

Decision No. 22428

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of ) Application  
 G. A. BRINKMAN for a franchise. ) No.16174

In the Matter of the Application of )  
 HARRY S. PAYNE, operating under the )  
 fictitious name of Pacific Motor )  
 Express, for a certificate of public )  
 convenience and necessity to operate )  
 a motor truck service for the trans- )  
 portation of milk, dairy products )  
 and supplies only, as an extension )  
 of his present operative rights )  
 between Los Angeles and Temecula and )  
 intermediate points. ) Application  
 No.16256

ORIGINAL

Ellock & Mitchell, by A. D. Mitchell, for  
 Applicant in Application No.16174, and  
 for G. A. Brinkman, protestant in  
 Application No.16256.

H. J. Bischoff, for Applicant in Application  
 No.16256, and for Harry S. Payne, Protestant  
 in Application No.16174.

L. R. Kagerise, proprietor, Keystone Express,  
 Protestant in Applications Nos.16174 and  
 16256.

Phil Jacobson, for Bahler Transportation  
 Company, Protestant in Applications Nos.16174  
 and 16256.

A. M. Astor, for Kardashian & Kardashian,  
 Protestants in Applications Nos.16174 and  
 16256.

L. A. Galbreath, for Chino Express & Transfer,  
 Protestant in Applications Nos.16174 and 16256.

BY THE COMMISSION -

OPINION

In Application No.16174, G. A. Brinkman has pe-  
 titioned the Railroad Commission for an order that public  
 convenience and necessity require the operation by him  
 of an automobile truck line as a common carrier of milk  
 and cream from dairies in the vicinity of Pomona, Ontario,

Wineville, Chino, Prado and Corona to creameries in the vicinity of El Monte, Alhambra, Pasadena, Los Angeles, Glendale and San Bernardino, and for the transportation of return loads of dairy supplies and cattle.

In Application No.16256, Harry S. Payne, operating under the fictitious name of Pacific Motor Express, has petitioned the Railroad Commission for an order declaring that public convenience and necessity require the operation by him of an auto truck service as a common carrier of milk and cream, and for return movement of dairy supplies, from an area having a radius of five miles from the intersection of Central Avenue and the present south city limits of Chino for deliveries to creameries located at San Bernardino, Glendale, Los Angeles and Pasadena, and points on the Valley Boulevard between Los Angeles and Pomona, the proposed operation to be an extension of the presently authorized rights of this applicant as covered by certificated authority heretofore granted by this Commission.

Public hearings on these applications were conducted by Examiner Handford at Ontario, the matters were consolidated for the purpose of receiving evidence and for decision, were duly submitted and are now ready for decision.

In Application No.16174, applicant G. E. Brinkman proposes to charge rates in accordance with a schedule as filed at the hearing, to operate two round trips daily from the dairies in the districts proposed to be served to the creameries located at El Monte, Alhambra, Pasadena, Los Angeles, Glendale and San Bernardino, using as equipment 12 Reo trucks, each of 3 ton capacity, 2 trailers, and 1 small pick-up truck.

In Application No.16256, applicant Harry S. Payne, operating under the fictitious name of Pacific Motor Express, proposes to charge rates in accordance with a schedule marked "Exhibit A" as attached to the application; to operate two round trips daily on schedules satisfactory to the dairies and creameries; and to use as equipment several units of equipment

now on hand together with such additional trucks as may be required by the demands of traffic. This applicant relies as justification for the granting of the desired certificate, upon the following alleged facts: that applicant is now authorized to transport all commodities between Los Angeles on the one hand and on the other hand to points on the main highway south of Chino to Temecula, including a distance of five miles on each side of the highway; that his presently authorized routes cover approximately seventy-five percent of the territory formerly served by Jos. K. Hawkins, said territory being that now proposed to be served by G. A. Brinkman, applicant in Application No. 16174; that the creameries to which dairies sell their product prefer to have one carrier handle the entire business of milk delivery, which service applicants will be able to perform in the event of being granted the desired certificate.

G. A. Brinkman, applicant in Application No. 16174, testified that he was at present hauling milk from dairies in Chino and its vicinity, and from the Pomona territory to creameries at Los Angeles and Pasadena, hauling being performed for one hundred and sixty five dairymen. Since applicant instituted the service on December 23, 1929, he has employed an average of 21 men. Applicant's headquarters are at 1194 South Gary Avenue, Pomona, at which point is located his garage, machine shop and assembling and loading platforms. Milk is transported from the dairies to the assembling depot at Pomona, thence loads are consolidated and dispatched to the creameries at Los Angeles, Pasadena and other points, it being the experience of applicant that a satisfactory service, without complaint from the dairy shippers or creamery consignees, cannot be given unless the milk is handled through a centrally located assembling station. Witness was formerly employed by Jos. K. Hawkins, for about one year as a driver and for a

little over a year as manager. Upon the discontinuance of the Hawkins operation, by order of the Railroad Commission (Decision No. 21816 in Case No. 2718, decided November 25, 1929) witness leased the property on Gary Avenue, Pomona, for a ten year period, at a rental of \$250.00 per month. Witness purchased the machinery, garage and office equipment of Jos. K. Hawkins, paying therefor cash in the sum of \$3000.00. Witness also purchased, on lease contract from the Euclid Finance Company of Ontario, 10 Reo trucks and 3 trailers, assuming an obligation of approximately \$13,000, which is to be paid off in monthly installments. Nine witnesses, dairymen residing at Chino and Pomona, testified regarding their use and approval of the service of applicant, G. A. Brinkman. These witnesses shipped to creameries at El Monte, Los Angeles, Pasadena, Alhambra and Glendale, and were unanimous in their approval of the service which was stated to be satisfactory in every respect and superior to any service heretofore rendered or available.

By stipulation, the testimony of five witnesses, residing at Ontario and Chino, was received as being substantially the same as the testimony of the nine witnesses who were fully examined.

W. P. Cheronig, employed as field advisor for the California Dairies, with creameries at Alhambra, Glendale and Los Angeles, testified that he was familiar with the territory proposed to be served by applicant Brinkman; that he had checked the service and rates proposed; that he had no complaints regarding the character of service rendered or rates charged; and that the creameries he represented would continue to use the service of Brinkman, if authorized.

R.H. Nelson, Superintendent of the Valley Dairy at El Monte, testified that his creamery received milk transported by applicant Brinkman; that he frequently interviewed dairymen who were forwarding their product to his creamery

and had found no complaint regarding the service rendered but that drivers were competent and in general the service rendered to dairymen shipping to his creamery was the most efficient that had ever been offered. If authorized, the service of Brinkman will be continued.

G. C. Watson, plant superintendent for the Adohr Creamery of Los Angeles, testified that shippers of milk who were under contract for the delivery of their products to his creamery were now using the service of applicant Brinkman; that he had heard no complaints as to the rates or type of service rendered. Some 250 cans of milk are now received daily by the Brinkman service and the witness believes the service now being rendered is more satisfactory than any heretofore available.

H. S. Payne, applicant in Application No. 16256, testified regarding his present operation and territory served. Witness has made investigation of the territory from which he concludes that of an average production of 2000 cans of milk per day, 1500 cans are produced on or adjacent to his presently authorized routes. Solicitation amongst dairymen now located on his present routes has not resulted in securing the milk business, due largely to the attitude of creameries, to whom the milk is shipped by dairymen, preferring a restricted number of carriers delivering milk at their plants. This applicant proposes to serve San Bernardino with an "on call" service, to be given on three hours' notice and at a minimum charge of \$12.50. Witness is now the owner of seven trucks and six trailers, and five of the trucks are available and adapted for the transportation of milk. Additional equipment can be promptly acquired if the needs of the business so require.

Applicant at present does not operate on Sundays and holidays, but proposes to so operate if the desired certificate is granted. Witness now maintains terminals in Corona and Los Angeles and in the event of the granting of his application would establish a depot at Chino or Pomona. Witness claims a present net worth of \$27,184 as evidencing his ability to properly finance and operate the additional service for which certificate is requested.

Each applicant protests the application of the other and both applications are protested by Edward Bahler, operating service between Yucaipa and San Bernardino, between San Bernardino and Los Angeles (without intermediate service between San Bernardino and Los Angeles), between Arlington, Corona, Chino, Pomona, Riverside, Colton, Wineville, Ontario and Nard on the one hand and Los Angeles and El Monte on the other hand, and between Riverside and San Bernardino.

Edward Bahler, a protestant, testified that he was operating milk truck service under the authority of the Commission and had been so operating for about four years, some additions to his original routes having been acquired by purchase of other routes which had been duly authorized by this Commission. Witness claims to be ready and willing to handle all the milk originating in the territory served by his authorized routes, and to be financially able to furnish such additional equipment as may be necessary for its transportation.

John S. Azevedo and A. C. Freitas, dairymen of San Bernardino, testified regarding their use of the service of protestant Bahler and as to its satisfactorily meeting their requirements at all times.

Two branch managers of truck sales agencies testified regarding the financial rating of protestant Bahler, each having sold him equipment in the past and having found his

obligations to have been satisfactorily and promptly cared for.

L.H.Moulton, residing at San Bernardino, and employed as Superintendent of the California Milk Producers Creamery in San Bernardino testified that his creamery was used by the association as a factory for the diversion and processing of surplus milk, diversions of milk being frequently made on short notice when the available supply was in excess of the requirements of the creameries at Los Angeles and other points. Witness testified that he had used the service of both applicant Brinkman and protestant Bahler, finding both uniformly satisfactory and without complaint from dairymen or from the creamery, Brinkman at present handling about 120 cans and Bahler now handling about 300 cans of milk daily to his creamery.

We have carefully and fully considered the record as shown by the evidence and exhibits in these proceedings. It appears therefrom that immediately upon the discontinuance of the service by Jos. K. Hawkins under the provisions of this Commission's Decision No. 21816, in Case No. 2718, that G. A. Brinkman commenced operation between the dairies and creameries in San Bernardino, Glendale, El Monte, Alhambra, Pasadena and Los Angeles, having filed Application No. 16174 on December 18, 1929, to cover such operation. The record fully sustains the necessity for the authorization of the service which is universally commended by dairymen and creamery operators as being satisfactory in all respects, both as to rates and service. The financial position of this applicant has required the assuming of a considerable obligation in the payment for trucks on a monthly basis but not to a degree that, in our opinion, should militate against the successful operation of the routes and the continuance of a satisfactory

and continuous service to his patrons.

As regards applicant Harry S. Payne, applicant in Application No. 16256, this applicant is now conducting a general freight service between Los Angeles, Alhambra, El Monte, Fuente, Pomona and Chino on the one hand and Corona, Glen Ivy, Elsinore, Murrieta Hot Springs, Temecula, Pauba Ranch and intermediate points on the other hand, and while a portion of the territory sought is already covered by certificate rights held by this applicant, other portions of the territory proposed are intermediate on his route and are in territory where no business is authorized beyond the carriage of through traffic through such territory. This applicant has not heretofore specialized in the transportation of milk, same only having been carried in conjunction with his general freight business. The record shows that creamery operators prefer that milk be handled as a single commodity and not be incorporated with loads containing general freight or merchandise. Additional terminal facilities would also be required to be established by this applicant, new or additional equipment would be necessary, as well as a revision and amplification of applicant's schedules, especially as regards Sunday service. This applicant also proposes to serve San Bernardino only as an "on call" service and at a minimum charge of \$12.50 per trip. The record shows this applicant, although having made a canvass of the territory, to have received no promise of business from creameries or dairymen and no witnesses were presented who expressed a desire for the proposed service if existing and presently available service were to be continued.

As regards the service now available by protestant Bahler. Although the record shows milk to be picked up by both this protestant and applicant Brinkman in the same area and that witnesses testified as to the satisfactory service rendered by each carrier, there appears no conflict between the operations of the respective carriers in the same pick-up



district and no justification for disturbing the present satisfactory conditions. Protestant Behler does not serve the creameries at Glendale, Pasadena and Alhambra, such cities not being located on his authorized routes, and it appears that the delivery of milk is frequently changed from one creamery to another.

After full consideration of all the evidence herein it is our conclusion that public convenience and necessity will best be served by the granting of the application of G. A. Brinkman in accordance with the declaration, terms and conditions as set forth in the accompanying order, and the denial of the application of Harry S. Payne.

G. A. Brinkman is hereby placed upon notice that "operative rights" do not constitute a class of property which should be capitalized or used as an element of value in determining reasonable rates. 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

Public hearings having been held on the above entitled applications, which were consolidated for the receiving of evidence and for decision, the matter having been duly submitted, the Commission being now fully advised and basing its order on the conclusions as contained in the opinion which precedes this order,

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA  
HEREBY DECLARES that public convenience and necessity require the operation by G. A. Brinkman of an automobile truck service, as a common carrier for the transportation of milk, cream,

dairy products and for the back haul of dairy supplies, hay and feed only, between Los Angeles, Glendale, Pasadena, Alhambra, El Monte, Pomona, Chino, Ontario, and San Bernardino and intermediate points serving only the dairies located in the territory and along the following routes and two miles on each side of said routes, which routes are in the vicinity of Pomona, Ontario, Chino and Corona, to wit:

(a) Beginning at the intersection of Garey Avenue and Grand Avenue, in the town of Pomona, east on Grand Avenue prolonged to intersect Etiwanda Avenue;

(b) Beginning at the intersection of Garey Avenue and the prolongation of Riverside Avenue, near the town of Chino, east on Riverside Avenue through the town of Chino to the intersection of Riverside Avenue and Etiwanda Avenue;

(c) Beginning at a point on Carbon Canyon Road about three (3) miles westerly from Garey Avenue, easterly on Carbon Canyon Road and Merrill Avenue prolonged to intersect Etiwanda Avenue;

(d) Beginning at the intersection of Pomona-Rincon Road and Pine Avenue, easterly on Pine Avenue to its conjunction with Schleisman Street thence east on Schleisman Street and Orange Street prolonged to intersect Etiwanda Avenue;

(e) Beginning at a point where Prado Road crosses the Santa Ana River near the town of Prado formerly named Rincon, northeasterly along the southeast bank of the Santa Ana River to River Street southeasterly on River Street to Hammer Avenue northerly on Hammer Avenue to Fourth Street in the town of Norco, east on Fourth Street prolonged to intersect Etiwanda Avenue.

The trucks of applicant may be operated and routed in a manner to give the most economic and efficient service, provided, however, that, except as hereinafter noted, no service of any kind may be given to or from dairies located outside the territory included within the zone bounded as follows:

Beginning at the intersection of Carey Avenue and Holt Avenue, in the town of Pomona, east on Holt Avenue to Monte Vista Avenue, north on Monte Vista Avenue to Orchard Avenue, east on Orchard Avenue and "G" Street, in the town of Ontario, to San Antonio Avenue, south on San Antonio Avenue to "A" Street, east on "A" Street and Holt Avenue to Archibald Avenue, near the town of Guastip, north on Archibald Avenue to Colton Avenue, east on Colton Avenue to Etiwanda, south on Etiwanda Avenue prolonged to intersect Magnolia Avenue, near the town of Corona, southwesterly on Magnolia Avenue to East Sixth Street, westerly on East Sixth Street, Circle Boulevard, and Sixth Street, in the town of Corona to Yarba Street, northwesterly on Yarba Street and Santa Ana Canyon Road through the town of Prado to Prado Road, crossing the Santa Ana River northwesterly on Prado Road to Chino Road, northwesterly on Chino Road, Pomona-Rincon Road to Cloverdale Road, west on Cloverdale Road to Ramona Avenue, north on Ramona Avenue to Merrill Avenue, west on Merrill Avenue to Carey Avenue and northerly on Carey Avenue to the point of beginning.

Except that service may be given south along Pipe Line Avenue to the ranches of Steves and Blackburn and service is further required to dairies on Carbon Canyon Road as far as a point about three (3) miles westerly of Carey Avenue.

IT IS HEREBY ORDERED that a certificate of public convenience and necessity be and the same is hereby granted to C. A. Brinkman for the operation of an automobile truck service as a common carrier of milk, cream, dairy products and for the back haul of dairy supplies, hay and feed, only between the termini and intermediate points and over the routes as specifically set forth in the foregoing declaration, subject to the following conditions:

1- The authority hereby granted is confined to the transportation of milk and cream between the dairies and creameries in the territory and over the routes herein set forth with back haul of empty containers, dairy supplies, hay and feed, only to dairies from which milk or cream is transported. No authority is hereby granted for the transportation of general merchandise or for the commodities herein specified to other than dairies or creameries served by applicant.

2- Applicant shall file written acceptance of the certificate herein granted within a period of not to exceed ten (10) days from date hereof.

3- Applicant shall file in duplicate, within a period of not to exceed twenty (20) days from the date hereof, tariff of rates and time schedules, such tariffs of rates and time schedules to be identical with those attached to the application herein, or rates and time schedules satisfactory to the Railroad Commission, and shall commence operation of said service within a period of not to exceed thirty (30) days from the date hereof.

4- The rights and privileges herein authorized may not be discontinued, sold, leased, transferred nor assigned unless the written consent of the Railroad Commission to such discontinuance, sale, lease, transfer or assignment has first been secured.

5- No vehicle may be operated by applicant herein unless such vehicle is owned by said applicant or is leased by him under a contract or agreement on a basis satisfactory to the Railroad Commission.

For all other purposes the effective date of this order shall be twenty (20) days from the date hereof.

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA HEREBY DECLARES that public convenience and necessity do not require the operation by Harry S. Payne of a motor truck service for the transportation of milk, dairy products and supplies, as an extension of the present authorized rights of applicant between Los Angeles and Temecula and intermediate points, and

IT IS HEREBY ORDERED that Application No. 16256 be and the same hereby is denied.

Dated at San Francisco, California, this 13<sup>th</sup> day of May, 1930.

[Signature]  
[Signature]  
[Signature]  
[Signature]  
COMMISSIONERS.