

Decision No. 29568

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application  
of C. E. KIMBROUGH to sell, and  
CALIFORNIA MILK TRANSPORT, INC.,  
a corporation, to purchase an  
automobile freight line for the  
transportation of milk between  
Orange County points and Los  
Angeles, California.

Application No. 21014

BY THE COMMISSION:

**ORIGINAL**O P I N I O N

C. E. Kimbrough has petitioned the Railroad Commission for an order approving the sale and transfer by him to California Milk Transport, Inc., of an operating right for the automotive transportation as a highway common carrier of milk, cream and dairy products and the back haul of dairy supplies and empty containers between Newport Beach and Fullerton and intermediate points, on the one hand, and Los Angeles, on the other hand; and California Milk Transport, Inc., has petitioned for authority to purchase and acquire said operating right and to hereafter operate thereunder as an extension and enlargement of said applicant's existing operating rights, 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 \$800. All of which is alleged to be the value of the intangibles.

The operating right herein proposed to be transferred was created by Decision No. 24350, dated December 28, 1931, in Application No. 17861.

This does not appear to be a matter in which a public hearing is necessary. The application will be granted.

California Milk Transport, Inc., 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 operating right herein authorized to be acquired by applicant California Milk Transport, Inc., shall be acquired and operated as an extension and part of the operating right heretofore acquired by said applicant in Decision No. 28127, dated July 18, 1935, in Application No. 19962.
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 for any purpose other than the transfer herein authorized.
3. Applicant C. E. Kimbrough shall within twenty (20) days after the effective date of the order herein unite with applicant California Milk Transport, Inc., in common supplement to the tariffs on file with the Commission, covering service given under the certificate herein authorized to be transferred, applicant C. E. Kimbrough withdrawing and applicant California Milk Transport, Inc., accepting and establishing such tariffs and all effective supplements thereto.
4. Applicant C. E. Kimbrough shall within twenty (20) days after the effective date of the order herein withdraw all time schedules filed in his name with the Railroad

Commission and applicant California Milk Transport, Inc., shall within twenty (20) days after the effective date of the order herein file, in duplicate, in its own name time schedules covering service heretofore given by applicant C. E. Kimbrough which time schedules shall be identical with the time schedules now on file with the Railroad Commission, in the name of applicant C. E. Kimbrough or time schedules satisfactory to the Railroad Commission.

5. No vehicle may be operated by applicant California Milk Transport, Inc., unless such vehicle is owned by said applicant or is leased by it under a contract or agreement on a basis satisfactory to the Railroad Commission.

6. 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 obtained.

7. The authority herein granted to sell and transfer the right as set forth shall lapse and be void if the parties hereto shall not have complied with all the conditions within the periods of time fixed herein unless, for good cause shown, the time shall be extended by further order of the Commission.

8. Applicant shall, prior to the commencement of service authorized herein and continuously thereafter comply with all of the provisions of this Commission's General Order No. 91.

Dated at San Francisco, California, this 1<sup>st</sup> day of  
March, 1937.

William H. ...  
Leon ...  
James ...  
Sanborn ...  
Ray ...  
COMMISSIONERS