

Decision No. 37797

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of HENRY B. ELBERT, doing business as "THE ARVIN LINE," for permission to sell property and operative rights, and ARVIN LINE, a California corporation, to acquire said property and operative rights for the transportation of passengers, baggage, express and freight between Bakersfield and Mojave, California, and for authority on the part of Arvin Line, a corporation, to issue securities.

**ORIGINAL**

Application  
No. 26592

BY THE COMMISSION:

O P I N I O N

This is an application for an order of the Railroad Commission authorizing Henry B. Elbert to transfer operative rights and properties to Arvin Line, a corporation, and authorizing Arvin Line to issue 3,200 shares of its common capital stock of the aggregate par value of \$32,000.

The application shows that Henry B. Elbert, doing business under the firm name and style of the Arvin Line, is engaged in conducting a business transporting passengers, baggage, express and freight, by motor vehicle, between Bakersfield and Mojave, California. The operative rights granted by this Commission under which he is conducting this service were acquired by him pursuant to orders in Decision No. 23742, dated June 1, 1931, in Application No. 17368; Decision No. 25809, dated April 10, 1933, and Decision No. 27991, dated May 27, 1935, in Application No. 18161; and Decision No. 37486, dated November 21, 1944, and Decision No. 37531, dated December 5, 1944, in

Application No. 26331. His operating revenues, operating expenses and net operating revenues, before deductions for income taxes, are reported as follows:

<u>Year</u>	<u>Operating Revenue</u>	<u>Operating Expense</u>	<u>Net Operating Revenue</u>
1939	\$13,806.77	\$ 9,949.97	\$3,856.80
1940	13,236.21	10,590.29	2,645.92
1941	8,962.22	7,639.71	1,322.51
1942	15,187.82	11,872.98	3,314.84
1943	35,400.98	29,158.24	6,242.74
1944	64,847.66	59,589.54	5,258.12

It is set forth in the application that Henry B. Elbert is physically unable to continue the management of the transportation business and accordingly has entered into an agreement, dated February 14, 1945, to sell and transfer his operative rights and properties to Arvin Line, free and clear of all encumbrances and indebtedness, for the total price of \$29,000 in cash, of which \$10,000 was paid upon execution of the agreement of sale and \$19,000 is payable upon approval of the transfer by the Railroad Commission. A copy of the agreement is on file in this proceeding.

In order to finance the purchase price of the operative rights and properties and to provide \$3,000 for operating capital, Arvin Line at this time proposes to issue and sell \$32,000 of its common capital stock, at par, for cash, to its incorporators; namely, George S. Crozier, Hubert L. Mau and James Kuntz. The estimated value of the properties to be acquired is reported as follows:

Office equipment and supplies	\$ 1,059.00
Automotive parts, etc.	1,285.00
Nine stages - cost less accrued depreciation	19,313.36
C.R.C. operative rights- fees paid	150.00
Going concern, goodwill and name "Arvin Line"	<u>7,192.64</u>
Total	<u>\$29,000.00</u>

It is alleged that the transfer as proposed is in the public interest for the reason, among others, that the directors of the corporation financially are able to extend and improve the service and equipment and to provide additional funds that may become necessary for added facilities and service. On this point counsel for applicant has indicated that operating conditions call for an early transfer of the properties to the corporation.

In our opinion there is nothing in the record at this time to warrant an order authorizing the issue of stock against all the elements of value claimed by applicants. However, we are willing at this time to enter an order authorizing the transfer to the corporation and the issue by the corporation of not exceeding \$21,810 par value of stock in acquiring the rights and properties of Henry B. Elbert and \$3,000 par value of stock to provide working capital and to maintain service. We believe that, unless hereafter otherwise ordered and directed, any amounts paid by the corporation to Henry B. Elbert for his rights and properties in excess of \$21,810 should be charged by it on its books to other intangible property and thereafter amortized by charges to income over a period of not exceeding three years.

In making this order Arvin Line 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 orig-

inally 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 in 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 the operative rights and properties to which reference is made is in the public interest, and that Arvin Line, a corporation, should at this time be authorized to issue 2,481 shares of its common capital stock for the purposes hereinafter stated; that the money, property or labor to be procured or paid for through the issue of said stock is reasonably required by Arvin Line 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; therefore,

IT IS HEREBY ORDERED as follows:

1. Henry B. Elbert may, on or before May 31, 1945, transfer to Arvin Line, a corporation, his operative rights and properties to which reference is made in the foregoing opinion and which are described more particularly in the Purchase Agreement dated February 14, 1945 on file in this proceeding.
2. Arvin Line, a corporation, may, on or before May 31, 1945, issue and sell at not less than par, for cash, not exceeding 2,481 shares of its common capital stock of the aggregate par value of \$24,810, and use \$21,810 of the proceeds to pay for the properties of Henry B. Elbert and \$3,000 to maintain its service.
3. If Arvin Line, a corporation, acquires said operative rights and properties and pays therefor more than \$21,810, it must charge the amount paid in excess of said \$21,810 to other intangible capital and amortize the same by charges to

income over a period of not exceeding three years after the date of the acquisition of said operative rights and properties.

4. Applicants 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, appropriate tariffs and time tables within sixty days from the effective date hereof and on not less than one days' notice to the public and the Commission.

5. Arvin Line, a corporation, shall file with the Commission a report, or reports, as required by the Commission's General Order No. 24-A, which order, in so far as 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 17<sup>th</sup> day of April, 1945.

Harold G. ...  
Justice J. ...  
Richard ...  
Francis ...  
Irving ...  
 Commissioners