

ORIGINAL

Decision No. 42015

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)	
RUSSELL L. BENINGER and FRANK R. BEN-	:	
INGER, a co-partnership, doing busi-)	
ness as BENINGER TRANSPORTATION SERVICE	:	
to sell and BENINGER TRANSPORTATION)	Application
SERVICE, INC. a California corporation,	:	No. 29460
to purchase the certain passenger stage)	
operative rights, together with equipment	:	
and business of the Sellers.)	

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In the Matter of the Application of)	
BENINGER TRANSPORTATION SERVICE, INC., a	:	
California corporation, for authority to)	Application
issue shares of stock.	:	No. 29461
-----)	
	:	

Marquam C. George, for Applicants; Aaron Glickman,
in propria persona, protestant.

O P I N I O N

Russell L. Beninger and Frank R. Beninger, co-partners doing business as Beninger Transportation Service, hereinafter referred to as Sellers, are engaged in operating a passenger stage service in Contra Costa County, California. In Application No. 29460 they have applied to the Commission for authority to transfer their operative rights and properties to Beninger Transportation Service, Inc., a corporation they have caused to be organized for the purpose of receiving such rights and properties and thereafter conduct said passenger stage service.

In Application No. 29461 Beninger Transportation Service, Inc., hereinafter referred to as the Corporation, has

applied for authority to issue common and preferred stock for the following purposes:

	<u>Common</u>	<u>Preferred</u>
For properties of Sellers	\$38,400	\$ --
For working capital	2,800	2,200
To pay indebtedness of Sellers, to acquire real property and to construct a garage	<u>12,200</u>	<u>12,800</u>
Total	<u>\$53,400</u>	<u>\$15,000</u>

The Corporation has an authorized stock issue of 11,000 shares of the aggregate par value of \$200,000. The shares consist of 10,000 shares of preferred stock of the par value of \$10 a share, and 1,000 shares of common stock of the par value of \$100 a share. The holders of the preferred stock are entitled to cumulative dividends at the rate of 4% per annum, payable in cash semi-annually, and, after the payment of non-cumulative dividends at the rate of 8% per annum on the common stock, they participate with the holders of the common stock in additional dividends in the ratio of 1/5th to the holders of the preferred stock and 4/5ths to the holders of the common stock. The Articles of Incorporation as originally filed, provide voting rights for the holders of the preferred stock only in the event four semi-annual cumulative dividends are in arrears. However, at the hearing, counsel for Applicants stated that the Articles will be amended so as to give the holders of the preferred stock full voting rights on a parity with the holders of the common stock--that is, the holders of the preferred stock will receive one vote for each share (\$10 par value) held by them and the holders of the common stock will receive ten votes for each share (\$100 par value) held by them.

Aaron Glickman, appearing on his own behalf, protests the granting of the applications unless Sellers make provision for the payment of an amount of approximately \$300 which he alleges is owing to him by Sellers, but which was denied by a witness for Applicants. It is for the courts and not this Commission to determine whether Sellers are indebted to protestant. The transfer of the operative rights and properties herein authorized does not relieve Applicants from paying any indebtedness they may owe.

The operative rights proposed in these proceedings to be transferred to the Corporation, are those heretofore acquired by the Sellers under authority granted by the Commission by Decision No. 38594, dated January 15, 1946; Decision No. 40174, dated April 15, 1947; and Decision No. 40686, dated September 10, 1947. (1) The physical properties include six motor coaches, one pickup truck, two extra engines, materials, supplies and shop equipment.

Sellers have reported, for the seven months' period from January 1 to July 31, 1948, revenues of \$22,926.88, expenses, exclusive of partners' withdrawals, of \$18,850.87, and a net profit of \$4,076.01. They have reported their assets and liabilities as of July 31, 1948, as follows:

(1)

By Decision No. 38594, Sellers were authorized to acquire from Arlof N. Wright, for \$12,500, certain equipment and rights for the transportation of passengers between El Sobrante and three shipyards in Richmond, subject to certain local restrictions, and between Richmond and Point San Pablo and intermediate points. By Decision No. 40174, they were granted an extension to serve between Richmond and East Richmond Heights. By Decision No. 40686, they were authorized to modify their routes serving the communities of El Sobrante, Rollingwood and El Portal. Said Decision No. 38594 directed them to charge \$8,256.60 of the \$12,500 purchase price to tangible property, \$100 to intangible property and \$4,143.40 to deferred credits, the latter amount to be amortized over a period of not more than five years.

Assets

Current assets-cash in bank		\$ 2,417.50
Fixed assets -		
Buses and trucks	\$30,375.00	
Shop equipment, engines	8,500.00	
Operative rights	15,670.18	
Intangible capital	<u>200.00</u>	54,745.18
Deferred charges -		
Unexpired insurance	83.50	
Materials and supplies	<u>2,387.00</u>	<u>2,470.50</u>
Total assets		<u>\$59,633.18</u>

Liabilities and Net Worth

Current liabilities -		
Accounts payable	\$ 2,148.54	
Notes payable	8,129.32	
Due A. N. Wright	<u>1,862.00</u>	\$12,139.86
Net worth		<u>47,493.32</u>
Total liabilities and net worth		<u>\$59,633.18</u>

The record shows that the \$30,375 value assigned to buses and trucks covers the following:

No. 18	1946 Reo 31-passenger bus	\$7,875
No. 22	1939 Twin Coach 41-passenger bus	5,000
No. 23	1941 Twin Coach 35-passenger bus	5,000
No. 24	1943 International 29-passenger bus	3,250
No. 26	1939 G.M.C. Yellow Coach 41-passenger bus	3,000
No. 27	1942 Twin Coach 35-passenger bus	5,000
	1940 G.M.C. pickup truck	1,250

The amounts represent the purchase price paid by Sellers for the equipment, plus the cost of rebuilding it and placing it in operating condition. The record shows that in stating the amounts Sellers made no allowance for accrued depreciation. The testimony shows that as of June 30, 1948, Sellers had recorded on their books for accrued depreciation \$3,417.62. This represented the accrued depreciation on the purchase price paid for equipment. It was not related to the value now assigned to the equipment in

service. Were this done, as it should be, the accrued depreciation on July 31, 1948, would have been \$6,404.21. For the purpose of determining how much stock the Corporation may issue as a consideration for the assets of Sellers, we will deduct from the \$30,375 accrued depreciation in the amount of \$6,404, leaving a net value of \$23,971. Upon the transfer of the properties of Sellers, the Corporation will assume liabilities which, on July 31, 1948, were reported at \$12,139.86.

The amount claimed for operative rights includes approximately \$8,000 of the purchase price paid to Arlof N. Wright in acquiring his properties and rights under Decision No. 38594, the sum of \$4,000 for the Sellers' time and efforts in canvassing the territory, obtaining witnesses and appearing at hearings, and approximately \$3,000 for fees in obtaining and protecting operative rights. Whatever sums have been expended for such purposes have been by Sellers included in operating expenses.

In passing on this matter, the Commission wishes to place Beninger Transportation Service, Inc., as it has heretofore placed Sellers, 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 Commission will not recognize the

total amount claimed on the balance sheet for operative rights and intangible capital in making its order herein authorizing the issue of common stock.

In determining the amount of common stock which the Corporation may issue in payment for the assets of the Sellers, the Commission will allow for operative rights and intangible capital \$600, for buses and trucks \$23,971, for shop equipment and engines \$8,500, and for material and supplies \$2,387, making a total of \$35,458. From this amount we will deduct, as of July 31, 1948, liabilities assumed in the amount of \$12,139.86, leaving a balance of \$23,319. The order herein will authorize the Corporation to issue not exceeding \$23,300 par value of its common capital stock in payment for the properties of Sellers. The order will further authorize the Corporation to issue and sell at par, \$15,000 par value of common stock and, provided its Articles of Incorporation are amended as herein indicated, \$10,000 par value of preferred stock. \$3,000 of the stock proceeds may be used by the Corporation to improve and maintain its service and \$22,000 to pay indebtedness assumed by it to acquire the garage site described in Exhibit "6" and build a garage thereon.

The Corporation's request to issue \$15,100 of common stock and \$5,000 of preferred stock will be denied.

O R D E R

Public hearings having been held in the above entitled matters, the Commission having considered the evidence submitted

and it being of the opinion that the requests of Applicants should be granted to the extent herein provided, that the money, property or labor to be procured or paid for through the issue of \$38,300 of common stock and \$10,000 of preferred stock is reasonably required by Beninger Transportation Service, Inc. for the purposes specified herein, that such purposes are not, in whole or in part, reasonably chargeable to operating expenses or to income, and that the request of Beninger Transportation Service, Inc. to issue \$15,100 of common stock and \$5,000 of preferred stock should be denied without prejudice; therefore,

IT IS HEREBY ORDERED as follows:

1. Russell L. Beninger and Frank R. Beninger, after the effective date hereof and on or before December 31, 1948, may sell and transfer their operative rights and properties referred to in the preceding opinion, to Beninger Transportation Service, Inc.
2. Beninger Transportation Service, Inc., after the effective date hereof and on or before December 31, 1948, may assume the payment of the outstanding indebtedness referred to in the preceding opinion and may issue not exceeding \$23,300 par value of common stock in payment for the rights and properties herein authorized to be transferred.
3. Beninger Transportation Service, Inc., after the effective date hereof and on or before December 31, 1948, may issue and sell, at par for cash, \$15,000 par value of common stock and \$10,000 par value of preferred stock, and use not exceeding \$3,000 of the proceeds to maintain and improve its service

and use the remaining proceeds to pay indebtedness assumed by it, to finance the cost of acquiring said real property and of constructing a garage thereon.

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 to the public.

5. Beninger Transportation Service, Inc. shall file with the Commission, reports as required by General Order No. 24-A, which order, insofar as applicable, is made a part of this order.

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

7. The authority herein granted to transfer properties and to issue common stock will become effective twenty (20) days from the date hereof. The authority herein granted to issue preferred stock will become effective when Beninger Transportation Service, Inc. has filed with the Commission a certified copy of its Articles of Incorporation, amended so as to give the holders of the preferred stock voting rights on a parity with the holders of the common stock, as indicated in the preceding opinion.

8. The request of Beninger Transportation Service, Inc. to issue \$15,100 par value of common stock and \$5,000 par value of preferred stock is denied without prejudice.

Dated at San Francisco, California, this 3rd day
of September, 1948.

R. J. [unclear]
Justice J. [unclear]
Samuel [unclear]

Commissioners