

Decision No. 34240

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of K. Frank Henneken, for an Order Approving the heretofore formed Partnership, for the Approval of Loans heretofore made, and for an Order Approving subsequent loans for the East Monterey Water Service, of the County of Monterey, State of California.

**ORIGINAL**

Application No. 24131

Geo. D. Pollock for Applicant

BY THE COMMISSION:

O P I N I O N

This application involves the approval of a partnership agreement between K. Frank Henneken and Geo. D. Pollock, and the execution of a mortgage and note secured thereby.

By Decision No. 32935, dated March 26, 1940, in Application No. 22973, the Commission granted K. Frank Henneken a certificate of public convenience and necessity authorizing him to operate a public utility water system in the following tracts situate in and adjacent to the Community of Seaside, about three miles northeast of the City of Monterey:

East Monterey, Subdivision No. 1  
Vista Del Rey Tract, Subdivision No. 6  
Del Monte Hotel, Map 2, Subdivision No. 10  
Grey Eagle Terrace, Subdivision No. 24

By said decision, the Commission also directed K. Frank Henneken to install certain improvements to his water system then being used to supply water to consumers in said area. The improvements have been made.

For the period from March 7, 1940 to December 31, 1940, K. Frank Henneken reports operating revenues of \$3,019.85. His operating expenses, which included \$391.12 for depreciation, amounted to \$1,881.84, leaving a net income of \$1,138.01. The number of consumers on the system increased from 160 in March, 1940 to about 350 at present.

The testimony shows that on March 7, 1940, K. Frank Henneken and Geo. D. Pollock entered into a partnership agreement (Exhibit 1) for the purpose of carrying on the public utility business of K. Frank Henneken at Seaside, Monterey County. They agreed to conduct the business under the fictitious name of East Monterey Water Service. The agreement provides for the sale by K. Frank Henneken to Geo. D. Pollock of an undivided one-half interest in and to all of the equipment of said East Monterey Water Service. It further provides that each partner is to own an equal one-half interest in all the pipe, equipment and in both the real and personal property of said East Monterey Water Service. The agreement further provides that K. Frank Henneken shall be in charge of the business and that for his services he is to receive a monthly compensation of \$100. No other sum shall be withdrawn by either partner until all the debts of the partnership have been paid. While each partner has the power to use the name of the firm and bind the same, in making contracts and purchasing goods, neither partner shall contract liabilities in

the name and on the credit of the firm for amounts in excess of \$50 without the consent of the other partner. The partnership agreement contains other provisions but it is not deemed necessary to call attention to them at this time.

We cannot conclude from the evidence submitted, that it is in the public interest to authorize the transfer of a one-half interest in the certificate of public convenience and necessity or to authorize the transfer of a one-half interest in the other utility properties owned by K. Frank Henneken, under the partnership agreement on file in this proceeding.

The testimony shows that in order to install the improvements required by Decision No. 32935, dated March 26, 1940, it became necessary for K. Frank Henneken to borrow money. It is of record that he was unable to do so unless the notes issued by him were signed not only by himself but also by Geo. D. Pollock. To secure the payment of the notes a deed of trust was executed on April 11, 1940 to Salinas Title Guarantee Company, Trustee. The deed of trust secures the payment of a \$4,000 note issued on April 11, 1940, and secures the payment of any additional sums and interest thereon, thereafter loaned by Newton E. Collins and Esther Vance Collins, his wife, to K. Frank Henneken and Geo. D. Pollock. The \$4,000 note issued to Newton E. Collins was dated April 11, 1940 and is payable in monthly installments of \$77.32, or more each on the 15th day of each and every month, beginning May 15, 1940. The monthly payments include interest at the rate of 6% per annum. On May 15, 1940, K. Frank Henneken and Geo. D. Pollock issued to Newton E. Collins a note for \$3,500, which is payable in

monthly installments of \$70, or more each on the 15th day of each and every month, beginning November 15, 1940. On June 17, 1940, they issued to Newton E. Collins a note for \$1,500, payable in monthly installments of \$30, or more each on the 15th day of each and every month, beginning November 15, 1940. The testimony further shows that all of the monthly payments have been made and that the principal of the three notes remaining unpaid is approximately \$8,000. The deed of trust is a lien on nonutility property owned by K. Frank Henneken and purports to be a lien on the utility property owned by him. However, in view of the fact that the deed of trust was executed without permission from the Commission, it is, in our opinion, not a lien on the public utility property. The notes were issued without authorization from the Commission. Because of the language of Section 52 of the Public Utilities Act, we think they are void. The Commission cannot approve void instruments.

The testimony further shows that the moneys realized through the issue of the notes were used for utility purposes. A copy of the deed of trust and a copy of the notes were filed with the Commission on May 22, 1941. We have no objection to the form of the deed of trust and the notes if they are executed pursuant to the authorization of the Commission.

The testimony further shows that K. Frank Henneken and Geo. D. Pollock are endeavoring to borrow additional funds for the purpose of paying the indebtedness due Newton E. Collins and to make further improvements on the water system. K. Frank Henneken requests that this Commission authorize a loan up to

\$20,000 to refinance, extend and improve the water properties. However, at the time of the hearing, he was not in a position to submit the terms of any loan. The order herein, therefore, will be confined to the execution of a deed of trust to secure the payment of the money presently borrowed from Newton E. Collins, the issue of notes to said Newton E. Collins, and a denial of the approval of the partnership agreement. If K. Frank Henneken is successful in refinancing the properties, he should file with the Commission a supplemental application for permission to execute a deed of trust and to issue a note or notes, and should in such supplemental application set forth the purposes for which the moneys will be expended.

O R D E R

A public hearing having been held on the above entitled application before Examiner Fankhauser, and the Commission having considered the evidence submitted at such hearing and it being of the opinion that it should not approve the partnership agreement filed in this proceeding, that it should authorize K. Frank Henneken to execute a deed of trust and to issue notes in the sum of not exceeding \$9,000, that the money, property or labor to be procured or paid for by K. Frank Henneken through the issue of said notes is reasonably required by applicant for the purposes herein stated, and that the expenditures for said purposes are not, in whole or in part, reasonably chargeable to operating expenses or to income, therefore,

IT IS HEREBY ORDERED as follows:

1. For the purpose of securing the payment of indebtedness, K. Frank Henneken may execute a deed of trust which will constitute a lien on his public utility properties, said deed of trust to be substantially in the same form as the deed of trust filed in this proceeding on May 22, 1941, provided that the authority herein granted 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.

2. For the purpose of paying and refunding indebtedness due Newton E. Collins, K. Frank Henneken may issue notes in the principal amount of not exceeding \$9,000, said notes to be in substantially the same form as the notes filed in this proceeding on May 22, 1941.

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

4. K. Frank Henneken shall file with the Railroad Commission within thirty (30) days after the execution of the deed of trust and the issue of the notes herein authorized, a true and correct copy of said deed of trust and a true and correct copy of each of said notes.

5. This application insofar as it involves the approval of a partnership agreement is hereby denied without prejudice.

Dated at San Francisco, California, this 27<sup>th</sup> day of May, 1941.

*[Handwritten signature]*  
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*Justin J. Cassen*  
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*Francis R. Havens*  
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*Richard L. Baker*  
\_\_\_\_\_ Commissioners

\$ 25.00  
RAILROAD COMMISSION  
STATE OF CALIFORNIA  
PAID  
JUL 9 1941  
*[Handwritten signature]*  
BY \_\_\_\_\_ SECRETARY