

Decision No. 31507

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of  
R. A. NELSON to sell and ERNEST G. WENTE }  
to purchase warehouse property.

Application No. 22376

BY THE COMMISSION:

**ORIGINAL**

O P I N I O N

In this application R. A. Nelson asks permission to sell his warehouse properties in Livermore and his interest in a certain warehouse lease to Ernest G. Wente. Said Ernest G. Wente asks authority to acquire said properties, to issue a \$20,000.00 five per cent. note payable on or before three years after date, and to execute a deed of trust to secure the payment of said note.

It is of record that R. A. Nelson has agreed to sell for \$16,000.00 to Ernest G. Wente about 4.2 acres of land situated in the City of Livermore, on which is located one hay barn 72' x 165', one grain house 100' x 100', one boiler house 12' x 12', one office 12' x 26' and one 20-ton scale. In addition he has agreed to sell equipment consisting of one 1936 Dodge pick-up, one 1937 Ford truck, one barley roller, one grain cleaner, one "bar-num" grinder, all of the hand trucks, scales, piling machines, hay piling equipment, one feed mixer, hay hooks, ropes, cables, and all of the office equipment excepting one book-keeping machine. A description of the land is contained in Exhibit A attached hereto.

R. A. Nelson has also agreed to assign to Ernest G. Wente all of his right, title and interest in and to that certain lease dated June 1, 1938 made and executed by Farmers Warehouse Company

of Altamont, California, to R. A. Nelson. The lease covers a certain one-story warehouse building, located at Altamont. The building may be used only to store hay and/or straw.

The lease runs for a term of two years ending May 31, 1940, and provides for the following rental:-

A. Sixty(60¢) cents per ton for each ton of hay and/or straw originally stored in said premises prior to June 1, 1939.

B. Sixty(60¢) cents per ton for each ton of hay and/or straw originally stored in said premises from June 1, 1939 to May 31, 1940. Provided, however, that if all of the hay and/or straw stored in said premises during the first storage season of the term of the lease is not removed prior to May 31, 1939, then and in that event the rental on said hay and/or straw shall be 50 cents per ton for storage during the second storage season.

The rental per ton for each ton of hay and/or straw stored in the premises shall be paid to the lessor by the said lessee when said hay and/or straw is removed from the premises but in no event later than June 15, 1939 for the hay and/or straw stored prior to June 1, 1939 and in no event later than June 15, 1940 for all hay and/or straw originally stored during the term from June 1, 1939 to May 31, 1940.

The Farmers Warehouse Company of Altamont, California, John N. Egan, President, has agreed to the assignment of the lease to Ernest G. Wente.

Ernest G. Wente also asks authority to issue to J. C. Reimers his \$20,000. five(5) per cent. note, payable on or before three years after date, and to secure the payment of such note by the execution of a deed of trust covering the real property which he will acquire from R. A. Nelson, together with other properties which he now owns. The proposed deed of trust filed in this proceeding contains a description of the properties on which it will be a lien.

It is in satisfactory form. Ernest G. Wente will use the proceeds realized from the issue of the note to pay the \$16,000. which he will owe R. A. Nelson upon the acquisition of his properties and to pay the balance, to-wit \$4,000. due on a note which he issued in 1936 to Alice Spencer Downing.

Ernest G. Wente is now engaged in the warehouse business at Livermore. His storage rates and those of R. A. Nelson are the same. R. A. Nelson charges the same rates at Livermore and Altamont. Inasmuch as Ernest G. Wente has no tariff on file showing storage rates at Altamont, we believe that he should adopt R. A. Nelson's tariff. The order herein will require him to do so.

#### ORDER

The Commission having been asked to enter its order, as indicated in the foregoing opinion and it 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 this application should be granted, as herein provided, therefore,

IT IS HEREBY ORDERED as follows:-

1. R. A. Nelson may, after the effective date of this order and prior to December 31, 1938, sell his warehouse properties described in this application and assign his right, title and interest in the lease referred to in this application to Ernest G. Wente who may acquire and operate said warehouse properties and leasehold interest.

2. Ernest G. Wente may, after the effective date of this order and prior to December 31, 1938, issue to J. C. Reimers his note for the sum of \$20,000.00 payable on or before three years after date with interest at the rate of 5% per annum and execute a deed of trust substantially in the same form as the deed of trust filed in this

proceeding to secure the payment of said note, provided the authority herein granted to execute said deed of trust is for the purpose of this proceeding only and is granted only insofar as this Commission has jurisdiction under the terms of the Public Utilities Act, and is not intended as an approval of said deed of trust as to such other legal requirements to which said deed of trust may be subject.

3. Ernest G. Wente shall use the proceeds realized from the issue of the said \$20,000.00 note to pay the \$16,000.00 which he has agreed to pay for the properties of R. A. Nelson and to pay the balance, \$4,000.00, due on his note issued to Alice Spencer Downing.

4. R. A. Nelson and Ernest G. Wente shall join in a common supplement to R. A. Nelson's tariff on file with the Commission, said tariff being Warehouse Tariff No. 2, C.R.C. No. 2, effective May 15, 1930, and Supplement No. 1 to said Warehouse Tariff No. 2, C.R.C. No. 2, effective August 17, 1938, said R. A. Nelson on the one hand withdrawing and Ernest G. Wente on the other hand adopting and establishing as his own said tariff and all effective supplements thereto.

5. The authority herein granted will become effective when Ernest G. Wente has paid the minimum fee prescribed by Section 57 of the Public Utilities Act, which minimum fee is Twenty-five (\$25.00) Dollars.

6. Within thirty(30) days after the transfer of the properties herein authorized, Ernest G. Wente shall file with the Railroad Commission a copy of the deed or other instrument by which he acquires title to the aforesaid properties, together with a copy of the note and a copy of the deed of trust executed under the authority herein granted.

DATED at Los Angeles, California, this 5<sup>th</sup> day of December, 1938.

Ray B. Buckley  
James H. Miller  
Ray L. Rice

COMMISSIONERS.

EXHIBIT A

" All that certain real property situate, lying, and being in the City of Livermore, State of California, and particularly described as follows, to-wit:

BEGINNING at the intersection of the western line of "Q" Street with the northern line of 1st Street extended westerly, as said streets are shown on the "Map of Town of Livermore, Alameda County, California," filed November 4, 1869, in book 5 of Maps at page 9; running thence north 20° 30' West along said western line of "Q" Street 250 feet, more or less, to the southern line of the reserve of the Central Pacific Railway Company; thence along said line of said reserve south 69-1/2° west 242.88 feet; thence south 70-1/2° west 347.16 feet to the eastern line of the parcel of land conveyed by H. P. Winegar and wife, to Cecelia S. Buck, by deed dated January 28, 1927 and recorded in book 1512 of Official Records of Alameda County at page 312; thence southeasterly along the last named line and continuing southeasterly along the eastern line of the parcel of land conveyed by H.P. Winegar and wife, to Michel Biscay and wife, by deed dated April 16, 1925 and recorded in book 917 of Official Records of Alameda County at page 425, to the intersection thereof with the northeastern line of the parcel of land conveyed by H. P. Winegar and wife, to Town of Livermore, by deed dated November 3, 1923 and recorded in book 569 of Official Records of Alameda County at page 372; thence southeasterly along the last named line to the intersection thereof with said northern line of 1st Street extended westerly; and thence easterly along said last named line 470 feet, more or less, to the point of beginning.

BEING a portion of the land conveyed by W. M. and Mary Mendenhall to the Oakland Bank of Savings, by deed dated November 8, 1894 and recorded in book 549 of Deeds, page 14, Alameda County Records, and being a portion of plot 18 of the Bernal portion of the Rancho El Valle de San Jose."

