

ORIGINAL

Decision No. 46620

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of	)	
GUY H. BENTON,	:	
doing business under the name of	)	
BENTON BUS LINES,	:	
to sell, and	)	Application
JOHN W. CHAPMAN,	:	No. 32933
to purchase, an automobile passenger	)	
line between Whittier, Sunshine Farms,	:	
Pico, Rivera, Norwalk, Bellflower,	)	
and Artesia.	:	
-----	)	

G. Randolph Miller, for Guy H. Benton; John W. Chapman, in propria persona.

O P I N I O N

Guy H. Benton, one of the applicants in this proceeding, owns and operates the Benton Bus Lines which provide transportation for passengers in and about Whittier, and also owns, but does not operate, the Artesia-Bellflower-Norwalk Bus Line which transports passengers between the communities indicated. (1) In this application he reports that because of ill health he desires to retire from the passenger stage business and that he has made arrangements, and now asks authorization, to sell his operative rights and equipment to

(1)

Exhibit E-1 shows the routes operated by Benton Bus Lines as follows:

- Route No. 1. Whittier-Orangewood Route via Orangedale Park.
- Route No. 2. Whittier-Los Nietos and Flood Ranch Route.
- Route No. 3. Whittier-Orangewood Route via Rivera.
- Route No. 4. Whittier-Sunshine Farms-Norwalk Route.
- Route No. 5. Whittier-South Whittier and Valley View Route.
- Route No. 6. Whittier-Valencia Manor-Pico Route.

Exhibit F-1 shows the routes operated by the Artesia-Bellflower-Norwalk Bus Line as follows:

- Route No. 1. Bellflower-Artesia-Hawaiian Gardens Route.
- Route No. 2. Artesia-Norwalk Route.
- Route No. 3. Bellflower-Norwalk Route.

John W. Chapman. In this decision said Benton will be referred to as Seller.

John W. Chapman, the other applicant, hereafter referred to as Buyer, joins in the matter and requests the Commission to grant the application. The record shows that Buyer during 1951 has been engaged in conducting the operations of Artesia-Bellflower-Norwalk Bus Line and, in addition, that for the last eight years he has been engaged as general manager of the Holbrook Transit Company, a passenger carrier operating in a nearby service area.

The operative rights to be transferred apply to both Benton Bus Lines and Artesia-Bellflower-Norwalk Bus Line and were acquired by Seller pursuant to authority granted by Decision No. 45079, dated December 5, 1950, Decision No. 45080, dated December 5, 1950, Decision No. 45317, dated January 30, 1951, and Decision No. 45817, dated June 12, 1951. The tangible property included in the transaction consists of five buses, parts and supplies on hand, and shop equipment. The purchase price to be paid by Buyer is the sum of \$46,000, of which \$8,302.86 has been assigned by applicants to the tangible property and \$37,697.14 to the operative rights.

To carry out the terms of the proposed transaction, Buyer and Seller desire to execute a conditional sales contract providing for the payment in cash of \$10,800 of the purchase price, and for the payment of the remaining \$35,200 in monthly installments of \$500 or more, including interest at the rate of 6% per annum on unpaid balances. Under the terms of the contract, title to the property will remain in Seller until full payment has been made.

A public hearing on the application was held in Los Angeles on December 13, 1951, at which time evidence was offered by both parties in support of their requests. Exhibit No. 1 shows operating

revenues for the Benton Bus Lines of \$26,205.33 for the eleven-month period ended November 30, 1951, and net income of \$5,091.12 before making provision for depreciation. As to the Artesia-Bellflower-Norwalk Bus Line, the record shows that for the same period operating revenues amounted to \$13,775.24, with a loss of \$3,356.03. It appears, however, that on June 12, 1951, by Decision No. 45824, the Commission authorized an increase in rates on this bus line and that revenues have been increasing monthly since the middle of the year. (2) Buyer testified that revenues increased from \$747.31 in January of 1951 to \$1,725.13 in November, that during the first six months the revenues amounted to \$.1487 per mile and during the last five months to \$.2077 per mile, and that, in his opinion, the line would have shown a profit of \$1,155 during the eleven months had the new rates been in effect. Buyer further testified that the residential growth in the service area has been increasing rapidly and that new real estate developments should increase the passenger revenues materially. He estimated that upon acquiring the two lines he could increase the total revenues by one-third and that he could meet the requirements of the conditional sales contract for payment of principal and interest out of the revenues from operations. Buyer also gave testimony concerning his financial resources and income from other sources. He urged the Commission to grant him the authority to acquire the lines for the price and under the conditions set forth in this application, and he specifically requested that the transaction be handled through the execution of a conditional sales contract rather than some other form of indenture in order to protect his other holdings.

(2)

Monthly revenues during 1951 were reported as follows:

January	\$ 747.31	July	\$ 1,331.77
February	827.59	August	1,606.49
March	1,069.62	September	1,625.37
April	926.25	October	1,725.57
May	1,068.04	November	<u>1,725.13</u>
June	1,122.10	Total	<u>\$13,775.24</u>

Buyer testified that should the equipment he intends to acquire from Seller be inadequate to maintain and improve service, he can make other equipment available from Holbrook Transit Company. The record indicates that plans are being considered looking toward the incorporation of Holbrook Transit Company and the consolidation of the operations of that company with those Buyer now is acquiring from Seller in the present proceeding. This matter, however, is not now before us.

The proposed purchase price was agreed upon after negotiations between the parties and, as shown herein, is substantially in excess of the cost or value of the tangible property. A review of the record, however, indicates that Buyer has had many years experience in the operation of passenger stage lines, that he is fully acquainted with the operations he now proposes to acquire, and that he has financial resources sufficient to enable him to meet the obligations he proposes to assume. If Buyer desires to invest his money in these lines we will not withhold our consent and, under the circumstances set forth in this particular proceeding, will authorize the execution of the conditional sales contract. In authorizing the execution of the contract we are not relieving Seller of his public utility obligations. In the event he finds it necessary to retake possession of the rights and properties under the terms of said contract, we will require him at that time to continue service to the public.

The action taken in this decision shall not be construed to be a finding of the value of the operative rights and equipment herein authorized to be transferred. With reference to the amount assigned by applicants to the operative rights, attention is directed to Section 820 of the Public Utilities Code, which reads in part as follows:

The Commission shall have no power to authorize the capitalization of the right to be a corporation, or the capitalization of any franchise or permit, or the right to own, operate, or enjoy any such franchise or permit, in excess of the amount (exclusive of any tax or annual charge) actually paid to the state or to a political subdivision thereof as the consideration for the grant of such franchise, permit, or right.

Thus it appears that in the event it is decided to transfer to a corporation the two lines here under review, the Commission would have no power to authorize such corporation to issue securities in payment for the operative rights in the amount of the agreed purchase price, or in any amount except as indicated in the code. Nor can the Commission accept the agreed purchase price for the operative rights as the basis for an order authorizing increases in charges for service, and in this connection we wish to place Buyer 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 as to the number of rights which may be given.

ORDER

A public hearing having been held on the above entitled matter, and the Commission having considered the evidence and being of the opinion that the proposed transfer will not be adverse to the public interest; that the application should be granted, as herein provided; and that the money, property or labor to be procured or paid for through the execution of the conditional sales contract herein