

Decision No. 46645

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of:

(a) HAROLD B. BOYLE, an individual doing business as BOYLE & SON, to sell, and BOYLE & SON, a California corporation, to purchase a highway common carrier certificate authorizing operations between Los Angeles, California and Escondido and San Diego, California and other points in the vicinity thereof.

(b) BOYLE & SON, a California corporation, to issue and sell shares of its capital stock.

Application No. 33025

ORIGINAL

O P I N I O N

Harold B. Boyle, one of the applicants in this proceeding, is an individual doing business under the firm name and style of Boyle & Son and, as such, is engaged as a highway common carrier of property generally between Los Angeles and San Diego and points and places in the vicinity of Escondido, Vista and Fallbrook. He reports that due to the growth in his business he has found it difficult to keep his highway carrier operations segregated from his personal activities and has concluded that the carrier properties and business could be operated better by a corporate organization. To that end, he has caused the organization of Boyle & Son, a California corporation, and now proposes, and asks authorization, to transfer to it his carrier operative rights and properties in exchange for shares of stock.

The operative rights include those acquired by applicant Boyle pursuant to authority granted by this Commission by Decision No. 36441, dated June 22, 1943, Decision No. 38258, dated September 25, 1945, and Decision No. 44864, dated October 3, 1950. The

tangible properties include 60 units of equipment consisting of trucks, tractors, trailers and semi-trailers. The cost of the tangible properties to be transferred, including the revenue equipment to which reference has been made, and also service cars, shop and garage equipment, furniture and office equipment and miscellaneous items, is reported at \$122,714.50 and the depreciated book value at \$56,653.09. The value assigned to the operative rights is \$53.

In Exhibit C, applicant Boyle reports a financial statement, as of September 30, 1951, giving effect to the proposed sale, showing assets, liabilities and net worth as follows:

<u>Assets</u>		
Current assets -		
Cash and accounts receivable	\$ 11,169.18	
Materials and supplies	5,918.98	
Inventories	469.91	
Prepaid expenses	<u>3,062.50</u>	
Total current assets		\$20,620.57
Property and equipment -		
Tangible property	122,714.50	
Less-depreciation reserve	<u>66,061.41</u>	
Net balance		56,653.09
Franchises		53.00
Other intangible capital	11,950.00	
Less-provision for amortization	<u>3,333.34</u>	<u>8,616.66</u>
Total		<u>\$85,943.32</u>

<u>Liabilities</u>		
Current liabilities -		
Accounts payable	\$ 25,681.03	
Accrued liabilities	<u>5,380.54</u>	
Total current liabilities		\$31,061.57
Mortgages and contracts		19,408.23
Net worth		<u>35,473.52</u>
Total		<u>\$85,943.32</u>

It is proposed that the new corporation, as of the close of business on December 31, 1951, will issue such number of its shares of no par common stock at a stated value of \$25 as shall equal the net worth of the properties. Based upon the net worth shown in the

balance sheet, the number of shares to be issued would be 1,418 but in order to allow for an increase in the net worth at the date of transfer, the request is made for authorization for the corporation to issue not to exceed 1,500 shares of stock, although the number of shares actually delivered may be somewhat less than that amount. Applicant Boyle represents that there has been no substantial change in either the assets or liabilities of the properties to be transferred since September 30, 1951.

The balance sheet shows that applicant Boyle carries as a debit balance the sum of \$11,950 designated as other intangible capital and that he has accumulated a provision for amortization of this amount in the sum of \$3,333.34 as of September 30, 1951, leaving an unamortized balance of \$8,616.66. Records of the Commission show that this debit balance primarily includes the purchase price paid by applicant Boyle for operative rights acquired from certain of his predecessors and that the Commission, by Decision No. 44447, dated June 27, 1950, authorized and directed him to amortize said amount over a period of not more than three years, commencing January 1, 1950, by charges to income.

In our opinion, the unamortized balance of \$8,616.66 is not an item upon which we can base an order authorizing the issue of shares of stock. Excluding the amount from the reported net worth of \$35,473.52 as of September 30, 1951, would leave a balance as of that date of \$26,856.86, an amount which would permit the issue of 1,074 shares of stock at a stated value of \$25.

The order herein will authorize the issue of not exceeding 1,074 shares at this time. If it should develop that there has been an increase in the net worth as of the date of transfer, requiring the issue of additional shares, applicant corporation may file a

supplemental application for authorization to issue the same.

The new corporation should set up in its books the ledger balances on Boyle's books at the date of transfer representing the tangible property to be transferred, the associated depreciation reserves and the operative rights, now carried at \$53. If the corporation transfers to its books the aforesaid unamortized balance of \$8,616.66, or any part thereof, it shall continue the amortization over the three-year period specified by the Commission.

It appears that the transfer, as here proposed, will not be adverse to the public interest and that, accordingly, an order should be entered. In making this order we wish to place applicants 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.

O R D E R

The Commission having considered the above entitled matter, and being of the opinion that a public hearing thereon is not necessary; that the application should be granted, as herein provided; that the money, property, or labor to be procured or paid for through the issue of the shares of stock herein authorized is reasonably required by Boyle & Son, a corporation, 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. Harold B. Boyle, after the effective date hereof and on or before June 30, 1952, may transfer his operative rights and properties to Boyle & Son, a corporation, in accordance with the terms and conditions set forth in this application.

2. Boyle & Son, a corporation, in payment for said operative rights and properties, may assume the payment of outstanding mortgages and contracts in an amount not exceeding \$19,408.23 and may issue not exceeding 1,074 shares of its no par common stock at a stated value of \$25 a share.

3. 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.

4. On not less than five (5) days' notice to the Commission and to the public, applicants shall comply with the provisions of General Order No. 80 and Part 14 of General Order No. 99, by filing, in triplicate, and concurrently making effective, appropriate tariffs and time tables.

5. Boyle & Son, a corporation, upon acquiring the rights and properties of Harold B. Boyle, shall file with the Commission a copy of each journal entry used to record the acquisition.

6. Boyle & Son, a corporation, shall file with the Commission monthly reports as required by General Order No. 24-A, which order, insofar as applicable, is made a part of this order.

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

Dated at San Francisco, California, this 15th day of January, 1952.

R. T. [Signature]
President

Justus J. [Signature]

Harold [Signature]

[Signature]

Commissioners