

Decision No. 24746.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application)
of A.D. MITCHELL to sell and)
G.K. BRINKMAN to buy milk operative)
right between Pomona and vicinity)
and Los Angeles, Alhambra, etc.)

Application
No. 18049.

ORIGINAL

WHITSELL COMMISSIONER:

O P I N I O N

A.D. Mitchell seeks herein to transfer to Gertrude K. Brinkman a certificate of public necessity authorizing the transportation of milk, cream and dairy products and for back haul of dairy supplies, hay and feed only between Los Angeles, Pomona, San Bernardino and many intermediate points. The transaction calls for only a nominal consideration (\$1.00) and no equipment is involved.

A public hearing was held at Los Angeles at which the matter was duly submitted and now is ready for decision.

The certificate sought to be transferred was originally granted to G.A. Brinkman, son of applicant Gertrude K. Brinkman, by Decision No. 22428, Application No. 16174. By Decision No. 23783, on Application No. 17387, dated June 15, 1931, Brinkman transferred the operating right to A.D. Mitchell, Brinkman's attorney, who continued the operation of the business.

On October 12, 1931, G.A. Brinkman was adjudged a bankrupt and all of the equipment acquired by Mitchell from Brinkman, and used in the business, was acquired by W.H. Moore, Jr., trustee in bankruptcy of G.A. Brinkman Estate. Using this equipment the trustee continued the operation until February 29, 1932, when the equipment was sold to Gertrude K. Brinkman applicant herein, as evidenced by Trustee's Bill of Sale (Exhibit "A" attached to the application) and the bankrupt was discharged.

Applicant Gertrude K. Brinkman is buying the operating right and proposes to place the operation again in the hands of her son as manager. By the trustee's conveyance she acquired 12 trucks and three trailers. It is her intention to purchase seven new pieces of equipment of the semi-trailer type, specially adopted to heavy line haul. The producing field served is large and has produced in excess of 2000 10-gallon cans daily. There are several hundred producers and the record shows desire on their part for the betterment of service through applicant's plans of rehabilitation. The record also shows financial ability on the part of Gertrude K. Brinkman to sustain the operation.

Applicant proposes to establish a uniform rate of 15 cents per can from all parts of the area served and Los Angeles. Applicant's rates are not involved in this proceeding, which is solely for the transfer of the operating right, and the rate indicated, being a reduction, or any other reduced rate, may be filed by applicant Gertrude K. Brinkman upon proper compliance with tariff regulations. The rate adjustment appears to be satisfactory to producers and shippers.

I find no reason why the transfer should not be approved.

Gertrude K. 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

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 A.D. Mitchell shall immediately unite with applicant G.K. Brinkman in common supplement to the tariffs on file with the Commission covering service given under certificate herein authorized to be transferred, applicant A.D. Mitchell on the one hand withdrawing, and applicant G.K. Brinkman on the other hand accepting and establishing such tariffs and all effective supplements thereto.

3- Applicant A.D. Mitchell shall immediately withdraw time schedules filed in his name with the Railroad Commission and applicant G.K. Brinkman shall immediately file, in duplicate, in her own name time schedules covering service heretofore given by applicant A.D. Mitchell which time schedules shall be identical with the time schedules now on file with the Railroad Commission in the name of applicant A.D. Mitchell 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 G.K. Brinkman unless such vehicle is owned by said applicant or is leased by her under a contract or agreement on a basis satisfactory to the Railroad Commission.

Dated at San Francisco, California, this 9th day of

May 1932.

C. L. Sawyer

Leon O'Rourke

W. A. Cline

W. B. Harris

Fred H. Stewart

COMMISSIONERS.