

Decision No. 24350.

## BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of  
 R.J. Kimbrough, Sr. to sell and  
 C.E. Kimbrough to purchase an auto-  
 mobile freight line for the trans-  
 portation of milk between Orange  
 County points and Los Angeles,  
 California.

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 )  
 ) Application  
 ) No. 17861  
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BY THE COMMISSION:

**ORIGINAL**OPINION and ORDER

R.J. Kimbrough has petitioned the Railroad Commission for an order approving the sale and transfer by him to C.E. Kimbrough of an operating right for an automotive service for the transportation of property between Orange County points and Los Angeles and C.E. Kimbrough has petitioned for authority to purchase and acquire said operating right and to hereafter operate thereunder, the sale and transfer to be in accordance with an agreement, a copy of which, marked Exhibit "A", is attached to the application herein and made a part thereof.

The consideration to be paid for the property herein proposed to be transferred is given as \$1500. all of which sum is declared to be the value of equipment.

The operating rights herein proposed to be transferred were established by certificates granted to R.J. Kimbrough by Decisions Nos. 15412 and 23114 on Application No. 11186. In the Decision No. 23114 dated November 28, 1930 applicant was granted a certificate

"...in lieu of all operative rights heretofore acquired by operation prior to May 1, 1917 and the certificate granted by Decision No. 15412 in Application No. 11186, for the automotive transportation as a common carrier of milk, cream and dairy products, and for the back haul of dairy supplies and empty containers; service to be given to no others than the dairies and creameries served by the applicant, between Newport Beach, Costa Mesa, Fairview, Delhi, Tustin, Santa Ana, Orange, El Modena, Villa Park, Olive, Anaheim and Fullerton

and intermediate points, on the one hand, and Los Angeles, on the other hand, serving the dairies located in the territory and along the following pickup routes, and two (2) miles each side thereof, which pickup routes, are in the vicinity of Newport Beach, Costa Mesa, Fairview, Delhi, Tustin, Santa Ana, Orange, El Modena, Villa Park, Olive, Anaheim and Fullerton to wit:

#### PICKUP ROUTES

(a) Beginning in Newport at the intersection of the so-called Roosevelt Coast Highway and Newport Avenue; thence northeasterly via Newport Avenue and northerly via Main Street through the town of Santa Ana to West Chapman Avenue near the town of Orange; thence west on West Chapman Avenue to Euclid Avenue; thence north on Euclid Avenue to Orangethorpe Avenue; thence west on Orangethorpe Avenue to the intersection of Magnolia Avenue:

(b) Beginning at the intersection of Fairview Avenue and Newport Avenue in Costa Mesa; thence north on Fairview Avenue to Adams Avenue; thence east on Adams Avenue to Plum Street in the town of Fairview, thence north on Plum Street to Kent Avenue; thence east on Kent Avenue to Bristol Street; thence north on Bristol Street to Wakeham Avenue; thence east on Wakeham Avenue to Old Newport Road; thence northerly on Old Newport Road to West Stanford Street; thence east on West Stanford Street to its intersection with Main Street in the town of Santa Ana:

(c) Beginning at the intersection of Newport Avenue and Main Street about two (2) miles south of the town of Santa Ana; thence northeasterly on Newport Avenue to Glen Avenue near Aliso Station; thence northerly on Glen Avenue and Tustin Avenue to 17th Street; thence west on 17th Street to Tustin Avenue; thence north on Tustin Avenue to the town of Olive continuing to the tracks of the Atchison, Topeka & Santa Fe Railway; thence northeasterly over the highway and county roads paralleling said Atchison, Topeka & Santa Fe Railway tracks to the intersection of Corona Avenue; thence westerly via Corona Avenue to Placentia Avenue; thence via Placentia Avenue to Orangethorpe Avenue and west via Orangethorpe Avenue to its intersection with Euclid Avenue:

(d) Beginning at the intersection of the state highway and West Chapman Avenue, west of the town of Orange; thence northwesterly via the state highway and Los Angeles Street through the town of Anaheim to the intersection of the state highway and Orangethorpe Avenue.

The trucks of the applicant may be operated and routed in a manner to give the most economic and efficient service, provided, however, that 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 Magnolia Avenue and West Commonwealth Avenue, east of the town of Buena Park; thence east on West Commonwealth Avenue and its extension to Placentia Avenue; thence southerly on

"Placentia Avenue to Placentia-Yorba Boulevard; thence easterly on Placentia-Yorba Boulevard to Richfield Road near the town of Richfield; thence southerly on Richfield Road and its extension to intersect Santiago Boulevard; thence easterly and southerly on Santiago Boulevard to County Park Road near the town of El Modena; thence west on County Park Road to Skyline Drive; thence southerly on Skyline Drive to Newport Avenue; thence southwesterly on Newport Avenue to Irvine Boulevard near the town of Tustin; thence southeasterly on Irvine Boulevard to Culver Road; thence southwesterly on Culver Road and The Lane Road to Bayside Drive; thence following Bayside Drive and its extension to the Pacific Ocean; thence northwesterly along the Pacific Ocean shore line to the mouth of the Santa Ana River and northerly along the Santa Ana River to West Chapman Avenue, near the town of Orange; thence westerly along West Chapman Avenue to Euclid Avenue; thence north on Euclid Avenue to Orangethorpe Avenue; thence west on Orangethorpe Avenue to Magnolia Avenue and north on Magnolia Avenue to the point of beginning."

Line haul to be by shortest and best available route.

We are of the opinion that this is a matter in which a public hearing is not necessary and that the application should be granted.

Applicant C.E. Kimbrough is now operating an automotive service for the transportation of films and motion picture advertising between Los Angeles and Redlands and Riverside and certain intermediate points by authority of Decision No. 12285 on Application No. 9020 dated June 28, 1923 and Decision No. 16120 on Application No. 11835 dated March 8, 1926.

C.E. Kimbrough 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.

IT IS HEREBY ORDERED that the above entitled application be, and the same is hereby granted, subject to the following conditions:

1- 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.

2- Applicant R.J. Kimbrough shall immediately unite with applicant C.E. Kimbrough in common supplement to the tariffs on file with the Commission covering service given under certificate herein authorized to be transferred, applicant R.J. Kimbrough on the one hand withdrawing, and applicant C.E. Kimbrough on the other hand accepting and establishing such tariffs and all effective supplements thereto.

3- Applicant R.J. Kimbrough shall immediately withdraw time schedules filed in his name with the Railroad Commission and applicant C.E. Kimbrough shall immediately file, in duplicate, in his own name time schedules covering service heretofore given by applicant R.J. Kimbrough which time schedules shall be identical with the time schedules now on file with the Railroad Commission in the name of applicant R.J. Kimbrough or time schedules satisfactory to the Railroad Commission.

4- 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.

5- No vehicle may be operated by applicant C.E. Kimbrough 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.

6- No authority is contained herein for the consolidation of the right transferred with any right or rights now possessed by applicant C.E. Kimbrough.

Dated at San Francisco, California, this 28<sup>th</sup> day of December 1931.

C. Leary  
Leon Whidbey  
W. J. Lee  
M. B. Harris  
Fred G. Stewart  
COMMISSIONERS.