated area in the County of Los Angeles,

easterly from the city limits of the City of Los Angeles, known as Belvedere Gardens. The operative rights under which he is conducting this service were granted by Decision No. 9790, dated November 23, 1921, in Application No. 7194, and by Decision No. 2210, dated February 16, 1930. His operating revenues for 1943 are reported at \$107,558.25.

Frank J. Rice is operating a passenger stage service in an unincorporated territory in the County of Los Angeles, easterly from the city limits of the City of Los Angeles, known as Belvedere Gardens. The present operative rights were originally granted to C. F. Haguewood and T. H. Adams by Decision No. 12693, dated October 13, 1923, in Application No. 9218. By Decision No. 19509, dated March 21, 1928, in Application No. 14465, the Commission authorized the transfer of T. H. Adam's interest in said operative rights to Frank J. Rice. By Decision No. 19923, dated June 25, 1928, in Application No. 14797, the Commission authorized C. F. Haguewood to transfer his interest in the operative rights to Frank J. Rice. A summary and description of Frank J. Rice's operative rights appears in Exhibit "D" on file in this application. His operating revenues for 1943 are reported at \$21,089.70.

A map showing the streets on which Anthony B. Dunphy and Frank J. Rice operate is also on file in this application.

It is of record that Belvedere Transit, Inc, proposes to operate each passenger stage operative right as a separate unit and conduct passenger service over the same routes now

traversed. It does not presently propose to change any schedule, rate, rule or regulation. Immediately upon approval of the application by the Commission, Belvedere Transit, Inc. proposes to conduct an extensive survey of the area now served by Sellers to determine any new transportation need which may have been created by the increase in population. If the survey shows a need for a change in service or for additional service, an appropriate application should be filed.

D. M. Brockway and M. M. Brockway have agreed to pay Anthony B. Dunphy \$68,300, and Frank J. Rice, \$9,500 for their respective properties. They have paid Anthony B. Dunphy \$10,000 and have placed the remainder of the purchase price in escrow to be paid to the Sellers upon the delivery to the escrow holder a copy of the Railroad Commission's decision authorizing the transfer of the properties. D. M. Brockway and M. M. Brockway have agreed to transfer their right, title and interest in the purchase contracts to Belvedere Transit, Inc., in exchange for 778 shares of no par value common stock at \$100 per share. Belvedere Transit, Inc. asks permission to issue said stock, together with 22 additional shares at \$100 per share to provide itself with operating capital.

Belvedere Transit, Inc. submits the following appraisal of the properties:

A. Appraised value of physical and tangible assets and going concern value of Anthony B. Dunphy.

1. Appraised value of physical assets

(a) Automotive equipment and spare motors	\$45,420.00	
(b) Office equipment	400.00	
(c) Garage equipment and shop tools	3,265.11	
(d) Parts	1,725.00	
(e) Tires and tubes	1,145.00	
(f) Land	3,500.00	
(g) Buildings and improvements	10,000.00	
Total value of tangible assets		\$65,455.11

2. Appraised value of intangibles

(a) Goodwill and going concern value of business conducted for twenty three (23) years		2,844.69
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Total consideration \$68,300.00

B. Appraised value of physical and tangible assets and going concern value of Frank J. Rice

1. Appraised value of physical assets

(a) Automotive equipment	\$ 7,414.00	
(b) Parts, tires and equipment	1,000.00	
Total value of tangible assets		\$ 8,414.00

2. Appraised value of intangibles

(a) Goodwill and going concern value of business conducted for twenty one (21) years		1,086.00
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Total consideration \$ 9,500.00

The petition shows that immediately upon the transfer of the properties, Belvedere Transit, Inc. proposes to retire all of the equipment now in use and in place thereof install and operate new 29-passenger Ford transit buses. It is of the opinion that by the use of the new equipment, more accurate and dependable schedules can be maintained and the public provided with better service. Counsel for applicant advises us that operating conditions call for the immediate transfer of the properties. We have not completed our review of the appraisal and are, therefore, not in a position at this time to enter a final order fixing the amount of stock which Belvedere Transit, Inc. should be permitted to issue. The Order herein will authorize the transfer of the operative rights and properties to Belvedere Transit, Inc. and authorize that company to issue 250 shares of stock in part payment for the properties and 22 shares to provide itself with operating capital. The remainder of the purchase price may temporarily be represented on the books of Belvedere Transit, Inc. by an account payable. We will by a Supplemental Order provide for the issue of additional stock if our further investigation warrants such action, and indicate the amount which Belvedere Transit, Inc. may charge to tangible and intangible property accounts. In the meantime, the company may proceed with its program of replacing its equipment and invest the proceeds realized from the sale of such equipment in new equipment. The proceeds which the company will realize from the sale of equipment will be considered by us in authorizing the issue of additional stock.

Belvedere Transit, Inc. 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

Application having been made as above entitled and the Commission being of the opinion that the transfer of said properties to Belvedere Transit, Inc. is in the public interest and that said Belvedere Transit, Inc. should at this time be authorized to issue 272 shares of stock for the purposes herein stated; that the money, property or labor to be procured or paid for through the issue of said stock is reasonably required by said Belvedere Transit, Inc. for the purposes herein stated, and that the expenditures for said purposes are not, in whole or in part, reasonably chargeable to operating expenses or to income;

IT IS ORDERED as follows:

1. Anthony E. Dunphy may, on or before February 1, 1945, transfer to Belvedere Transit, Inc. his operative rights and properties to which reference is made in the foregoing Opinion and

which are more particularly described in the Agreement of Sale on file in this application.

2. Frank J. Rice may, on or before February 1, 1945, transfer to Belvedere Transit, Inc. his operative rights and properties to which reference is made in the foregoing Opinion and which are more particularly described in the Agreement of Sale on file in this application.

3. Belvedere Transit, Inc. may, on or before February 1, 1945, issue at \$100 per share, 272 shares of its common stock without par value; 250 shares of said stock shall be delivered to D. M. Brockway and M. M. Brockway in partial consideration for their right, title and interest in and to said agreements between said Anthony B. Dunphy and Frank J. Rice and said D. M. Brockway and M. M. Brockway. The proceeds from the sale of 22 shares of said stock shall be used by Belvedere Transit, Inc. to maintain its service.

4. Applicants shall comply with the provisions of General Order No. 79 and Part IV of General Order No. 93-A by filing, in triplicate, and concurrently making effective, appropriate tariffs and time tables 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.

5. Belvedere Transit, Inc. shall file with the Commission a report or reports required by the Commission's General Order No. 24-A, which Order, insofar as it is applicable, is made a part of this Order.

6. The authority herein granted will become effective upon the date hereof.

Dated at San Francisco, California, this 19th day of
December, 1944.

Richard L. ...
Justus F. ...
Francis R. ...
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Commissioners