

ORIGINAL

Decision No. 54175

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
S. DEL GEORGE, doing business as
S. DEL GEORGE TRANSPORTATION COMPANY,
to sell, and ALLAN ARTHUR TRANSPORTATION,
INC., a corporation, to purchase operating
rights and properties of a highway common
carrier, and the application of ALLAN
ARTHUR TRANSPORTATION, INC., a corporation,
for authority to issue stock and promissory
notes.

Application
No. 38449

Ivan McWhinney, for S. Del George;
Carter, Young, Zetterburg & Henrie,
by R. T. Young, for Allan Arthur
Transportation, Inc.

O P I N I O N

In this application the Commission is asked to enter an order (1) authorizing S. Del George to transfer operative rights and equipment to Allan Arthur Transportation, Inc., and (2) authorizing Allan Arthur Transportation, Inc., to issue \$31,700 par value of common stock and a promissory note in the principal amount of \$39,035.88.

The application was filed on September 24, 1956 and came up for hearing before Examiner Coleman in Los Angeles on November 14, 1956, at which time it was taken under submission. The Commission has received no protests in the proceeding.

S. Del George

S. Del George, doing business as S. Del George Transportation Company, is engaged in operating a highway common

carrier service for the transportation of livestock and certain other commodities, in California and in Arizona, and in interstate commerce between points in California and points in Arizona. His California intrastate operative rights were created by Decision No. 44523, dated July 11, 1950, and were transferred to him under authorization granted by Decision No. 49700, dated February 23, 1954.

Applicant Del George has reported revenues and expenses as follows:

	<u>1955</u>	<u>1956</u> <u>Jan.-June</u>
Operating revenues	\$112,296	\$ 76,624
Operating expenses (excluding depreciation)	123,800	75,541
Balance	<u>(11,504)</u>	1,083
Depreciation	<u>6,618</u>	<u>3,309</u>
Net	\$ <u>(13,122)</u>	\$ <u>(2,226)</u>

In arriving at these recorded losses, applicant Del George included no salary allowances for himself.

Allan Arthur Transportation, Inc.

This corporation was organized on January 29, 1955 for the purpose of engaging in business as a highway permit carrier. It has not, however, obtained any permits nor has it conducted any highway operations. It has \$1,000 of stock outstanding.

Exhibit D shows that the corporation has acquired three 1956 units of equipment and miscellaneous parts, at a total cost of \$35,455 and that presently it has unpaid equipment purchase contracts in the amount of \$23,905. It has financed itself primarily with monies advanced by Allan R. Arthur, Sr., one of its incorporators.

Agreement to Transfer Rights and Equipment

It appears that Del George desires to withdraw from his highway common carrier activities and that he has made arrangements to sell his operative rights, both interstate and intrastate, along with one 1948 Peterbilt truck and Weber trailer and two aluminum bodies, to Allan Arthur Transportation, Inc., for the sum of \$60,000, the purchase price being allocated to the various elements of property as follows:

Interstate Commerce Commission certificate of public convenience and necessity, No. MC-107715	\$10,000
California Public Utilities Commission certificate of public convenience and necessity granted by Decision No. 44523 and acquired by Del George by Decision No. 49700	10,000
Arizona Corporation Commission certificate of public convenience and necessity, No. 5192	6,000
One 1948 Peterbilt truck and Weber trailer	20,000
Two aluminum bodies	12,000
Goodwill and name of S. Del George Transportation Company	<u>2,000</u>
Total purchase price	<u><u>\$60,000</u></u>

These values are said to represent current market prices. The testimony shows that the tangible assets have been rebuilt and are in good operating condition.

Financing by Corporation

In order to provide the purchase price, to refinance indebtedness and to obtain working capital, applicant corporation proposes to issue to Allan R. Arthur, Sr., its president and sole

stockholder, \$31,700 par value of common stock and a promissory note in the principal amount of \$39,035.88, payable five years after date of issue with interest at the rate of five per cent per annum, payable annually.

A pro forma statement of the corporation, giving effect to the transfer of properties and to the issue of securities, is as follows:

<u>Assets</u>		
Cash in bank		\$ 5,000
Tangible assets -		
Equipment	\$67,455	
Less: Equipment obligations	<u>23,905</u>	
Net tangible assets		43,550
Intangible assets -		
Certificates	26,000	
Goodwill	<u>2,000</u>	
Net intangible assets		<u>28,000</u>
Total		<u>\$76,550</u>
<u>Liabilities and Capital</u>		
Note to Allan R. Arthur, Sr.		\$39,036
Capital stock		32,700
Surplus		<u>4,814</u>
Total		<u>\$76,550</u>

The \$67,455 assigned to tangible assets includes the \$35,455 paid by the corporation for the properties it now owns and the \$32,000 value placed on the equipment to be obtained from S. Del George.

Earnings and Operations

Upon carrying the proposed transaction to completion applicant corporation will commence its operation with equipment obligations requiring monthly repayments aggregating \$8,544

annually and with long-term notes requiring annual interest payments of \$1,951, the two items aggregating \$10,495.

While the S. Del George operations have been conducted at a loss during 1955 and 1956, the record indicates that the volume of business has been increasing and that the new corporation will be in a position to develop additional revenues and to obtain new accounts once the operative rights have been transferred to it, and that such new business already is available to it.

The evidence shows that the organizers of the corporation presently are engaged, as partners, in transporting livestock under permitted authorization, that such operations are producing gross revenues running from \$20,000 to \$30,000 monthly with as much as 10 per cent being carried to net profits and that the partners will turn their operations over to the corporation for consolidation with the present S. Del George operations and will make additional equipment available if needed.

Summary and Conclusions

From a review of the application it is clear that the proposed purchase price is one that has been agreed upon by the parties for the purpose of the transaction and is predicated, in part, on present values and on estimated earnings.

It is not our practice to fix the price which may be paid by the purchaser of a public utility operation although, of course, we can decline to approve a transfer of public utility properties if it should appear that the purchaser does not have sufficient financial resources to meet the purchase price and to undertake the

obligations of furnishing public utility service, or if the transfer would be, in our opinion, adverse to the public interest.

In the present case it appears that the new corporation should be in a position to meet the obligations, both financial and servicewise, which it will incur in succeeding to the operations of S. Del George. The organizers of the corporation are experienced in the transportation business, and the corporation will conduct and improve the service now being offered to the public and will adopt the present rates.

However, in exercising jurisdiction over the issue of securities, we are subject to certain limitations placed on us by law and are charged with certain responsibilities.

Under the law we cannot authorize the capitalization of operative rights in excess of the amount paid the state or other political subdivisions as the consideration for the grant of such rights.^{1/} In addition, we are required by law, when authorizing

^{1/} Section 820 of the Public Utilities Code reads 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. No contract for consolidation or lease shall be capitalized, nor shall any public utility issue any bonds, notes, or other evidences of indebtedness against or as a lien upon any contract for consolidation or merger."

the issue of securities, to make a finding as to the reasonableness of the proposed issue.^{2/}

In the present proceeding we are asked to authorize the issue of securities against values assigned operative rights which do not represent payments to the state or other political subdivisions and against a claimed value of goodwill, although the operations have been conducted at a loss. Excluding the \$28,000^{3/} which has been assigned by applicants to intangible capital from the capital base will leave a balance of \$48,550, representing cash and net investment in equipment which appears to be the proper valuations which we can take into consideration in passing on the reasonableness of the proposed issue of \$70,735.78 of stock and debt.

We have reviewed the evidence and upon the basis of information presented to us we are of the opinion, and so find:

1. That the transfer of the operative rights and equipment of S. Del George to Allan Arthur Transportation, Inc., will not be adverse to the public interest.

^{2/} Section 818 of the Public Utilities Code requires the Commission in making an order authorizing the issue of securities to state that "in the opinion of the Commission, the money, property, or labor to be procured or paid for by the issue is reasonably required for the purposes specified in the order and that, except as otherwise permitted in the order in the case of bonds, notes, or other evidences of indebtedness, such purposes are not, in whole or in part, reasonably chargeable to operating expenses or to income."

^{3/} Certificates \$26,000 and Goodwill \$2,000.

2. That the Commission has no power to authorize the capitalization of the intangible capital in the amounts requested.

3. That the tangible assets to be acquired by the corporation are adequate to warrant an order authorizing an issue of the \$31,700 of stock, but are not sufficient to permit us to authorize the issue of the note.

4. That the money, property or labor to be procured or paid for through the issue of \$31,700 of stock is reasonably required for the purposes set forth in the application, which purposes are not, in whole or in part, reasonably chargeable to operating expenses or to income.

Our order will be entered in accordance with the foregoing findings. In making this order we place Allan Arthur Transportation, Inc., 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.

We place the corporation upon notice also that it will be required to keep its books of account in accordance with the Uniform System of Accounts prescribed by the Commission and to file annual reports in the form to be provided and at the times to be specified.

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. In entering this order we are not accepting the claimed values for equipment and intangible capital as determining the rate base of the corporation.

O R D E R

A public hearing having been held on the above-entitled matter and the Commission being of the opinion that an order should be entered; therefore,

IT IS HEREBY ORDERED as follows:

1. S. Del George may transfer to Allan Arthur Transportation, Inc., his operative rights and equipment as set forth in this application.
2. Allan Arthur Transportation, Inc., may issue not exceeding \$31,700 par value of common stock for the purposes set forth in the application.
3. None of the stock authorized by paragraph 2 hereof shall be sold or issued unless and until the corporation first shall have selected an escrow holder and said escrow holder shall have been first approved in writing by the Commission; that when issued all documents evidencing any of said stock shall forthwith be deposited with said escrow holder, to be held as an escrow pending the further written order of the Commission; that the receipt of said escrow holder for said documents shall be filed with the Commission; and that the owner or persons entitled to said stock shall not consummate a sale or transfer of said stock, or any interest therein, or receive any consideration therefor, until the written consent of the Commission shall have been obtained so to do.

4. The application of Allan Arthur Transportation, Inc., to issue a promissory note is denied.

5. On not less than five days' notice to the Commission and to the public, applicants shall supplement or reissue the tariffs on file with the Commission naming rates, rules and regulations governing the common carrier operations herein involved so as to show that S. Del George has withdrawn or canceled and Allan Arthur Transportation, Inc., a corporation, has adopted or established, as its own, said rates, rules and regulations. The tariff filings made pursuant to this order shall comply in all respects with the regulations governing the construction and filing of tariffs set forth in the Commission's General Order No. 80.

6. Allan Arthur Transportation, Inc., shall file a report or reports, as required by General Order No. 24-A, which order, insofar as applicable, is made a part of this order.

7. This order will become effective 20 days after the date hereof.

Dated at Los Angeles, California, this 4th day of DECEMBER, 1956.

John E. Mitchell President
Paula L. Williams
William H. ...
R. ...
S. L. Fox Commissioners