

Decision No. 27935

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

In the Matter of the Application of
H. C. VENABLE to sell and transfer,
and CALIFORNIA MILK TRANSPORT, INC.
to purchase and operate automobile
freight truck service for the trans-
portation of milk and cream, dairy
supplies, seed, grain and hay between
Los Angeles and various points and for
the transportation of freight and express
between Los Angeles, Downey and Norwalk.

Application
No. 19909

ORIGINAL

Hugh Gordon, for Applicants.

J. O. Palstine, Deputy Attorney General, for the State of California, intervenor.

BY THE COMMISSION -

O P I N I O N

The above entitled application involves the transfer of an operating right to transport freight between Los Angeles, Downey and Norwalk and also for the transportation of milk and dairy products between Norwalk-Downey district and Los Angeles. The right was originally granted to A. T. Spencer by Decision No.23114, on Application No.16473, and was transferred to H. C. Venable by Decision No.27861, on Application No.19821. The instant application is to transfer the right from Venable to California Milk Transport, Inc.

A public hearing thereon was conducted by Examiner Williams at Los Angeles.

The rights transferred by Spencer to Venable, and sought herein to be transferred by Venable to California Milk Transport, Inc., is subject to a lien in excess of \$6000. for taxes accruing against its former owner, A. T. Spencer, covering a period of six years and which tax arrears had accumulated against the property and chattels of the former operator and also against the certificate itself. At the hearing for the transfer from Spencer to Venable the State of California intervened and gave notice that it

would follow its lien upon the certificate if the same should be passed to Venable. In the instant proceeding the State made its appearance for the purpose of following its claim of lien.

J. Perumean, President of the California Milk Transport, Inc., testified that he desired to acquire the right from Venable as Venable's is the only operating right existing in a large milk producing area southeast of Los Angeles. Mr. Perumean testified that he was trying to eliminate competition as the rights of Venable cover a large area in which similar rights are held by the corporation.

The consideration stated in the application is \$10.00. Perumean testified, however, that in addition he had agreed to pay a judgment secured upon a note executed by Spencer (who is Venable's father-in-law), and to employ Venable as a driver, if the certificate were transferred from Venable to the corporation. Such considerations, however, were not set up in the application. The amount involved in the note, according to Perumean, was something more than \$800.00. This note was held by a man named Greening, who became judgment creditor. Perumean admitted that he had authorized Greening to procure a transfer of the certificate to the corporation and that in consideration thereof the corporation would pay the note.

E. C. Venable testified that after the judgment was obtained Spencer agreed to transfer the operating right to him and application therefor was filed with this Commission. While this application was pending, Venable testified, Greening came to him and told him that if he would transfer the certificate to the corporation, it would pay the judgment and that if this was not done, Greening would enforce the judgment against the certificate and take it and do what he pleased with it. Venable testified, further, that under the apprehension that this would be done, he

had joined in the application to sell to the corporation. He further testified that the judgment is not for \$800.00 but for something like \$1300.00 with accumulations.

Venable testified that he had yielded to pressure of the circumstances as indicated and that he no longer wanted to transfer the right. He stated that he had made an agreement with the State of California by which he would pay \$50.00 a month on the tax delinquency and keep up current taxes on the operation; that he would conduct the operation, which has a patronage of about 125 ten gallon cans daily, and that he would receive revenue sufficient to justify his operation and permit him to make the tax payments. Venable previously operated a milk route in the same district, under certificate of this Commission for more than ten years.

In view of the attitude of applicant Venable in refusing to complete the transfer sought, and the facts incident to the transaction, we must deny the application. When an owner of a public utility right does not desire to sell, the Commission cannot compel him to do so.

"If, having contracted to sell, he refuses to comply with his contract, the commission is not empowered to determine that he should carry out his bargain. The provision that an owner may not sell without the consent of the Commission implies that there must be an owner ready to sell and seeking authority so to do before the Commission is called upon to act." (Hanlon v. Eshleman et al., 169 Cal. 200).

An order accordingly will be entered.

ORDER

H. C. Venable having made application to sell, and California Milk Transport, Inc. to purchase the certificated right of Venable, for the transportation of property, as granted by Decision No. 27861, on Application No. 19821, public hearing having been held and the matter having been duly submitted,

IT IS HEREBY ORDERED that the application be, and the same hereby is denied.

Dated at San Francisco, California, this 6th day of May, 1935.

Lionel Whitwell

M. J. Carr

W. B. Harris

W. B. Harris

Frank R. DeLeon

COMMISSIONERS.