

Decision No. 29783**ORIGINAL**

## BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )  
 G. A. BRINKMAN )  
 to sell, and A. D. MITCHELL to pur- )  
 chase a motor truck line for the )  
 transportation of milk and dairy )  
 products and supplies operated )  
 between Pomona and Los Angeles, )  
 California. )

Application No. 17327

Pollock and Mitchell for applicants.

BY THE COMMISSION:

OPINION

In this proceeding the Railroad Commission is asked to authorize G. A. Brinkman to sell to A. D. Mitchell his operative rights granted by Decision No. 22428, dated May 13, 1930. Reference will hereafter be made to said operative rights.

It is of record that A. D. Mitchell is the legal owner of the motor trucks and trailers heretofore used by G. A. Brinkman in the business of transporting milk and dairy products and supplies between Pomona and Los Angeles and that said A. D. Mitchell repossessed all of said motor trucks and trailers and purchased of said G. A. Brinkman the garage and office equipment for the sum of \$3,500.00, which sum is to be paid by taking said properties subject to a chattel mortgage thereon. A description of the garage and office equipment is set forth in Exhibit "B" filed in this proceeding.

The operative rights which G. A. Brinkman asks permission to sell to A. D. Mitchell were, as stated, granted by Decision

No. 22428, dated May 13, 1930, in Application No. 16174. By that decision the Commission granted to G. A. Brinkman a certificate of public convenience and necessity for the operation of an automobile truck service as a common carrier of milk, cream and 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 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 Hamner Avenue, northerly on Hamner 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 Garey 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 Guasti, 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 Yerba Street, northwesterly on Yerba 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 Garey Avenue and northerly on Garey 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 miles westerly of Garey Avenue.

The order in said Decision No. 22422, dated May 13, 1930, provides that the authority granted by said order is confined to the transportation of milk and cream between the dairies and creameries in the territory and over the routes set forth in said order with back haul of empty containers, dairy supplies, hay and feed, only to dairies from which milk or cream is transported. No authority is granted by said order for the transportation of general merchandise or for the commodities specified in said order to other than dairies or creameries served by said G. A. Brinkman.

In acquiring the foregoing operative rights, the purchaser is 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 in the number of rights which may be given.

O R D E R

Application having been made to the Railroad Commission for an order authorizing the transfer of the aforesaid operative rights, the Commission having considered the request of applicants and being of the opinion that this is not a matter in which a public hearing is necessary and that the application should be granted, therefore,

IT IS HEREBY ORDERED that G. A. Brinkman be, and he heroby is, authorized to sell and transfer, on or before August 1, 1931, to A. D. Mitchell the operative rights and properties referred to in the foregoing opinion and in this application.

The authority herein granted is subject to the following conditions:

(1) All limitations and restrictions, under which the operative rights herein authorized to be transferred have been granted, shall remain in full force and effect.

(2) The consideration to be paid for the property herein authorized to be transferred shall never be urged before this Commission or any other rate fixing body as a measure of value of said property for rate fixing, or any purpose other than the transfer herein authorized.

(3) Applicant G. A. Brinkman shall within fifteen (15) days after the date hereof unite with applicant A. D. Mitchell in common supplement to the tariffs on file with the Commission,

applicant G. A. Brinkman on the one hand withdrawing, and applicant A. D. Mitchell on the other hand accepting and establishing such tariffs and all effective supplements thereto.

(4) Applicant G. A. Brinkman shall within fifteen days after the date hereof withdraw time schedules filed in his name with the Railroad Commission and applicant A. D. Mitchell shall within said fifteen days file, in duplicate, in his own name time schedules covering service heretofore given by applicant G. A. Brinkman, which time schedules shall be identical with the time schedules now on file with the Railroad Commission in the name of applicant G. A. Brinkman, or time schedules satisfactory to the Railroad Commission.

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

(6) No vehicle may be operated by A. D. Mitchell unless such vehicle is owned by said A. D. Mitchell or is leased by him under a contract or agreement on a basis satisfactory to the Commission.

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

DATED at San Francisco, California, this 15<sup>th</sup> day of June, 1931.

Ch. Sawyer  
Leon White  
W. J. ...  
W. B. ...  
Fred G. ...  
Commissioners.