

ORIGINAL

Decision No. 44141

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 ESKDALE NEWTON, an individual doing)
 business as "NEWTON PASSENGER TRANS-)
 PORTATION COMPANY", Seller, and NEW-)
 TON PASSENGER TRANSPORTATION COMPANY,)
 INC., a corporation, Buyer, for an)
 order of the commission authorizing)
 (a) the sale and transfer of the op-)
 erative properties and rights herein)
 described, and (b) the latter to is-)
 sue shares of its capital stock in)
 payment thereof.)

Application
 No. 31170

- Eskdale Newton, for applicants.

O P I N I O N

This is an application for an order authorizing Eskdale Newton to transfer operative rights and properties to Newton Passenger Transportation Company, Inc., a corporation, and authorizing said corporation to issue shares of stock in payment.

Eskdale Newton is, and for some time has been, engaged in operating motor coaches for the transportation of passengers in and about the City of Stockton. (1) His annual reports to the Commission show his revenues and expenses, in summary form, for the last four years as follows:

(1) The records of the Commission show that applicant Newton acquired operative rights under authority granted by the Commission as follows:

Decision No. 36715, dated Nov. 23, 1943, in Application No. 25808
 Decision No. 36910, dated Mar. 7, 1944, in Application No. 26021
 Decision No. 38030, dated June 26, 1945, in Application No. 26556
 Decision No. 40406, dated June 17, 1947, in Application No. 28354
 Decision No. 41292, dated Mar. 9, 1948, in Application No. 29122

	<u>Operating Revenues</u>	<u>Operating Expenses</u>	<u>Net Income</u>
1946	\$81,686	\$79,578	\$ 2,108
1947	78,011	90,398	(12,387)
1948	78,252	79,351	(1,099)
1949	72,254	76,975	(4,721)

The record shows that applicant Newton has concluded it is more advantageous for him to do business as a corporation and to that end he has organized Newton Passenger Transportation Company, Inc. to take over the properties and operations. The corporation was organized under the laws of the State of California on or about March 29, 1950, with an authorized capital stock of \$65,000 divided into 650 shares of the par value of \$100 each. At this time it proposes to issue such shares, or such part thereof as may be authorized by the Commission, in payment for the assets of Eskdale Newton, the transfer of the same to be made free and clear of indebtedness.

The assets to be thus transferred include the operative rights heretofore acquired by said Newton, nine coaches and service automobiles, and shop equipment, parts, material and supplies and prepaid insurance and licenses. Applicant reports the cost of his nine units of equipment at \$45,209 and their estimated present value at \$31,000. He reports the cost of the other assets to be transferred at approximately \$15,000. In addition to these items, he reports that he has expended approximately \$5,000 for legal expenses, fees and incidental costs in obtaining the certificates he now proposes to transfer, as shown by his books of account, and he claims an allowance of \$32,000 for goodwill and other intangible capital. He states that in addition he will provide the company with \$2,000 in cash for working capital purposes.

We do not believe that goodwill is a proper item to be used as a basis for an order authorizing the issue of stock. A

review of the record indicates that the new corporation should be authorized to issue not exceeding \$53,000 par value of stock in acquiring the properties of Eskdale Newton.

The authority herein granted shall not be construed to be a finding of the value of the properties herein authorized to be transferred. The corporation 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

A public hearing having been held on the above entitled matter and the Commission being of the opinion that the application should be granted only as herein provided, that the money, property or labor to be procured or paid for through the issue of the stock herein authorized is reasonably required for the purpose specified herein, and that such purpose is not, in whole or in part, reasonably chargeable to operating expenses or to income; therefore,

IT IS HEREBY ORDERED as follows:

1. Eskdale Newton, after the effective date hereof and on or before June 30, 1950, may transfer his operative rights and

properties, to which reference is made in the foregoing opinion, to Newton Passenger Transportation Company, Inc.

2. Newton Passenger Transportation Company, Inc., after the effective date hereof and on or before June 30, 1950, may issue not exceeding \$53,000 par value of its capital stock to pay for the operative rights and properties herein authorized to be transferred and to provide working capital to maintain and improve its service.

3. 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 after the date hereof and on not less than five (5) days' notice to the Commission and to the public.

4. Newton Passenger Transportation Company, Inc. shall file with the Commission a report of the issue of the stock herein authorized as required by General Order No. 24-A, which order, insofar as applicable, is made a part of this order.

5. The authority herein granted will become effective twenty (20) days after the date hereof.

6. The application, insofar as it involves the issue of \$12,000 of stock, is dismissed without prejudice.

Dated at San Francisco, California, this 9th day of May, 1950.

R. E. Dwyer
James F. Callahan
John P. Farrell
Harold P. Kule
Penelope D. Potter
Commissioners