

Decision No. 39011

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

**ORIGINAL**

In the Matter of the Application of )  
 :  
 SAN BERNARDINO VALLEY TRANSIT COMPANY, )  
 a corporation, for authority to pur- )  
 chase all issued and outstanding )  
 shares of the capital stock of Air )  
 Service Transit, Inc., a California )  
 corporation, engaged in a public util- )  
 ity business; )  
 :  
 SAN BERNARDINO VALLEY TRANSIT COMPANY, )  
 and AIR SERVICE TRANSIT, INC., for ap- )  
 proval of merger agreement and for )  
 authorization for merger into San Ber- )  
 nardino Valley Transit Company, and )  
 for transfer and consolidation of Cer- )  
 tificates of Public Convenience; )  
 :  
 SAN BERNARDINO VALLEY TRANSIT COMPANY )  
 for authority to borrow money and re- )  
 finance obligations by issuance of )  
 promissory note. )  
 :  
 ----- )

Application  
No. 27512

O P I N I O N

This is an application for an order authorizing San Bernardino Valley Transit Company, a corporation, to acquire the outstanding stock of Air Service Transit, Inc., to issue a note in the principal amount of \$30,000, and authorizing San Bernardino Valley Transit Company and Air Service Transit, Inc., to execute an agreement for merger.

San Bernardino Valley Transit Company is engaged in the business of operating motor vehicles for the transportation of passengers in and about San Bernardino. For the year 1945 it

reported its operating revenues at \$291,494.88 and its operating expenses, taxes and depreciation at \$288,546.50, leaving net operating revenues of \$2,948.38. As of December 31, 1945, it reported outstanding stock in the total amount of \$14,300 held as follows:

|                      |                 |
|----------------------|-----------------|
| Richard J. Glasscock | \$ 5,600        |
| Elizabeth P. Guthrie | 3,300           |
| Mary D. Guthrie      | 1,500           |
| W. H. Pattillo       | 1,400           |
| William Guthrie      | 1,000           |
| J. P. Shepardson     | 900             |
| B. T. McKissock      | 600             |
|                      | <u>\$14,300</u> |

Air Service Transit, Inc., is engaged in the business of operating motor vehicles for the transportation of passengers between San Bernardino and East Highlands and between San Bernardino and Del Rosa under operative rights acquired by it pursuant to authority granted by Decision No. 37279, dated August 16, 1944, and Decision No. 38665, dated February 5, 1946. It reports its outstanding stock, as of December 31, 1945, at \$2,000, divided into 20 shares of the par value of \$100 each, held in equal proportions by William Guthrie and J. B. Shepardson. For the year 1945, it reported its operating revenues at \$49,761.07 and its operating expenses, taxes and depreciation at \$47,874.67, leaving net operating revenues of \$1,886.40. Its assets and liabilities as of April 30, 1946, are reported by it as follows:

Assets

|                                |                 |                   |
|--------------------------------|-----------------|-------------------|
| Cash in bank                   |                 | \$ 46.74          |
| Revenue equipment - buses      | \$ 4,078.03     |                   |
| Less: Reserve for depreciation | <u>1,739.19</u> | 2,338.84          |
| Franchise                      |                 | 50.00             |
| Goodwill                       | 10,065.58       |                   |
| Less: Reserve for amortization | <u>5,616.80</u> | <u>4,448.78</u>   |
| Total                          |                 | <u>\$6,884.36</u> |

Liabilities

|                  |                 |                   |
|------------------|-----------------|-------------------|
| Taxes accrued    |                 | \$ 294.40         |
| Accounts payable |                 | 1,048.38          |
| Notes payable    |                 | 5,500.00          |
| Net worth:       |                 |                   |
| Common stock     | \$2,000.00      |                   |
| Less - deficit   | <u>1,958.42</u> | <u>41.58</u>      |
| Total            |                 | <u>\$6,884.36</u> |

Under authority granted by said Decision No. 37279, Air Service Transit, Inc., acquired certain rights and properties from F. M. Snell. The order of the Commission provided that if the Company paid therefor more than \$17,500, it must charge the excess to account 109, Other Debit Accounts, and amortize the same over a period of three years by charges to income. Thereafter it appears the company set up on its balance sheet an item of \$10,065.58 designated as goodwill, against which it has accumulated, up to April 30, 1946, a reserve for amortization in the total amount of \$5,616.80, leaving a net balance in the account of \$4,448.78.

Decision No. 37279, referred to above, among other things authorized Air Service Transit, Inc., and San Bernardino Valley Transit Company to enter into an operating agreement under which each could operate over the lines of the other under an arrangement providing for the pro-rating of revenues and of the cost of repairs, maintenance and operations on a mileage basis. The two corporations in the present proceeding now propose to consolidate their operations and properties under one ownership and control. San Bernardino Valley Transit Company has agreed to purchase, for \$125 a share, the outstanding 20 shares of stock of Air Service Transit, Inc. Thereafter the two corporations propose to effect a merger of their properties, in accordance with the provisions of Section 361 of the Civil Code of the State of

California, with San Bernardino Valley Transit Company being designated as the surviving corporation. As such, it will succeed to all the assets of Air Service Transit, Inc., and will assume all its obligations and indebtedness. It intends to record the transaction on its books by means of the following entries:

Debit Entries

|                  |                   |
|------------------|-------------------|
| Cash             | \$ 46.74          |
| Franchises       | 50.00             |
| Passenger stages | 2,338.84          |
| Goodwill         | 6,907.20          |
| Total            | <u>\$9,342.78</u> |

Credit Entries

|                       |                   |
|-----------------------|-------------------|
| Federal income tax    | \$ 294.40         |
| Accounts payable      | 1,048.38          |
| Notes due F. M. Snell | 5,500.00          |
| Cash                  | 2,500.00          |
| Total                 | <u>\$9,342.78</u> |

At the conclusion of the transaction the surviving corporation will have certain outstanding indebtedness as follows:

San Bernardino Valley Transit Company

|   |             |
|---|-------------|
| Note in favor of American National Bank, dated Nov. 26, 1945, due Nov. 26, 1946, interest at 5%   | \$17,500.00 |
| Note in favor of American National Bank, dated Dec. 15, 1943, payable in monthly installments of \$416.66, with interest at 7%, authorized by Decision No. 36795                    | 3,333.52    |
| Conditional sale contract with Anglo California National Bank, dated May 1, 1944, payable in monthly installments of \$245.85 with interest at 6%, authorized by Decision No. 37009 | 3,196.13    |

Air Service Transit, Inc.

|  |                    |
|--|--------------------|
| Non-interest bearing note in favor of F. M. Snell, due Aug. 27, 1946 | <u>5,500.00</u>    |
| Total  | <u>\$29,529.65</u> |

To obtain funds to pay said indebtedness and to provide in part (\$470.35) the cost of acquiring the stock of Air Service Transit, Inc., San Bernardino Valley Transit Company proposes to borrow \$30,000 from Federal Engineering Corporation, said amount to be represented by a note payable in monthly installments of \$250 each on the first day of each month commencing October 1, 1946, with interest at the rate of 3% per annum, commencing on September 1, 1946, on the unpaid balance.

Applicants allege, in support of their requests, that San Bernardino Valley Transit Company can, and will, as a result of the merger, be enabled to furnish public service at lower cost and more efficiently than such service is now furnished by the two corporations functioning separately. The refinancing of the indebtedness, as proposed, will lower the interest costs and reduce the monthly payments required to amortize the outstanding obligations.

The Commission has considered this matter and is of the opinion that a public hearing is not necessary and that the requests of applicants should be granted, subject to the conditions of the order herein. The action taken herein shall not be construed to be a finding of value of the stock or properties, particularly the item of goodwill, referred to herein. However, we believe that for accounting purposes San Bernardino Valley Transit Company should record in account 1221, Revenue Equipment, the \$4,078.03 now carried by Air Service Transit, Inc., as the cost of its passenger stages, and offset the amount, in part, by a credit to account 2521--Reserve for depreciation, of the amount of \$1,739.19 now reported by Air Service Transit, Inc., as its reserve against such equipment. As to the item of \$6,907.20

which the surviving corporation proposes to record in its books as goodwill, it appears that this amount represents the balance of \$4,448.78 of the excess purchase price paid to F. M. Snell by Air Service Transit, Inc., plus the excess of the purchase price of the stock of that company, now being paid by San Bernardino Valley Transit Company, over the reported net worth as shown in the balance sheet of April 30, 1946. We believe this item should be amortized by charges to income within three years from the effective date of this order.

San Bernardino Valley Transit Company is hereby 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 to the Railroad Commission for an order authorizing the acquisition of stock and the issue of a note and approving an agreement of merger, as set forth in the preceding opinion, and the Commission having considered the matter and being of the opinion that the money, property or labor to be procured or paid for through the issue of said note

is reasonably required for the purpose specified herein, which purposes are not, in whole or in part, reasonably chargeable to operating expenses or to income,

IT IS HEREBY ORDERED as follows:

1. San Bernardino Valley Transit Company, after the effective date hereof and on or before July 31, 1946, may acquire all the outstanding stock, \$2,000 par value, of Air Service Transit, Inc.

2. San Bernardino Valley Transit Company and Air Service Transit, Inc., after the effective date hereof and on or before August 31, 1946, may merge their properties in accordance with the terms of the agreement of merger filed in this proceeding as Exhibit "B".

3. If such agreement of merger is executed, San Bernardino Valley Transit Company as the surviving corporation shall assume the obligations and indebtedness of Air Service Transit, Inc., and shall acquire the properties and operative rights of Air Service Transit, Inc., which operative rights it may consolidate and integrate with those now owned and operated by it.

4. San Bernardino Valley Transit Company, after the effective date hereof and on or before July 31, 1946, may issue a note in the principal amount of \$30,000 in the same form as the note filed in this proceeding as Exhibit "C", for the purpose of obtaining funds to pay the indebtedness referred to in the preceding opinion and to pay in part the cost of acquiring the outstanding stock of Air Service Transit Inc.

5. 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 to the public.

6. The authority herein granted will become effective when San Bernardino Valley Transit Company has paid the minimum fee prescribed by Section 57 of the Public Utilities Act, which fee is Twenty-five (\$25.00) Dollars.

7. Within thirty (30) days after the issue of the note herein authorized and the completion of the merger, San Bernardino Valley Transit Company shall file with the Commission a report as required by the Commission's General Order No. 24-A and a copy of the journal entries used to record the merger on its books of account, which entries shall be in line with the proposed entries and the comments in the foregoing opinion.

8. San Bernardino Valley Transit Company shall amortize the \$6,907.20 charged to its accounts as goodwill, by charges to income account 315, Miscellaneous Charges to Income, over a period of three years after the effective date of this order.



Dated at San Francisco, California, this 28<sup>th</sup> day  
of May, 1946.

David C. Brown  
Justin J. Calmes  
Amos C. Carr  
Joseph H. Dungee  
Harold H. Hule  
Commissioners

