

ORIGINAL

Decision No. 40870

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
R. L. BENINGER and A. L. BENINGER,)
co-partners, doing business as)
BENINGER BUS SERVICE, to sell and)
D. R. FRANKLIN and J. P. STERLING,)
co-partners, to purchase certain)
operative rights and equipment.)

Application No. 28785

OPINION AND ORDER

The above entitled application states that R. L. Beninger and A. L. Beninger, partners, hereinafter referred to as Sellers, doing business as Beninger Bus Service are presently engaged in the automotive transportation of passengers between Antioch and Camp Stoneman and intermediate points, subject to certain local restrictions, between Antioch and Sweeney's Beach and intermediate points, and between Antioch and Pittsburg Industrial Area and intermediate points, subject to certain restrictions, pursuant to the authority of the Commission under the following decisions: Decision No. 38875 in Application No. 27143, Decision No. 39593 in Application No. 27605 and Decision No. 39690 in Application No. 27608. They request the Commission to authorize them to sell and transfer those operative rights and three units of passenger stage equipment to D. R. Franklin and J. P. Sterling, hereinafter referred to as Buyers, who desire authority to acquire said operative rights and equipment and thereafter conduct the operations.

The proposed transfer would be made pursuant to the terms of an agreement between the parties attached to the application as Exhibit "A". The purchase price is stated to be \$15,800, of which \$10,600 in cash is to be paid by the Buyers to the Sellers upon receipt of the authority of this Commission authorizing the

transfer. Of the remainder of the purchase price, \$5,200, the Buyers agree to assume an obligation of \$4,300 of the Sellers to the Bank of America, National Trust and Savings Association, and to execute a promissory note to the Sellers in the amount of \$900, payable in monthly installments of \$50 or more with interest on deferred balances at the rate of 3% per annum. The agreement states that of the purchase price \$7,900 represents the value of the equipment and the remainder represents the value of the intangibles.

It does not appear that there will be any change in the fares charged or the conduct of the operations as a result of the proposed transfer. The Sellers assert that service between the points involved has been continuously provided since the granting of the certificates. According to the application the Buyers have been employed by the Sellers as General Manager and Assistant Manager and have had considerable experience in the public transportation of passengers. Statements submitted with the application show that they are financially able to conduct the service.

D. R. Franklin and J. P. Sterling are 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.

The action taken herein shall not be construed to be a finding of the value of the properties herein authorized to be transferred.

The Commission has considered this matter and is of the opinion that a public hearing is not necessary and that the application should be granted as herein provided.

Therefore,

IT IS HEREBY ORDERED as follows:

(1) That R. L. Peninger and A. L. Peninger, partners, after the effective date hereof and on or before December 31, 1947, may sell and transfer to D. R. Franklin and J. P. Sterling, partners, the operative rights and equipment herein referred to, and D. R. Franklin and J. P. Sterling may acquire such operative rights and equipment, assume the liabilities of the Sellers in an amount of not to exceed \$4,300, and thereafter conduct the operations referred to herein, such transfer to be in accordance with the agreement of sale attached to the application herein as Exhibit "A", except that the date of the transfer shall be subsequent to the effective date of this order.

(2) That 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 60 days from the effective date hereof and on not less than one day's notice to the Commission and the public.

(3) That D. R. Franklin and J. P. Sterling, after the effective date hereof and on or before December 31, 1947, may issue a note in the principal amount of not exceeding \$900, payable in monthly installments of \$50 or more with interest on deferred balances at the rate of 3% per annum to finance in part the purchase

price of the properties herein authorized to be transferred, it being the opinion of the Commission that the money, property or labor to be procured or paid for through such issue is reasonably required for the purpose specified herein.

(4) That Buyers shall file with the Commission a report of the issue of said note for \$900 within 30 days after its issue.

(5) That the authority herein granted to issue a note will become effective when Buyers have paid the minimum fee prescribed by Section 57 of the Public Utilities Act, which fee is \$25.

In all other respects the authority herein granted will become effective 20 days from the date hereof.

Dated at San Francisco, California, this 4th day of November, 1947.

Harold A. Kula
Justin F. Casper
W. S. Paul
R. F. ...

COMMISSIONERS

