

Record No. 5711

In the
Supreme Court of Appeals of Virginia
at Richmond

WILMER W. BROWN

v.

STATE MILK COMMISSION

FROM THE STATE MILK COMMISSION

RULE 5:12—BRIEFS

§5. NUMBER OF COPIES. Twenty-five copies of each brief shall be filed with the clerk of this Court and three copies shall be mailed or delivered by counsel to each other counsel as defined in Rule 1:13 on or before the day on which the brief is filed.

§6. SIZE AND TYPE. Briefs shall be nine inches in length and six inches in width, so as to conform in dimensions to the printed record, and shall be printed in type not less in size, as to height and width, than the type in which the record is printed. The record number of the case and the names and addresses of counsel submitting the brief shall be printed on the front cover.

HOWARD G. TURNER, Clerk.

Court opens at 9:30 a. m.; Adjourns at 1:00 p. m.

NOTICE TO COUNSEL

This case probably will be called at the session of court
to be held NOV 1963

You will be advised later more definitely as to the date.

Print names of counsel on front cover of briefs.

Howard G. Turner, Clerk

IN THE

Supreme Court of Appeals of Virginia

AT RICHMOND.

Record No. 5711

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Thursday the 13th day of June, 1963.

WILMER W. BROWN,

Appellant,

against

STATE MILK COMMISSION,

Appellee.

From the State Milk Commission

Upon the petition of Wilmer W. Brown an appeal and *supersedeas* is awarded him from an order entered by the State Milk Commission on the 1st day of November, 1962, in a certain proceeding then therein depending entitled, Application of Wilmer W. Brown, Staunton, Virginia, for a general distributor's license on the Harrisonburg Milk Market; upon the petitioner, or some one for him, entering into bond with sufficient security before the chairman of the said State Milk Commission in the penalty of one thousand dollars, with condition as the law directs.

RECORD

page 2 }

November 2, 1962

BY REGISTERED MAIL

Mr. Wilmer W. Brown
P. O. Box 731
Staunton, Virginia

Dear Mr. Brown:

This is to advise that the Commission, at its meeting held on November 1, 1962, again considered the evidence and testimony presented at a hearing held on October 11, 1962, relative to an application by Wilmer W. Brown, Staunton, Virginia, for a general distributor's license on the Harrisonburg Milk Market.

The Commission determined to approve the recommendation of the Harrisonburg Local Milk Board that this application be denied.

I was directed to notify you accordingly.

Very truly yours,

T. M. RAGLAND
Executive Officer

TMR:aw

cc: Mr. R. W. Smith, Attorney
Mr. R. L. Stultz, Chairman
Harrisonburg Local Milk Board

REGISTERED, RETURN RECEIPT REQUESTED

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44380

THIS IS A CERTIFIED TRUE COPY

T. M. RAGLAND
Executive Officer.

page 3 } OPINION AND FINDING OF FACT OF THE
MILK COMMISSION.

This matter involves the application of Wilmer W. Brown, Staunton, Virginia, for a distributor's license on the Harrisonburg Milk Market.

The application for the license was received on September 11, 1962, and on September 14, 1962, was forwarded to the Harrisonburg Local Milk Board for recommendation.

The Local Milk Board on September 22, 1962, considered the application and made the following recommendation to the Commission:

"We feel that the proposed License operation cannot be justified by any element of public need, service or benefit. There are at present 7 Licensed Distributors and Producer-Distributors in this Market area. Our information shows that the existing Licensed operations are fully adequate for this Market's present and immediate future needs. We feel that any additional Licensees would tend to weaken and impair the present satisfactory structure of supply and demand in this Market area, and would fail to strengthen or improve existing operations and facilities for serving the public. Mr. Brown advised this Board Sept. 22, 1962, that he proposes to operate in the entire Harrisonburg Market area. The Local Board on July 30, 1962, requested the expansion and redefinition of the boundaries of the Harrisonburg Market area. It was shown at the Commission's Hearing Aug. 23, 1962, on this request, that 7 Distributors and Producers-Distributors were operating in this Market area on July 30, 1962. Although most of these Licensees were desirous of operating in the entire Market area, they agreed to the Market boundaries recommended by the Local Board at the Commission's Hearing inasmuch as most of them had not previously been operating in the entire Market area. This Board therefore feels it would not be fair to present Licensed Distributors and Producers-Distributors to grant another License in this Market area."

This matter came on to be heard before this Commission on October 11, 1962, at which time evidence and arguments were heard.

The evidence presented disclosed that the Harrisonburg Milk Market is presently being served by 7 licensed distributors and producer-distributors. These distributors are serving the public with all types of milk and milk products, both at wholesale and retail, and to permit an additional dis-

tributor on the Market would tend to weaken and impair the present satisfactory structure of supply and demand in this Market, and would fail to strengthen or improve existing operations and facilities for serving the public.

The evidence further disclosed that the Applicant is presently not pasteurizing, bottling or processing milk for consumption in the State as is required of a distributor in Regulation No. 7, Section 3 A; that he is not qualified by experience and equipment to properly conduct the business as is required by Regulation No. 7, Section 4 B; that the Applicant has operated without a license prior to the date of the hearing and though advised at such date to discontinue the same has continued to do so in violation of the Rules and Regulations of the Commission, Regulation No. 7, Section 4 E; that the Applicant does not have the necessary health permits required of a distributor by Regulation No. 7, Section 4 L.

In view of the foregoing and for the reasons ascribed by the Local Board, the Commission is of the opinion that it would not be in the public interest to grant this license and, therefore, the license is denied.

FRANK G. LOUTHAN
Chairman.

November 15, 1962.

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NOTICE OF APPEAL.

In accordance with Rules of Supreme Court of Appeals of Virginia, Rule 5:1, §4, counsel for Wilmer W. Brown hereby gives notice of appeal from the decision of the State Milk Commission made by letter dated November 2, 1962, and by "Opinion And Findings Of Fact Of The Milk Commission" dated November 15, 1962, denying application for a distributor's license on the Harrisonburg Milk Market.

HENRY T. WICKHAM
Counsel.

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ASSIGNMENTS OF ERROR.

Counsel for Wilmer W. Brown hereby assigns the following errors:

1. The State Milk Commission erred in denying the application of Wilmer W. Brown for a distributor's license on the Harrisonburg Milk Market, such denial being contrary to the due process clause of the Fourteenth Amendment of the Constitution of the United States.

2. The State Milk Commission erred in holding that the granting of the said application would be contrary to the public interest.

3. The State Milk Commission erred in holding, in effect, that §3-360 of the Code permits it to deny a license on the ground that such action is in the public interest.

4. The State Milk Commission erred in holding, in effect, that § 3-362 of the Code did not require the issuance of a license to the applicant, Wilmer W. Brown.

HENRY T. WICKHAM
Counsel.

* * * * *

page 2 }

* * * * *

A hearing before the Virginia State Milk Commission was convened at 12:10 p. m., Eastern Standard Time, on Thursday, October 11, 1962, in the Conference Hall of the Commission, 618 East Franklin Street, Richmond, Virginia, for the purpose of considering the application of Wilmer W. Brown, Staunton, Virginia, for a general distributor's license on the Harrisonburg Milk Market, Acting Chairman H. N. Lewis presiding.

Members sitting: Frank G. Louthan, Chairman, Clarence G. Burrows, Member, H. N. Lewis, Acting Chairman.

Also Present: M. Harris Parker, Assistant Attorney General.

T. M. Ragland, Executive Officer.

page 3 } Acting Chairman Lewis: Will the hearing please come to order? I will ask our Executive Officer to swear the reporter.

T. M. Ragland.

(The reporter, C. Overton Lee, was sworn by Executive Officer Ragland.)

Acting Chairman Lewis: The purpose of this hearing is to receive evidence and testimony relative to an application by Wilmer W. Brown for a distributor's license on the Harrisonburg Milk Market. Mr. Ragland, the Commission's Executive Officer, will introduce certain background information.

Mr. Parker, will you swear Mr. Ragland?

(Executive Officer Ragland was sworn by Mr. Parker.)

PRESENTATION IN BEHALF OF THE COMMISSION.

T. M. RAGLAND,
having been sworn, testified in behalf of the Commission as follows:

Effective September 15, 1962, after a public hearing held on August 23, 1962, the Commission revised the sales area of the then existing Harrisonburg-Bridgewater Milk Market.

Mr. W. W. Brown appeared at the hearing and testified that he had, and intended to continue, distributed milk in certain areas which were under consideration to be made a part of the sales area of the Harrisonburg Market.

By letter dated August 27, 1962, the Commission advised Mr. Brown that the sales area of the Harrisonburg Milk Market had been redefined as proposed at the hearing of August 23. Mr. Brown was further advised as to the regulation of the Commission requiring that the applicable license be obtained before engaging in the business of a "distributor."

On September 11, 1962, an application was received for a distributor's license on the Harrisonburg Milk Market to be issued in the name of Wilmer W. Brown, P. O. Box 731, Staunton, Virginia.

By letter dated September 14, 1962, page 1 of this application was forwarded to the Harrisonburg Local Milk Board for recommendation.

On September 22, 1962, the Local Board considered this application and made the following recommendation to the Commission:

T. M. Ragland.

"We feel that the proposed License operation cannot be justified by any element of public need, service or benefit. There are at present 7 Licensed Distributors and Producer-Distributors in this Market area. Our information page 5 } shows that the existing Licensed operations are fully adequate for this Market's present and immediate future needs. We feel that any additional Licensees would tend to weaken and impair the present satisfactory structure of supply and demand in this Market area, and would fail to strengthen or improve existing operations and facilities for serving the public. Mr. Brown advised this Board Sept. 22, 1962, that he proposes to operate in the entire Harrisonburg Market area. The Local Board on July 30, 1962, requested the expansion and redefinition of the boundaries of the Harrisonburg Market area. It was shown at the Commission's Hearing Aug. 23, 1962, on this request, that 7 Distributors and Producers-Distributors were operating in this Market area on July 30, 1962. Although most of these Licensees were desirous of operating in the entire Market area, they agreed to the Market boundaries recommended by the Local Board at the Commission's Hearing inasmuch as most of them had not previously been operating in the entire Market area. This Board therefore feels it would not be fair to present Licensed Distributors and Producers-Distributors to grant another License in this Market area."

page 6 } The Commission at its meeting of September 27, 1962, set today as the date of a hearing to receive evidence and testimony on this application.

By letter dated October 1, 1962, the applicant and others were so notified.

Acting Chairman Lewis: Are there any questions of Mr. Ragland in regard to this background information?

Mr. R. W. Smith: Yes, sir.

By Mr. Smith:

Q. Mr. Ragland, what is the basis, aside from the letter of the Local Milk Board for the statement that Mr. Brown desired to operate in the entire Harrisonburg Market area?

A. The office of the Milk Commission has no information concerning that point other than that mentioned in the Local Board's recommendation, and presumably it will be developed here today as to what Mr. Brown's desires are.

Wilmer W. Brown.

Acting Chairman Lewis: A word as far as procedure is concerned. First, we would like to entertain evidence and testimony in behalf of the applicant, after which anyone who is opposed to this application is heard from and any questions of any witness or any question is entertained at any time of any witness. At this time we will hear from representatives of the applicant.

(Witness stood aside.)

page 7 } Mr. Smith: Mr. Brown.

PRESENTATION ON BEHALF OF THE APPLICANT.

WILMER W. BROWN,

was sworn and testified in his own behalf as applicant as follows:

By Acting Chairman Lewis:

Q. Would you state your name and affiliation for the record, please?

By Mr. Smith:

Q. You are Wilmer W. Brown?

A. That's correct, sir.

Q. And you are the applicant for this license?

A. Yes, sir.

Q. Mr. Brown, what is your age?

A. Forty-eight—forty-seven or forty-eight.

Q. Where is your residence; where do you live?

A. Staunton, Virginia; 112 Robinhood Road.

Q. Do you actually live in the city limits of Staunton?

A. No, sir, I live in Augusta County.

Q. That is just outside of Staunton?

A. Yes, sir, two and a half blocks.

Q. Are you presently leasing a farm in Rockingham County?

A. I am, sir.

Q. Is that the operation generally referred to as Bowmont Dairy?

A. That is right, sir.

Q. From whom do you lease this farm?

A. Production Credit Corporation, Staunton, Virginia.

Q. That is the Staunton Production Credit Association?

A. Well, I actually rent from the branch which is in Har-

Wilmer W. Brown.

risonburg, but it's under the jurisdiction of the Staunton office.

Q. In connection with your lease arrangement, what understanding do you have regarding the leasing of this farm at the present time? And I have special reference to terms of your lease.

A. Mr. Smith, I have it on oral agreement leased until December 31, 1962.

Q. Do you have any additional understanding with the Staunton Production Credit Association?

A. Yes, sir, I do, sir. I can have it for another two, three, or five years with first option to buy.

Q. Prior to your leasing this farm, was milk produced on that farm?

page 9 } A. Yes, sir, it was by the Bowman family.

Q. Do you know to whom that milk was sold?

A. Shenandoah's Pride, to the best of my knowledge. I think I am right.

Q. In other words, it was wholesaled?

A. Yes, sir.

Q. When did you acquire cows, your cows?

A. March 23 of this year.

Q. And from whom did you acquire them?

A. Chambersburg, Pennsylvania, from a Mr. Kype.

Q. How much did you pay for them?

A. \$2,800.

Q. How many head?

A. It was 12.

Q. How many cows are you presently milking?

A. Twenty-five, about, to the best of my knowledge. I haven't been there for two weeks, but so far as I know, if we have had any fresh cows, I don't know.

Q. Do you own all of those cows?

A. I do, sir.

Q. When did you start producing milk on this farm?

A. If I remember correctly, it was about March 25. Mr. Scott there can tell you if he went and looked the records up. He bought it.

page 10 } Q. You mean Mr. Scott of Shenandoah's Pride bought your—

A. Yes, Shenandoah's Pride, not Mr. Scott.

Q. On a wholesale basis?

A. Yes, sir.

Q. For how long did that continue?

A. My last check came on September 15, about \$174.

Wilmer W. Brown.

Q. So that for that entire period you were selling some milk to Shenandoah's Pride?

A. I was selling up—yes, sir, up until July 3 or 4, he took all of my milk. After that, I commenced to sell some after I obtained my health permit.

Q. Let me get it perfectly clear in my own mind about this. As I understand it then, for about, beginning about March 25 and through the month of June, you sold milk on a wholesale basis to the Shenandoah's Pride?

A. I did, sir.

Q. And then, beginning the first week of July began selling not only wholesaling it to Shenandoah's Pride but also retailing?

A. That's true, sir.

Q. In what area did you retail milk in July?

A. Outskirts of Bridgewater, Port Republic, and some in New Market, some in Woodstock, and in the areas
page 11 } in between, Lacey Springs ie one and outside of
Harrisonburg to two trailer courts, which at that time was not in the jurisdiction at all of the milk market. We did not enter into the milk market at any time.

Q. When did you start retailing milk? Do you have the date?

A. Yes. I feel reasonably sure it was either the second or the third, and I am sure it was July 3, because my health permit was given to me on the 2nd of July.

Q. Have you sold milk in the areas that you mentioned since July 3 or thereabouts?

A. I have.

Q. Up until the present time?

A. Yes.

Q. And that has been a retail operation?

A. That's right.

Q. In connection with your application, the Local Board indicated that you had requested to operate in the entire Harrisonburg area; is that correct?

A. No. I said that I wished to operate in the part of the area that was unrestricted at the time that I started selling milk. I did not care to operate in Harrisonburg and in the old area at all. I have no reason to. I will never be that large,
Mr. Smith.

page 12 } Q. Do you have a statement signed by some
thirty-odd people?

A. Yes, sir, I do, sir.

Wilmer W. Brown.

Q. Would you mind reading the heading for that statement?

Acting Chairman Lewis: Would you like to submit that as an exhibit?

Mr. Smith: Yes, sir. Is it all right if we just read the heading in the record? I do not intend for him to read all of the names.

Acting Chairman Lewis: Yes, sir.

A. "We the undersigned purchase milk from BOWMONT DAIRY, HARRISONBURG, VIRGINIA and desire very much to continue doing so. Therefore, we request the State Milk Commission to grant the license applied for."

By Mr. Smith:

Q. There are thirty-odd signatures to that statement?

A. Yes, sir.

Q. Where are these people?

A. Woodstock, New Market, and in between.

Mr. Parker: You might clear up whether he wants it introduced for identification or whether he wants it as an exhibit, and if so, we might designate it in the record.
page 13 } Mr. Smith: We would like it introduced as an exhibit.

Acting Chairman Lewis: That will be Hearing Exhibit No. 1.

(The two-page petition was filed as Hearing Exhibit No. 1, with the testimony of Mr. Brown.)

Mr. Smith: I believe that is all at this time.

By Acting Chairman Lewis:

Q. Is there any further statement that you would care to make?

A. Yes. Of course, I want to continue selling milk. I have a very definite reason for doing it. The doctor has told me that he would prefer me to stop traveling. That is why, I made the statement here before, that I went into this milk thing in the first place, so I could ease up on my traveling and of course be home at night and try to make a living out of it. I never intend to become a large distributor, I have

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no desire to do so, I have no desire to hurt anyone, I just want to make a living. I doubt if I will ever milk over forty cows. That is my whole, sole idea; that is all I want to do.

I was there, I think, prior to the time that this market was closed. My milk barn passes about 100 percent
page 14 } and so does the plant that I get my milk pasteurized at. If I were asking for—if I had just gone into this thing last week, I don't think I would ask the Commission for a license, but I was there before it was closed, and I have not been in the restricted area and never intend, may I quote myself again, to do so. I have no desire to. So I wish that this Board would, of course, grant me a license. I was there thirty days before it was closed—forty-five days before it was closed.

Acting Chairman Lewis: Mr. Parker, do you have any questions?

By Mr. Parker:

Q. This health permit that you testified was issued to you on July 2—

A. If I remember correctly, Mr. Parker, that is right.

Q. —what kind of a permit is that and who issued it?

A. It is a health permit issued by the Staunton Health Department, or Augusta County Health Department, which is in the—which has an office in the Kings' Daughters' Hospital in the City of Staunton.

Q. Do you have a permit from the Department of Agriculture and Immigration here in Richmond, concerning your
operation?

page 15 } A. Yes. Mr. Reuben is my inspector. I presume that is what you are talking about now.

Q. Is he a representative of the Agricultural Department?

A. Yes, he is.

Q. Did he come to your place at your request to inspect?

A. Yes, I think he did. Now I talked to him and told him what I wanted to do and he said, "All right." And if I remember correctly, he was there on a Monday morning, I am not sure, and passed it.

Q. Do you have these permits with you?

A. No, I do not.

Q. Where are they?

A. They are in the barn.

Q. Posted inside of the barn?

Wilmer W. Brown.

A. Yes. Anybody can see them that wishes. I can send them to you if you would like to see them.

Q. These cows that you brought in from Chambersburg, Pennsylvania, were they also checked by the State Veterinarian and given a certificate?

A. So far as I know, they were, and I have that posted in the barn, also, with the ear tag numbers and register numbers. I think the register numbers are there, I am page 16 } not sure.

Q. This list that you submitted to the Commission did not state the addresses of the various people. I think you testified they were in certain areas, however?

A. I did. The man that got that list for me or obtained the list are the people that he is selling milk to. I would have had a list two or three times that long, but one of the men that worked for me had a death in his family, his father died, so—well, he worked some for me, he works some milk routes, I have two men, and I was unable to get the list from him. I wouldn't bother him at this time.

Q. Did you solicit these people?

A. No, I did not.

Q. Did you type this language?

A. My wife typed it at my request.

Q. And then the drivers took it around with them?

A. One man did.

Q. To the various people?

A. So far as I know, that is the way he done it. I didn't ask him how he was going to do it, I asked him would he want to do it and he said, "Yes, sir, I certainly do."

Q. Then how can you say they were not solicited? Were they voluntarily put on there?

A. Yes, sir.

Q. Or were they asked to put their names on page 17 } there?

A. I don't know, I wasn't with him, gentlemen. I could not tell you, sir. I was in Richmond or Newport News. I couldn't tell you, sir.

Q. Under what brand do you sell your milk?

A. Bowmont Dairy, all Guernsey milk.

Q. What size containers?

A. It comes in quarts, half-gallons and five-gallon dispensary cans.

Q. How is it distributed, by trucks?

A. By trucks.

Wilmer W. Brown.

Q. How often?

A. Every day, to the best of my ability.

Q. Presently, in what areas are you distributing milk?

A. Port Republic, outskirts of Bridgewater, and in between in the old unrestricted area, and Woodstock and New Market and the surrounding area that was open.

Q. How far is Woodstock from Harrisonburg?

A. I have been there fifty times, I couldn't tell you. I would say it's close to forty miles. Is that right?

Q. Does your truck make a route up there and back every day?

A. No, sir, the man lives at New Market.

Q. Comes down and gets the milk from your page 18 } place and takes it back up?

A. That's right, from the pasteurizing plant, sir.

Q. From whom did you buy this pasteurizing equipment?

A. I don't own it, I pay for everything. It is pasteurized from Riverside Farms.

Q. How about you telling us a little bit about your operation. I was under the impression that Bowmont Farm, your place, that you processed the milk and pasteurized it there. Apparently, that is not the case.

A. No, that is not the case at all, sir.

Q. What is the case?

A. My cows are milked at Harrisonburg, Route 1, the milk is picked up—is cooled—

Q. Where was it cooled?

A. At the place I milk at Harrisonburg, Route 1. Then it is taken from the can when it down to 40 to 45 degrees and put in the truck and wrapped, sealed truck, closed truck, panel truck, and brought to Riverside Farms and processed. Then it is picked up from there.

Q. Who owns Riverside Farms?

A. To the best of my ability, it is Mr. G. E. McAllister.

Q. And he processed the milk?

A. Yes, he does.

page 19 } Q. Puts it in your containers?

A. That's right.

Q. Then what happens with it?

A. Sir?

Q. Then what happens to the milk thereafter? Is it pasteurized and put in your containers?

A. It is iced and carried to a storage plant in Mt. Jackson.

Q. Who owns that?

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A. I don't know. I rent that space and I couldn't tell you. The man over there made all of the arrangements. I do not know. I have never been to the ice house in my life.

Q. What do you rent from him, the storage space?

A. Just a portion of the cold room, that's right.

Q. And then what happens with it?

A. He takes the milk from there and carries it to the homes and the milk that is milked this morning and tonight, and sometimes it will run over to the next two milkings, is pasteurized. So the milk is actually three days old when it is delivered to the homes.

Q. Then you don't own all of these facilities, you are leasing some of them at various points in your operation?

A. I do not. I own my milking machines, my cold box and my tanks to clean my equipment with, and of course, page 20 } the pipelines and all of that that you have to have, and I rent the farm, which I have said previously, and then I pay to have my milk pasteurized, which is also been okayed by the Health Department. That was July 2, if I remember.

Q. And you tell the Commission that you are running an efficient operation with all of these various things being leased and rented?

A. Now, what am I leasing? Nothing but a farm, sir.

Q. You have someone else pasteurize your milk?

A. That is right.

Q. You are having to rent a cooler?

A. I am not renting a cooler, I own my own cooler.

Q. Well, the freeze box or the cold box, or what-have-you, that is stationed somewhere up the Valley, that you put the milk in at Mt. Jackson?

A. It's at Mt. Jackson.

Q. You do not rent that?

A. I rent a portion of it.

Q. That is what I referred to as a cooler. You are using it to keep the milk stored?

A. Overnight is all.

Q. So then you rent that and you rent a pasteurizer?

A. No.

Q. And you lease the farm?

page 21 } A. No, sir, I do not rent the pasteurizing unit. I pay—Mr. Jim Mining pasteurizes it and he is the gentleman that—I don't pay him, I pay McAllister for what they do for me, for pasteurizing my milk.

Wilmer W. Brown.

Q. With all of that you are still running a profitable business?

A. Yes, I am doing all right—will be, I hope.

Q. How much volume do you have?

A. It's not a great deal right now. Off of the 25 cows or 24 cows I am selling just a fraction, I would say, over 100 gallons of milk a day, something like that. We use some at home and I couldn't tell you to the pound how much I am selling.

Q. Have you changed your prices since the Milk Commission went into this market or—

A. I have not been authorized to do so, no, sir.

Q. And you are still charging the prices that you were charging two months back, shall we say?

A. Yes, I am.

Q. What are your prices?

A. 25 cents a quart, and in the dispensary can it is 92 cents, if I remember correctly.

Q. You realize if you get a license that your prices will have to conform also?

page 22 } A. I certainly do and I am perfectly willing to. I am perfectly willing to. And if it is mandatory that I do it now, I will do it immediately. I didn't understand it that way. But if it is, I will do it and be very happy to.

Q. In the event you are granted a license and your supply of milk wasn't sufficient for your sales, do you intend to take any baseholding producers that may be assigned to you by the Local Board other than by the Commission?

A. Yes—Mr. Parker, ask it over. I didn't understand it.

Q. The Commission requires that a distributor take such baseholding producers that supply milk as are assigned to him commensurate with the sales on the market; so in the event your sales should increase beyond your supply, would you then take baseholding producers that are assigned to you?

A. Mr. Parker, I don't think that I want to get that big. I would if they asked me to and I could sell the milk, but I do not want to be that large. I just want to—frankly, if they demanded that, I would do so, I would certainly try and comply with what the Board wanted me to do.

Q. You have told the Commission, I believe, that you got an oral promise that you can stay on this land until Decem-

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ber, 1962, and then on oral promise that you may be able to take it later for a two- to five-year period.

page 23 } A. I have the gentleman's word that I can. He has never lied to me, sir, and I would have no reason at all to believe that he would go back on his word.

Q. Well, you understand, of course, that land is a little different than other property and you have to have something in writing or a lease or sale?

A. I will have, sir, by the end of this year. I will have it in the next two weeks.

Q. You are there presently under an oral arrangement, are you?

A. I am now operating under an oral—

Q. Do you realize that tomorrow he could put you off there under this oral arrangement and you would have no relief?

A. I could get a signed statement. I can have a lease drawn up any time. Mr. Myers offered to do it and I told him I didn't think it was necessary for this year. But from now on it will be necessary.

Q. One of the regulations requires that you have facilities adequate to carry on the business, and it appears that you don't even have any assurance of the land on which you operate.

A. Yes, I do, sir.

Q. Except an oral agreement?

page 24 } A. To me, that is enough. I can have it tomorrow morning, tomorrow evening; I can have a lease drawn up if you care to, sir, and I will be glad to send the Board a copy of it, be very happy to, sir.

Mr. Parker: That is all I have.

Acting Chairman Lewis: Mr. Louthan?

By Commissioner Louthan:

Q. Mr. Brown, I gathered from your statement that a lot of your sales or rather a lot of your customers were right in the area of Harrisonburg, but not inside of the city?

A. No, Mr. Louthan, I think you misconstrued, or either I said the wrong thing, and I am sorry if I did. I said this, that I have no idea of selling milk now or any other time in the restricted old area. I have no desire to do that, because if I do that, I would be working a hardship on my friend sitting right here and I do not wish to do that. I am serious. I do

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not wish to hurt Harvey Scott. I consider him a very good friend of mine. He may not be.

Q. You don't mind hurting somebody else?

A. I do not want to hurt anybody. Who I am going to hurt? Who else is there?

Q. I do not know, but you are bound to have some competition in the area.

A. I said in the old area. Yes, sir, I do not want page 25 } to sell in the old area.

Q. But doesn't your friend, Harvey Scott, sell outside of the restricted old area?

A. Yes, sir, he does.

Q. Are you hurting him in that area?

A. No, sir, because it was only when I went into it. No, sir, I am not hurting Mr. Scott at all.

Q. What area—

A. Pardon me, sir, Because I had a right there as Mr. Scott did, the way I feel about it. Maybe I don't.

Q. Didn't Harrisonburg recently add some property?

A. I understand that they did, yes, sir.

Q. If they went out and covered one of your customers, would you exclude and discontinue that customer?

A. No, sir, I would not. Why should I?

Q. In this area, I think the question was raised here a bit ago that as to whether or not the Commission had decided that you were asking for a limited area or whether the Local Board asked whether you be assigned a limited area, and the answer was that you were requesting a limited area.

A. I don't know where they got it from.

Q. Didn't you say that you asked them to exclude the formerly restricted area?

A. I did not.

page 26 } Mr. Smith: I do not think Mr. Brown understands the question, Mr. Louthan. Maybe this will clear it up.

By Mr. Smith:

Q. It is my understanding that in the old Harrisonburg Milk Market area, that area around Harrisonburg that was so designated, you do not desire to sell milk in that; is that your statement?

A. That is exactly my statement, Mr. Smith.

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Commissioner Louthan: Does that mean that he wants the license limited?

Mr. Smith: Yes, sir, to the area—

By Mr. Smith:

Q. You want your license limited to the—

A. Former area.

Q. —to the area of the present Harrisonburg Milk Market as designated by the Commission, less what was formerly a part of the Harrisonburg Market?

A. Suits me fine.

By Commissioner Louthan:

Q. And you are asking for a license to extend over the whole area, except the Harrisonburg area, City of Harrisonburg?

A. No, I do not know whether it's the City of Harrisonburg, but the old area.

page 27 } Q. But relatively that?

A. Yes, the old area.

Q. But you are asking for a limited license?

A. Yes, if that's the term you use; yes.

Acting Chairman Lewis: Mr. Burrows, do you have any questions?

By Commissioner Burrows:

Q. Who does this farm belong to that you are leasing?

A. Mr. Burrows, the Production Credit Corporation has a first deed of trust on the entire farm and buildings.

Q. May I help you by saying that they operate and lend funds from the Federal Land Bank, and is not the Federal Land Bank the holder of the mortgage?

A. So far as I know, they do. I dealt with Mr. Myers strictly, and how he handled it, I could not tell you. He called the Production Credit.

Commissioner Burrows: I think that is the truth.

Mr. Smith: I think that is true, too.

By Commissioner Burrows:

Q. Is it a repossessed farm?

A. No, sir, it is not, not to my knowledge.

Q. May I observe that, so far as I know, they do not own

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land and retain it, they loan money on it, and that
page 28 } being true, is it not subject to sale?

A. Yes, it is subject to sale, I reckon. I don't know. I say it is, I don't know. I don't know the agreement between the Production Credit of Staunton and G. G. Bowman at all. I don't know, but I know he's dead.

Q. This dairy operation is not your principal business?

A. I hope it will be.

Q. It is not now?

A. No, it is not now, but I certainly hope it will be. And may I make this statement again? The doctor has asked me to please stop traveling. In other words, he says do or don't.

Q. Who is operating the farm now?

A. Mrs. Vela Wilson. I have no farming operations other than milking and hay, and my hay is completed for this year so she is milking the cows.

Q. Do you pay her a salary?

A. I do.

Q. And she manages the production unit?

A. She does. She milks the cows, sees that it is done with help, feeds them, pastures them, does it all.

Q. Do you produce any of your feed?

A. I do, sir, all of my hay.

page 29 } Q. On the leased farm?

A. On the farm, that's true, sir.

Q. Now, this processing is done—I think you have explained that you have someone to do that for you. How much milk are you currently distributing?

A. It's just a fraction over 100 gallons a day. I think I am right on that.

Q. That would be about 900 pounds daily?

A. Something like that, sir.

Q. Around 25- to 30,000 pounds a month?

A. And what we are doing is, of course, the help takes their milk and I take mine, so that could bring it down right much. I just don't know right to the pound, but I can get it.

Q. You mentioned Mr. McAllister in your testimony; does he have any interest in the operation?

A. No, sir.

Q. Does he furnish any of the cows?

A. No.

Q. You own all of the cows that are being milked?

A. Yes.

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Q. Are you now selling milk to anyone except your retail customers?

A. No. Mr. Burrows, excuse me, I do not want page 30 } to mislead anyone. Will you define, please—I am not being smart, I just want to be truthful—what do you mean by retail customers?

Q. I didn't understand your question.

A. What do you mean by retail customers? Do you mean house to house, or what?

Q. Well, I mean the milk that you distribute. I think you have made the statement in your testimony that you had sold milk to some processing plant before you went into the distribution business.

A. Oh, I did, yes, sir. I sold to Shenandoah's Pride. Now I know what you mean. That's all right. Go ahead.

Q. And you do not sell any milk to anyone like—

A. No, not any more.

Q. You do not contemplate that?

A. No.

Commissioner Burrows: That is all I have.

Acting Chairman Lewis: Mr. Ragland, do you have any questions?

By Executive Officer Ragland:

Q. I want to go through your operations again just so I have a grasp of what it shows in the record of just what you are doing now. Did I understand you to say that you are leasing a farm which is outside of Harrisonburg on page 31 } Route 1?

A. That's right.

Q. And that in your dairy you have how many cows was it?

A. About 25, and I have some heifers of course, and some calves.

Commissioner Louthan: Mr. Ragland, may I interrupt?

By Commissioner Louthan:

Q. Route 1, what does that route mean?

A. R. F. D. 1.

Q. I thought you might mean a highway, and your route was two ones instead of one.

A. That's right, 11.

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By Executive Officer Ragland:

Q. And you have approximately 25 cows in your milking herd?

A. That's right, sir.

Q. At the hearing held on August 23, at which time you were present, you said something about having a herd at Roanoke. Is this the same farm that you are talking about?

A. I never had a herd at Roanoke in my life.

Mr. Parker: Verona.

Mr. Stultz: Mr. Ragland, if I may contribute, I believe the reference to be to the pasteurization process at page 32 } Verona—V-e-r-o-n-a—rather than Roanoke.

Executive Officer Ragland: This may be.

By Executive Officer Ragland:

Q. I read from the transcript the question to Mr. Brown when he was on the stand:

“Is this Roanoke that you are talking about in Augusta County?

“Yes.”

So it may have been that the question was intended to mean Verona.

A. That is what I understood the question to be.

Q. Then substituting “Verona” for “Roanoke,” is this the same farm that you were then talking about on August 23?

A. I presume it was, because they pasteurize my milk. I would certainly think so.

Q. Is the Verona location where your milk is being pasteurized or where it is being produced?

A. Where it is being pasteurized.

Q. As opposed to this R. F. D. 1 outside of Harrisonburg where your cows are located and your milk is being produced?

A. That's right, sir.

page 33 } Q. And you own all of your equipment there at the farm, but you lease the farm and you pay management at the farm?

A. That's right.

Q. How is that milk transported from there to Riverside Farms?

A. In a panel truck.

Q. Is it in cans or truck?

A. Yes.

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Q. In cans?

A. In cans and iced.

Q. I think this has been cleared up, but just so there will be no question in the record, your application shows no reference to the name Bowmont Farms.

A. That is just a name that I gave the farm.

Q. Is that the name under which you are distributing milk?

A. Well, I distribute under my own name, but on the truck I have Bowmont Farm on it. If I am doing something against the law—

Q. Oh, no, I am just trying to avoid any misunderstanding, since your application makes no reference to Bowmont Farm and you testified today you are distributing under that name.

I just wanted to be sure that it is one and the same.

page 34 } A. Oh, yes, it is, sir.

Q. So you would, in effect, be trading as Bowmont Farm and that is the label that appears on your trucks and your milk?

A. Yes. I gave the farm a name just for it to have a name; that's all.

Q. But you are selling with bottles labeled "Bowmont Farm"; is that correct?

A. Yes, sir.

Q. Now is this Mt. Jackson that you referred to in your testimony a town or village or location?

A. Well, it's a little village, yes. Little city, they call it.

Q. And there you rent storage space in which the processed milk is stored?

A. Yes.

Q. Then you said "he" picks up the milk; who picks up the milk?

A. The man that works for me. He delivers it there, he carries it there, and he goes home, and goes back in the morning and picks it up and delivers it. It's all packed in the containers that he will deliver the milk in.

Q. Is he a salaried employee of yours?

A. He is.

page 35 } Q. Does he do anything else for you other than handle this milk operation?

A. No.

Q. And you have him on a salary not on a commission?

A. I have him on a salary.

Q. And he sells only to retail customers?

A. Yes. He sells to some restaurants. I presume you would you would call that retail customers, too.

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Q. Let me say since you had some questions in your mind that roughly speaking retail customers, as I use it here, means people who are consuming the milk themselves, not people who are buying it to sell to others. That would be a wholesale customer, like a restaurant or store.

A. Yes. Well, I am seeling both wholesale and retail.

Q. What per cent of your business would be retail and what percent wholesale?

A. I haven't checked it in the last week, but I would say about 90 percent of it is retail and about 10 percent is whole-sale. That is my observation. I don't know. That is what I consider it, Mr. Ragland.

Q. Briefly, what are these wholesale customers, stores or restaurants or hotels or what? Primarily restaurants?

A. Yes, sir.

page 36 } Q. Do you sell any stores that resell your milk?

A. Not that I know of.

Q. Grocery stores?

A. Not that I know of. He may be doing it now, I don't know. I don't think so.

Q. Do you have any other employee like this one you have just described who operates for you in the milk business, distributing milk? Just the one?

A. No, I have Mrs. Wilson at the farm.

Q. No, in the distribution of milk.

A. In the distribution of milk, I do have one other man that works part time; not all of the time, but part time.

Q. Does he operate out of this same storage box at Mt. Jackson?

A. No, sir, he does not.

Q. Where does he get his milk from?

A. Riverside.

Q. He picks it up directly from Riverside?

A. Yes, sir. We have a cold room there and he carries it and puts it out three days a week.

Q. What type of an operation does he have insofar as retail and wholesale customers?

A. He has the very same thing that the other man has. He has a truck.

page 37 } Q. Do you have any other routes that distribute milk?

A. No.

Q. Just these two?

A. Well, the routes—let me explain what I mean, Mr. Ragland. He covers—say he would go this way and then he would

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come back and in the afternoon maybe come over here or over to this area somewhere, Port Republic or to the edge of Bridgewater or somewhere like that, but I only have two routes. That is all I have now.

Q. Of your total volume of some approximately 100 gallons a day that you testified to, how much do each of these people handle?

A. Well, it's about half and half, I reckon, something like that. Awful close to half and half.

Q. What is the test of your milk as it leaves your farm, the raw milk?

A. To the best of my ability, it's about 4, 4 to 4.6, according to—I don't have a report from the State Department. The last that I had come from Shenandoah's Pride. It will be home this week, I expect.

Q. What is the test of your milk as it is sold on the street or sold by your two men who are distributing?

A. To the best of my ability, it would be the same, about 4.6.

page 38 } Q. This milk is not standardized from the time it is received from the cows until the time it is put on the street?

A. Well, there is a whole lot about the milk business I don't know, and that is the reason why I have this man to pasteurize for me. Now, very frankly, I think that the test was low. I think my cows are running 5, if not better. But when my milk goes on the street, I am—or on the road, I am reasonably sure it is 4.6, or 4.5. I may be wrong now, I don't know, I haven't the report on that and I couldn't tell you. I will have it though, I expect, this week when I get home, and I will be glad to forward it to you, send you an account and everything else. Would you like for me to do that, sir?

Q. Not unless the Commission requests it.

A. All right.

Q. You said something about you used milk from your farm production and some of your help does?

A. Yes, sir.

Q. How much of your total production of 100 gallons is being used in that fashion?

A. I would say a gallon a day, gallon and a half. I don't know. They take what they want. I hold no restrictions on them.

page 39 } Q. Gallon and a half a day for how many people?

A. Well, it's one, two—it's two people in my family, and I am not there, so it would be four people.

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Q. A gallon and a half, that would be 6 gallons a day?

A. Yes.

Q. Four people at a gallon and a half a day?

A. Oh, no. I didn't say that, sir. I said a gallon and a half to two gallons a day for all of it.

Q. For all of it?

A. Yes, I would think that. I don't know. You see, Mr. Ragland, my cows are coming fresh now and I couldn't tell you—and have been for the last four weeks, and I couldn't tell you exactly the amount of milk that I am shipping a day. I can tell you at the end of each two weeks or the end of every month when the boys come in and I get a report from them. But I couldn't tell you that I know something that I don't know.

Q. All right, sir. Now you testified that you are selling in containers of the size of quarts, half-gallons and five-gallon dispensers; is that correct?

A. That's correct.

Q. I believe you gave us the prices on quarts and gallon price in the five-gallon dispensers, but you did not
page 40 } give us a half-gallon price.

A. It would be 50 cents a half-gallon, so far as I know.

Q. These quarts and half-gallons are in what kind of containers?

A. Glass.

Q. Do you have any paper?

A. I buy paper.

Q. Do you distribute milk in paper containers?

A. I do, and I buy it.

Q. Does that come from Riverside Farms, too?

A. No, sir.

Q. Where does that come from?

A. Do you want me to tell you?

Q. Well, it seems to me the Commission would be interested in knowing.

A. It comes from Augusta Dairies, in Staunton.

Q. Tell the Commission something about this paper operation and how that works.

A. Well, I buy it from Augusta Dairies, pay cash for it, and deliver it, and either I collect for it at the time of delivery or charge it to the customer. Some of them are weekly and some are monthly accounts.

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Q. Whose name appears on these paper containers? page 41 }

A. Augusta Dairies.

Q. What percent of your 100 gallons a day would be reflected in this paper operation?

A. None, sir. That would be extra.

Q. Then you are selling more than 100 gallons a day that you previously testified to?

A. Yes, sir,—no, no—yes, I am, but I am buying the other. But I don't make any money on that to amount to anything. I am not set up for paper yet, only for glass bottles.

Q. Tell the Commission how much milk you are selling under this paper operation.

A. 180 pints of buttermilk and approximately 70 pounds of cream cheese per week.

Q. Cream cheese is not an item controlled by the Milk Commission.

A. Well, I did not know.

Q. So it's 180 pints of buttermilk that you are selling in paper?

A. Yes, sir.

Q. To whom do you sell this?

A. To the Morton Manufacturing Company, subsidiary of American—of Continental Baking Company.

Q. How do they use it? Is it sold in the dispenser? page 42 }

A. It is sold in the restaurant. Some is sold through dispensers, I understand. I have only been there twice. And the other is sold in the container and set on the table and poured in a glass as they wish it.

Q. And this 180 pints of buttermilk, is that daily?

A. No, sir, that's weekly. Now sometimes it is a little more, sometimes it is a little less, but it runs the same way with the cottage cheese.

Q. Do you sell paper under this arrangement to any other customer than this Morton Manufacturing Company?

A. Not to my knowledge, unless it has been done since I left home this week.

Q. Where is Morton Manufacturing Company located?

A. At Crozet, Virginia.

Q. Is that within the present Harrisonburg sales area?

A. I did not think so and still don't think so. It has never been made clear to me, because the bulletin you sent me, sir,

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was only marked off in roads and highways and secondary roads. I can look on the map there and tell you.

Q. I will ask you to do that in just a minute. I didn't think—

A. All right. I didn't think it was.

Q. You have testified that you are selling, if I page 43 } made my notes correctly, milk around the outskirts of Bridgewater, Port Republic, New Market, Woodstock, Lacey Springs, and outside of Harrisonburg. There is a map on the wall showing the present Harrisonburg Market. Would you please go up to that map and show the Commission where these areas are located that you are now serving, please?

A. Just as near as I can, sir, I will.

Q. Show them first where Bridgewater is, the outskirts of that are located.

A. This is Bridgewater right here and—what was the question again?

Q. Show the Commission where you are selling. You have testified that you are selling in this area. Show them where the outskirts of Bridgewater are.

A. It would be in—I presume here.

Q. So that would be generally northeast of Bridgewater?

A. I would think so. I have never been on that route, Mr. Ragland, and I just don't know. But I know it is out of this section here. I know that.

Q. Will you tell them where Port Republic is and where you are serving in that area?

A. If I can find Port Republic. Right here. This would be in here. And now I jump from there down to here.

page 44 } Q. If we can go in the order of this list: New Market. Now, will you show the Commission where that is and where you are serving around there?

A. Here it is right here.

Q. That is in Shenandoah County?

A. Yes, sir. I presume this is the county line.

Q. That is correct.

A. That's right.

Q. Now, Woodstock.

A. Yes, sir. Here is Mt. Jackson right here where the milk is stored. Right in here. All around in here.

Q. Lacey Springs?

A. That is down here on No. 11.

Tenth Legion, I think we are putting out a little milk right here, too. And Lacey Springs is right here.

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Q. And then you further testified that you are selling outside of Harrisonburg at the trailer court or something?

A. That's right, a trailer court in here somewhere. I have never been to it.

Q. That is generally northeast of Harrisonburg?

A. Yes, sir, that would be north on Route 11.

By Commissioner Burrows:

Q. Did you testify that you were selling in page 45 } Crozet?

A. I did.

Q. That is in Albemarle County?

A. So far as I know, sir, it is, whatever it is.

Commissioner Burrows: That is in another market.

Executive Officer Ragland: It appears, Mr. Burrows, it is in an uncontrolled area lying between two markets here.

The Witness: That's right.

A. (Continuing) Then I am also selling some in Quicksburg, just a little bit.

By Commissioner Burrows:

Q. While you are here, please, where is your farm located? Locate the farm.

A. Oh, boy. (Indicating)

Q. That is your production unit. Where is it processed at now?

A. Approximately here.

Q. And then you said something about storage facilities up—

A. Only for that man up there, Mr. Burrows, only for that man and he only carries about 30 gallons of milk over there. It's only there overnight, that is all.

By Acting Chairman Lewis:

Q. I thought you said it was sort of split fifty-page 46 } fifty?

A. I did, but I said he only carries enough for one day's delivery and makes it every other day, so that would be about 30 or 35 gallons.

By Executive Officer Ragland:

Q. Mr. Brown, how far from the farm on which your cows

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are located and are being milked is the point of processing?

A. Just a fraction less than 18 miles, I think.

Q. And how far is it from that point up to where the milk is stored at Mt. Jackson?

A. I would say 56 miles, something like that. I don't know, Mr. Ragland.

Q. At the hearing, Mr. Brown, on August 23, you testified that you were selling some 75 bottles of milk a week in Woodstock and you later testified that you were selling 35 or 40 bottles of milk in Port Republic.

A. I think that is about right, sir. I don't think, Mr. Ragland, that I pinned myself down to that exact amount, sir, I didn't mean to.

Q. I quote you from your testimony:

"Q. You said you made some sales, in what area did you make the sales in?

A. Oh, well, I sold some at Woodstock and Fort page 47 } Republic and I think that is about it.

"Q. How much have you sold in Woodstock?

"A. I don't know, I have to figure it up. I would say about 75 bottles a week.

"Q. How much have you sold in Port Republic?

"A. 30 or 40, I don't know. I am not there. I *on* only home once a week, and so forth."

A. That's right.

Q. 40 and 75 are 115 bottles a week, and assuming they are half gallon bottles—

A. No, it would be quarts.

Q. Assuming—

A. Practically all of it is. Most of it is quarts.

Q. Well, then, we will divide that by four. If they were most of them quarts, and it would appear that at that time you were selling something like 28 or 29 gallons a week. Now you testified here today that you were selling approximately 100 gallons a week. Have your sales increased that much in that period of time?

A. Why yes, or I wouldn't have testified to it, Mr. Ragland.

Q. What additional customers do you have now that you did not have then?

A. Well, part of them are on that list over there. page 48 } And I am very sorry I couldn't get the other list, but I just couldn't. I didn't think it would be very

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polite to go in there and ask for it. If the man had it, I wasn't going to ask him.

Q. Which list are you referring to?

A. The list of customers. See, we make a ticket for each customer.

Q. Who is this other man that you saw had it?

A. A Bowman works three days a week for me.

Q. Is he one of your drivers?

A. Yes, he's a driver.

Q. Or people that distribute—

A. He drives three days a week.

Q. And you are not here today prepared to tell the Commission what caused this difference in your sales between August 23 and today, which caused this some 300 percent increase?

A. Well, I have an answer for it, I think: Work, hard work. That is the only way that I can tell you. And I am not sure, Mr. Ragland, when I was here before, I am not sure whether I had Continental Baking Company or not. I just don't remember.

Q. How much do you presently sell the Continental Baking Company?

page 49 } A. It varies. I would say 30 to 40 gallons a day of sweet milk besides the paper milk that I am selling. Something like that. I wouldn't pin myself down to tell you exactly, because I just don't know. It varies. I think I would be doing wrong if I did do it. But I think that is my biggest increase right there.

By Commissioner Louthan:

Q. Where is the Continental Baking Company?

A. The home office is in Rye, New York.

Q. No, I don't mean that. What brand do they have? Where is that you sell milk to that you are talking about?

Mr. Scott: Crozet.

A. Crozet, Virginia. They are manufacturers of pies and that kind of stuff.

Executive Officer Ragland: I do not have anything further.

Acting Chairman Lewis: Gentlemen, we will recess this hearing for lunch and reconvene at 2:15 p. m.

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(The hearing was recessed for lunch at 1:10 p. m., to reconvene at 2:15 p. m.)

page 50 } AFTERNOON SESSION.

Met, pursuant to noon recess, at 2:15 p. m., October 11, 1962.

Acting Chairman Lewis: If everyone is here, we will reconvene this hearing. I believe you were on the stand, Mr. Brown.

WILMER W. BROWN,
resumed and testified further in behalf of the applicant, as follows:

Acting Chairman Lewis: Mr. Ragland, you had completed the questions that you had?

Executive Officer Ragland: I had, sir.

Acting Chairman Lewis: Are there any further questions of Mr. Brown by any member of the Commission? Any questions from the audience?

Mr. Scott: Yes, sir, I have some. Mr. Brown said he was my friend, I hope he will remain my friend.

By Mr. Scott:

Q. Did the farm you rent belong to Mr. George Bowman?

A. That's right, yes, sir.

Q. Isn't he being buried this afternoon?

A. I don't know when the funeral is, sir.

page 51 } Q. Isn't it true that the first deed of trust on
this farm is about what the banks that you have
it leased from claim the farm is worth?

A. I don't know.

Q. Didn't you make a statement to the Local Board when it met in Harrisonburg that you were renting the farm on a month-to-month basis and you had the farm rented to December 31, and on questioning, you weren't sure whether it could be rented after that, that you had the opinion that it could be? Isn't that the statement that you made?

A. I did, but I found out since I know I could.

Q. And you think since Mr. Bowman, who owned the place, and as much mortgage as against the place, that since his death that it would be true that you can continue on?

A. Yes.

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Q. With the seven distributors who now hold license in this area, would you say that the market is adequately supplied?

A. I don't know, Mr. Scott, whether it is or isn't.

Q. What date did you receive notice of the hearing in Richmond that the Milk Commission was going to have a hearing with the idea of extending the Harrisonburg territory?

A. What date?

Q. Yes.

page 52 } A. I could not tell you, sir.

Q. Were you here at the hearing on the 23rd?

A. I was.

Q. What date did you receive notice that the Milk Commission had extended the territory on that Harrisonburg Market?

A. I couldn't tell you that day either.

Q. Was there any reason why you shouldn't have received yours at the same time that the others received it, August 28? Do you think there was any reason for that?

A. No, I don't reckon it is. I presume I received it, I just don't know.

Q. I believe you stated to the Local Board in Harrisonburg, that you were selling in the Woodstock-Mt. Jackson-New Market-Crozet area, you said nothing about Port Republic, Bridgewater, New Market—you did say New Market—Lacey Springs and so forth.

A. Well, that was —Mr. Scott, I am sure that I told you all about Port Republic and also about Bridgewater. I am sure I did.

Q. When did you start selling milk in each one of these locations?

A. It was all in July.

page 53 } Q. Isn't it true that the first milk that you sold in Rockingham County was sold on August 7?

A. No, indeed. No.

Q. I am talking about milk now. I am not talking about lemonade juice.

A. No.

Q. Lemonade juice—

A. I don't know anything about that.

Q. —was sold in the Port Republic area and also the Bridge-water area. I am talking about milk.

A. No, sir.

Q. Can you give the Milk Commission *bona fide* sales that you sold in those areas in July?

A. I can. I will be sure and be glad to mail it to them.

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Q. I believe, if you will check the records, you will find your first sale was made on August 7.

A. No.

Q. And was two—and was two 5-gallon dispenser cans.

A. To Pye's Restaurant.

Q. And was sold for 85 cents a gallon, which is 3 cents under the Milk Commission minimum price.

A. No, the market was open when I sold that.

Q. I am talking about milk at these minimum
page 54 } prices in the Harrisonburg Market.

A. I wasn't in the Harrisonburg Market.

Q. I know you weren't. You did sell it for 85 cents a gallon on August 7, didn't you?

A. I don't remember the date.

Q. Well, I have it if you want me to show it.

A. I don't doubt it.

Q. I have a copy of the receipt signed, I believe, by your son. Mr. Allen Brown, is he your son?

A. He is.

Q. On August 8, you sold it to the same customers, 4 quarts of cream. What was the price on that cream?

A. I expect it was \$1.05.

Q. It was heavy cream, wasn't it?

A. Pure cream.

Q. Your receipt shows you charged 75 cents, which it's 88 cents per quart.

A. No, I think that is wrong.

Q. I think I also have a receipt that will show that, if you want to see it.

A. I would like to.

Q. Then on August 23, the same stop, you came back and sold 3 5-gallon dispenser cans and instead of charging 85 cents a gallon for that, you charged 80 cents a gal-
page 55 } lon, reducing your price by 5 cents.

A. I don't know anything about that now. Somebody else could.

Acting Chairman Lewis: Mr. Scott, would you rather bring this out in—

Mr. Scott: I am asking him whether those are charges he charged or not, and asking him the question.

Acting Chairman Lewis: You can do it either way you like.

Wilmer W. Brown.

By Mr. Scott:

Q. Isn't it true that the first milk that you sold after you bottled your milk was sold in Virginia just outside of the Charlottesville Market area?

A. No, sir, we sold it in Rockingham County. It was two or three weeks before I ever went to Crozet, I think.

Q. You notice I said, "sold," I didn't say to give away. There is an awful lot of milk given away, but I said sold and collected for.

A. I mean sold, and collected for. Would you like to have a copy of those?

Q. What day did you start delivering milk in the New Market-Mt. Jackson area?

A. I haven't got those figures with me, Mr. Scott. I can't tell you. I would have to get them. I will be able
page 56 } to have them the first of the week and be glad to supply them to you if you would like me to.

Q. Did you or did you not make your first sale in New Market on September 12?

A. No; no, it was long before that.

Q. Long before September 12?

A. Yes, sir, I am sure of that.

Q. You can produce evidence of that?

A. I think I can, sir. I will do my level best.

Q. How long before then?

A. I don't know. I would say it was somewhere around—I don't know, but I would think it was somewhere around July 15.

Q. Who delivered it?

A. In my opinion, Bowman delivered it. I don't know. I asked him to make a ticket and you know him as well as I do and I presume he did.

Q. What price are you selling your milk for in the New Market area now?

A. 25 cents a quart.

Q. What did you testify this morning your milk tests?

A. I said that it was 4.6. The last report I got was from
page 57 } you. I said it would run higher than that.
Q. The Milk Commission has been in that New Market area since then?

A. The what?

Q. The Milk Commission has taken control of the New Market-Mt. Jackson area when?

Wilmer W. Brown.

A. It was my understanding, I think it was the 15th of September, wasn't it?

Q. What is the Milk Commission price for 4.5 and 4.6 milk?

A. I do not know.

Q. But you stated you were selling it for 25 cents a quart?

A. I think I am right.

Q. I believe if you look at the Milk Commission regulation, it was 26½, which is a cent and a half a quart under.

A. All right, I will come up immediately.

Q. How long have you been in the milk business?

A. Do you mean selling milk?

Q. Selling milk, anything that would do with milk, production or selling?

A. Twenty years.

Q. How long have you been in the production or selling of milk in Rockingham County?

page 58 } A. March—July 2—July 3.

Q. I believe you stated this morning you sold milk through Shenandoah's Pride or Valley of Virginia Milk Producers Association for a while back?

A. I certainly did.

Q. Did the Valley of Virginia Milk Producers Association tell you that they would not handle your milk any longer?

A. No.

Q. So far as you know, the Valley of Virginia Milk Producers Association would still handle your A-grade milk?

A. So far as I know, you would.

Q. Do you think this Milk Commission should grant permits to feed salesmen or any salesmen or any bankers or lawyers or doctors or anyone else that just takes a notion that he wants to get tired and don't know what he's doing and he wants to go into the milk distributing business?

A. If he has a specific reason, as I do, I certainly think they should if they were in the market prior to the closing.

Q. That being the case, don't you think that they would definitely have a chaotic condition all over the State of Virginia in the milk business in the state?

A. No, I do not.

page 59 } Mr. Scott: That is all the questions I have at the present time.

Acting Chairman Lewis: Are there any further questions?

Executive Officer Ragland: I have one.

Wilmer W. Brown.

Mr. Stultz: Mr. Chairman, I would like to ask—Pardon me. Go ahead, Mr. Ragland.

Executive Officer Ragland: Go ahead, Mr. Stultz.

By Mr. Stultz:

Q. Just two questions to clarify a point. Mr. Brown, we understood you or Mr. Smith, your attorney, to say this morning your interest is only in securing a limited license, a license for operation within a limited area. Well, when you met on invitation with our Local Board several days ago, our understanding was that you were seeking a license to operate in the entire Harrisonburg marketing area, and there is a vast difference between the entire area and a limited-license operation.

A. Well, you didn't.

Q. If we understand you correctly?

A. Well, you didn't, sir.

Q. Well—

A. Evidently you didn't.

Q. We certainly were confident, and that, of
page 60 } course, entered into our consideration and our conclusions.

A. I am very sorry.

Q. Yes. The second is whether or not—this is probably addressed to the Commission—whether it is not proper for a licensed operation not in the market area as stipulated on the September 15, today being October 11, whether or not it is in order to allow that operation to continue until it has been determined whether or not a license is going to be issued.

Acting Chairman Lewis: Thank you.

Mr. Ragland, do you have a question?

By Executive Officer Ragland:

Q. Mr. Brown, in answer to some questions by Mr. Scott there was some question about giving milk away. Have you been giving milk away to your customers?

A. Sometimes—now, Mr. Scott says a whole lot of milk. I think he is wrong. Sometimes we would give a person a quart of milk to try. That has been done. But it was very few quarts given away, to my knowledge.

Q. Could it have been done without your knowledge?

A. It could have been because I don't ride the routes, sir.

Q. Don't you understand that you will be responsible for

Wilmer W. Brown.

the actions of your employees if this Commission
page 61 } were to grant you a license?

A. Oh, it would be an entirely different thing, Mr. Ragland, if I am granted a license, and the people that work for me will have to do what the Milk Commission says and I will see that it is done. But when I was in an open market, I did not understand that I had to comply with any wishes of anyone because I didn't even know what the Rules and Regulations was of the Milk Commission. I knew nothing about it.

Q. You are aware that this is not what you term to have been an open market, since September 15, 1962, do you not?

A. I do know that.

Q. Didn't I understand you to answer some of Mr. Scott's questions to the effect that you are selling below the Milk Commission's minimum prices since September, 1962?

A. That's right. I didn't know I was supposed to come up. I didn't know what the prices are.

Q. I believe you testified that you have had a copy of these regulations that were mailed to you, were they not?

A. I think I did get a copy of them, that's right. If I done it, I done it through ignorance, and I will correct it immediately.

page 62 } Executive Officer Ragland: No further questions.

A. (Continuing) I will correct that immediately.

Acting Chairman Lewis: Are there any further questions? Mr. Smith, do you have any questions?

By Mr. Smith:

Q. Mr. Brown, will you file, or how soon can you file, copies of your health permits with the Commission?

A. Between now and the weekend. I will put it in the mail over the weekend.

Mr. Smith: That is all.

Acting Chairman Lewis: If there are no further questions of this witness, thank you very much.

(Witness stood aside).

Russell H. Stultz.

Acting Chairman Lewis: Are there any further witnesses who wish to testify on behalf of this application? If not, we will hear from anyone who wishes to speak in opposition to this application.

page 63 } TESTIMONY IN BEHALF OF THE OP-
PONENTS.

RUSSELL H. STULTZ,

was sworn in behalf of the opponents and testified as follows:

Gentlemen, Mr. Ragland has already, I believe, read the recommendation of our Local Board. I would just like to repeat it very hurriedly, if I may, the second portion of it.

“Mr. Brown advised this Board Sept. 22, 1962, that he proposes to operate in the entire Harrisonburg Market area. The Local Board on July 30, 1962, requested extension and redefinition of the boundaries of the Harrisonburg Market area. It was shown at the Commission’s Hearing Aug. 23, 1962, on this request, that 7 Distributors and Producers-Distributors were operating in this Market area on July 30, 1962. Although most of these Licensees were desirous of operating in the entire Market area, they agreed to the Market boundaries recommended by the Local Board at the Commission’s Hearing, inasmuch as most of them had not previously been operating in the entire Market area. This Board therefore feels it would not be fair to present Licensed Distributors and Producer-Distributors to grant another License in this Market area.”

page 64 }

We felt from our information, and repeating an invitation, that we had the three licensed applicants to appear before our Board and after extensive discussion and further consideration the Board felt it advisable to reject the applications. We can’t get too far away from the existing operations and their stability and their satisfactoriness concerning our public’s needs and rendering the public service that the State Milk Act was designed to make possible. We have nothing particularly to add with the exception of since the other distributors in that area in good faith very readily agreed to limitations of their market boundaries, that we feel it would be highly unfair and be prejudicial to their interests, if the same limita-

Russell H. Stultz.

tions that are given them should not be considered in any future licenses.

We cannot see any element of need or any element of benefit or service that would be rendered by any additional license in our operations. We feel further that it would tend to injure and impair and perhaps weaken the stability of long-existing, long-established, licensed operations, and therefore, we wish, Mr. Chairman, to reiterate our disapproval of the application.

Acting Chairman Lewis: Thank you, Mr. Stultz. Are there any questions of Mr. Stultz?

page 65 } By Mr. Smith:

Q. Mr. Stultz, did the Local Board have knowledge of the fact that Mr. Brown was selling milk in the area now included in the Harrisonburg Market area prior to the time it was closed?

A. We had no definite information until we conferred with Mr. Brown on September—just a moment, I will give you the date—I don't have the date readily available, but about September 20 or the 22nd. The information then was gained and that was the basis, Mr. Smith, of the committee's recommendation.

Q. In other words, one of the bases of the committee's recommendation was the fact that Mr. Brown was selling milk in the area prior to the time that it was made a marketing area?

A. We understood from our information, that he had been. In our conversation, I believe it was generally agreed and admitted that some sales had been in progress.

Q. All right, sir. Would you mind, for my information, telling me who the seven distributors and producer-distributors were in the market area on July 30? That would be the Harrisonburg Market area on July 30, 1962.

A. Yes, sir. The Royal Dairy, Incorporated, Front Royal; the Monticello Dairy; H. L. and Paul F. Burkholder; the Spring Brook Dairy operating out of Broadway, Virginia; the Valley of Virginia Milk Producers; Sealtest Foods; and Safeway Stores, Incorporated I believe that makes seven.

Q. Yes, sir. They were all operating in the Old Harrisonburg Market area?

A. That's right, yes, sir.

H. H. Scott.

Mr. Smith: No further questions.

Acting Chairman Lewis: Does anyone have any questions of Mr. Stultz? If not, thank you very much.

The Witness: Thank you.

(Witness stood aside).

Acting Chairman Lewis: Is there anyone else who wishes to speak in opposition?

H. H. SCOTT,

was sworn and testified in behalf of the opponents as follows:

My name is H. H. Scott and I am a member of the Local Board and also associated with the Valley of Virginia Milk Producers Association, processors of Shenandoah's Pride milk.

Mr. Brown states that he was selling milk in and around Harrisonburg prior to the early part of July. In page 67 } talking to the distributors on the market and checking very closely ourselves, we would be very foolish if we didn't check very closely every day, the first sales that we could find anywhere in the market at all—I am talking about milk, I am not talking about lemonade and other juices and so forth that have been bottled and sold—the first sale was made on August 7. The Milk Commission records will show that the Local Board recommended to the State Milk Commission that the market be enlarged on July 30. A public hearing went out on August 6 that the Milk Commission had decided to call a public hearing to enlarge the market and the hearing was held on August 23. The reason I mention these dates, I want to bring out, to show you that Mr. Brown into these markets even after the hearing, and he admitted he was here attending the hearing.

On August 28, our Local Board received a notice that they had enlarged the territory and spelled out the territory that they had taken in. That was on August 28.

As brought out here this morning, Shenandoah's Pride purchased a dairy in New Market known as Sunnyside Dairy, and Sunnyside Dairy approached the Valley of Virginia Milk Producers Association and our Valley of Virginia Milk Producers did not approach them. This herd was or had all

Guernseys, putting out all Guernsey milk. He page 68 } never has in the past, and he wasn't at the time that we bought it, standardizing his milk, so he

H. H. Scott.

was putting out anywhere, I would say, from 4.5 to probably 4.7, maybe 5-percent milk. The man who owned the business is an employee of our organization, and has been since we purchased his business, but he had two routes running and we absorbed the rest of the business on our routes that were in and around this territory.

Now on September 12, Mr. Brown or Mr. Bowman, the partner, or somebody, employed the man who was running the other route and he got one customer in New Market on September 12. I will give you the name of the customer if you want it. I don't have it with me, but I can get it for you.

On September 13, he still only had one customer. On September 14, he got his second customer. Bear in mind he received a notice from the Milk Commission, or at least he should have received it, on August 28, that is the time we received it, and he waited until September 12 and started into the New Market-Mt. Jackson territory. He employed the man who was driving the truck—we took possession of the Sunnyside Dairy on September 1. He employed the man who was driving the other truck for Sunnyside Dairy. He is selling his milk at 25 cents a quart. There was two quarts of his milk purchased at the place that he claims he had it in storage.
page 69 } One quart was tested in our own laboratory, and one quart was taken by a State employee to a State laboratory and tested, and both tests came out 4.5 percent.

He has been operating in that market. He waited seventeen days after he received notice from this Board that they had taken in the territory and three days at the most before the Milk Commission went into effect, he goes into that market selling 4.5 milk at 25 cents a quart, and he has gotten some customers. And who wouldn't get them? I could get them, too, with a cent-and-a-half differential on a quart of milk.

These are facts that I can back up. We have followed that particular market very closely because it was held very confidential until September 1 that we were taking over Sunnyside Dairy. And we felt like what was happening—and it taken him from September 1 to the 12th and 14th to get organized and move in on the market with a butterfat test like that in violation of the Milk Commission, and in competition with the Shenandoah's Pride along with the other distributors in the market.

Mr. Brown said he was a good friend of mine, and I am a good friend of him, but facts are facts.

Now he stated this morning that he was selling approximately 100 gallons of milk. He has increased it like every-

H. H. Scott.

thing since the last time he shipped to us, if that's
page 70 } the case, because he was selling a whole lot less
than that when he was selling to us. He must
have doubled his production.

He also stated that he was selling 35 to 40 gallons a day in the Crozet section, which is clear across the Blue Ridge Mountain from Waynesboro, right close to the Charlottesville Market, which is very close to half his milk. Then he claims he was selling some in Port Republic. I have had men over there—I will be frank to tell you I have had men over there and around Bridgewater day in and day out and we could never find where he sold any there.

He is still selling some below north of Harrisonburg at the trailer park. He moved into the New Market, as I state, between the 12th and 14th and into *Mr. Jackson*. He was selling in the Woodstock-Mt. Jackson area back the latter part of July. He went into the New Market area after he got notice from the Milk Commission, and I understand he received the regulations and the prices and so forth, and he continued selling high-test milk in violation of the Milk Commission prices.

I would say roughly from where he is producing his milk, to Crozet and back down to Woodstock, is at least 100 miles. He made statements this morning, I believe, that indicated
page 71 } that he was making money. If a man can take, even
if he had 50 gallons left, and run from Augusta

County to Port Republic, which is over in East Rockingham, back over to Bridgewater, which is in the west of Rockingham, and then go clear down Route 11 fifty or sixty miles, and run from one side of the road to the other and sell 40 gallons of milk, why I don't believe he need to get into the business itself there would be plenty of people would be glad to hire him. It is just not in the cards. What is in the back of his mind or what he proposes to do, I don't know. But I will state what I stated this morning, that I was one member of the committee that was appointed by the Local Board to contact the other distributors in the market in regard to enlarging the Harrisonburg Market as being carried out by the Milk Commission on the other markets throughout the state. Those distributors in the market agreed that it would not be fair to them to ask to go into the whole market because they were not serving the whole market at that time.

I certainly feel like it is not fair to allow this applicant here a permit to distribute milk where he is talking about distributing. He says he doesn't want in the whole market. I

H. H. Scott.

don't know where he says he is distributing, I don't see how you could outline any part of that market where you could serve because he is going right down through the heart of it.

page 72 } As I stated before, I am also connected with the Valley of Virginia Milk Producers Association and the Board of Directors of the Valley of Virginia Milk Producers Association is opposed, and will oppose to the limit, the granting of this application. It sees no justification for it whatsoever.

Acting Chairman Lewis: Thank you, Mr. Scott.
Are there any questions of this witness?

By Commissioner Louthan:

Q. Mr. Scott, are you speaking for the Local Board?

A. I was speaking for the Local Board on part of my presentation, and part of it I said I was presenting the view of the Valley of Virginia Milk Producers Association.

Q. What was the recommendation of the Local Board with respect to this application?

A. Be denied.

Q. With no conditions whatsoever?

A. Under any conditions, be denied.

Q. And that speaks also for the Valley of Virginia Milk Producers Association?

A. That is correct.

Acting Chairman Lewis: Mr. Smith?

page 73 } By Mr. Smith:

Q. Mr. Scott, when did you contact these other distributors in the market about limiting their license?

A. Well, we started about July, around July 1.

Q. When did you have your meeting that you finally decided on what limitations there would be on the various distributors?

A. The meeting was held on July 30.

Q. You didn't contact Mr. Brown?

A. No, sir.

Q. How long have you been on the—

A. Well—

Q. Excuse me. How long have you been on the Milk Board, sir?

A. Oh, for a number of years. I don't know how long, six or eight years.

H. H. Scott.

Q. Your name isn't on the letterhead?

A. That's an old one, though.

Mr. Stultz: That is an old one, Mr. Smith. We are economical. We thought we would use the old supply before we asked to requisition any new ones.

By Mr. Smith:

Q. Mr. Scott, wasn't it mainly through your efforts that the market was extended?

page 74 } A. No, sir. I did a lot of work, yes, but the Board of Directors of the Valley of Virginia Milk Producers Association—I would have to make sure of the date, but I would say back as far as probably May or June—instructed management to make a study and to go ahead and to contact the other distributors and see whether they were interested or not.

Q. What is your position with the Valley of Virginia Co-operative?

A. I am Assistant General Manager and Secretary.

Q. Do I understand that the Valley of Virginia Co-op has bought out a good many small producers and distributors in the last six months?

A. They bought the one in New Market, I spoke of, and they fulfilled a contract in May, about five years ago, with the one in Woodstock.

Q. Is that all?

A. That's all. And I want to say, and in answer to that question, I want to say, both of those producers and distributors contacted the Valley of Virginia for sale, they were not contacted by the Valley of Virginia.

Q. You say that Mr. Brown is mistaken when he says that he sold in Rockingham County and Woodstock area in July of 1962?

page 75 } A. I made a statement that he sold in Woodstock area in July, but I clarified my statement in Rockingham County as to according to our information and information from the other distributors and by following—I will put it by other means of contact. First I made the statement and still stand on it, that the first known sale that could be anywhere found anywhere in Rockingham County was made on August 7, 1962.

Q. That is the first sale known to you?

A. Rockingham County.

Q. First sale known to you in Rockingham County?

H. H. Scott.

A. Known to either our company or the other companies, our producers and distributors selling in the whole area.

Q. You do not undertake to say that he did not make any sales in July in Rockingham County, do you?

A. I clarified my statement that I made.

Q. Will you answer that question? . Do you categorically tell this Board that you were watching him so closely that you could tell, or somebody was watching him so closely that you can state, under oath, as a matter of fact, that he made no sales in Rockingham County in July?

A. I didn't say that.

Mr. Smith: That is all.

page 76 } Acting Chairman Lewis: Does anyone have any further questions of Mr. Scott?

If not, thank you very much.

(Witness stood aside).

Acting Chairman Lewis: Is there any other person who wishes to testify in opposition to this application?

If not, are there any persons who wish to make any further statements or present any further evidence at this time?

Mr. Stultz: Mr. Chairman, if I may add a very brief footnote, I believe it would probably be informative to Mr. Smith.

The action of the Local Board on July 30 in asking me to redefine the boundaries of the Harrisonburg Market was predicated upon the Local Board's long experience in view of the changing conditions that come into the picture since the original Milk Act in 1934. Those conditions had created a lot of unrealistic—had created an unrealistic pattern of operation, and from time to time our Board had discussed and considered, you might say, the confusion that existed in having some limited boundaries around Harrisonburg in operations springing up in our own so-called uncontrolled territory. It just didn't make sense to us.

page 77 } Lately, our Board felt it was entirely advisable to have the boundaries redefined to blanket the true area of our distribution and operations in Rockingham County and the neighboring Shenandoah.

Acting Chairman Lewis: Thank you, Mr. Stultz.

Any further questions?

Mr. Smith: Mr. Lewis, I have only one statement to make, and that is that apparently because Mr. Bowman's father

had died, Mr. Brown was reluctant to approach him to get some of this corroborative evidence or written evidence of these sales made prior to the area being closed, or prior to the market being redefined. We would like the opportunity to get those receipts and so forth and file them as an exhibit. If we do so by the end of the week, may we be permitted to do that?

Acting Chairman Lewis: Fine. That will be in order. Of course, we would like to point out that until the Commission renders its decision on this matter, that any sales made within the controlled area by you would be illegal, you would be operating illegally in that area. You realize this?

Mr. Smith: Yes, sir.

Acting Chairman Lewis: This would automatically suspend any sales that you would make in the con-
page 78 } trolled area for the time until you got this information in.

Executive Officer Ragland: We may want to discuss this in executive session, Mr. Chairman, before you attempt to try to clear up this question, as to whether you are going to hold up your decision until certain other documents can be filed or not. This is not a new question in license applications, and most often the Commissioners want to discuss it before deciding.

Mr. Smith: Do you want us to wait for that? I think without any difficulty we can get them and mail them in anyway. Whether you receive them or not, of course, that is up to you.

Executive Officer Ragland: This should not take long.

(The members of the Commission retired into executive session, at the conclusion of which the hearing was resumed.)

Acting Chairman Lewis: Gentlemen, the Commission has decided that it will accept evidence as demonstrated by sales slips and any copies of health permits, those two items that you gentlemen wish to submit. These things should be in this office by next Tuesday at the latest. Of course, we would like
to reiterate the fact that the Commission does not
page 79 } condone operating in any of its markets without the proper license and permit.

Mr. Smith: May I ask a question? The original sales slips will be filed, but would Verifax copies of the Health permits be sufficient, or do you want them verified?

Mr. Parker: They only have one copy and it is difficult to getting those things off the wall.

Executive Officer Ragland: Mr. Chairman, I suggest that he send us the originals and we can copy them here and return the originals to him, if you will remind me of that in the letter, Mr. Smith.

Mr. Smith: All right, sir.

Acting Chairman Lewis: Nothing further, we declare this hearing adjourned.

(Whereupon, the hearing was adjourned at 3:08 p. m., October 11, 1962.)

page 80 } ATTENDANCE REGISTER.

Name	Address	Representation
W. W. Brown	112 Robinhood R.	Mr. Richard Smith
R. L. Stultz	H'burg, Va.	H'burg. Milk Bd.
R. W. Smith	Staunton, Va.	W. W. Brown
H. H. Scott	H'burg, Va.	H'burg Milk Bd.
M. W. Crowe	Keezletown, Va.	H'bg Milk Board
R. L. Bowman	Harrisonburg, V.	Hbg Milk Board
Thos. Stark, Jr.	Amelia, Va.	So. Side
B. F. Wilson Paxson	Norfolk Va.	Norfolk Coop.

A Copy—Teste:

H. G. TURNER, Clerk.

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