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Decision No. 18164

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

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CITY OF FRESNO, a Municipal Corporation,  
Complainant,

vs.

FRESNO TRACTION COMPANY, a Corporation,  
Defendant

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**ORIGINAL**

CASE NO. 2187

W. E. Simpson, for Complainant

Everts, Ewing, Wild & Everts,  
by D.S.Ewing and F.G.Everts, for Defendant.

LOUTTIT, Commissioner:

O P I N I O N

The City of Fresno filed its complaint in this matter on October 23, 1925. It alleges therein that public convenience and necessity require that the defendant Fresno Traction Company construct, establish and maintain an extension of its transportation service in the City of Fresno for the purpose of affording transportation to the persons residing in the so-called "Fink-Smith District", a portion of the City of Fresno, comprising one hundred and twenty-five city blocks; that on the 21st day of May, 1925, the Commission of the City of Fresno by the unanimous vote of the members thereof, duly and regularly passed and adopted a certain Ordinance No. 1187 and entitled "An Ordinance Declaring that public convenience and necessity requires the making of certain extensions of service by the Fresno Traction Company, a public utility, fixing the time, terms and conditions under which said extension shall be made and requiring said Fresno Traction Company to make such extensions"; that on the 16th day February, 1922, the

Commission of the City of Fresno by the unanimous vote of all the members of the said Commission duly and regularly passed and adopted a certain Ordinance No. 964, entitled "An Ordinance granting unto the Fresno Traction Company a franchise to construct, equip, maintain, and operate a street railway along and across and upon certain streets, avenues, and highways of the City of Fresno, prescribing the terms, conditions and obligations thereof in re-settlement and adjustment of existing franchises and rights and privileges now held and owned by it". Copies of Ordinances 964 and 1187 were annexed to the complaint, made a part thereof, and marked Exhibits "A" and "C" respectively.

The complaint further alleges that after the adoption by the City of Ordinance No. 1187, notice of the adoption of said Ordinance, and a copy thereof were served on defendant corporation, Fresno Traction Company, and said corporation has failed, neglected, and refused and continues so to fail, neglect, and refuse to extend its street car system as required by the terms of said Ordinance, or provide any transportation facilities whatsoever for the service of the residents of said Fink-Smith District; that prior to the filing of this complaint, the Commission of the City of Fresno, by resolution duly and regularly passed and adopted, resolved that application be made by said City to the Railroad Commission of the State of California to require said defendant corporation to establish, maintain, and operate in the Fink-Smith District a transportation system to be approved by the Railroad Commission of the State of California for the purpose of providing transportation facilities for the residents of said district. The complaint contains no allegation to the effect that defendant company has accepted said Ordinance No. 1187.

It is the prayer of the City of Fresno in its complaint that an order be made by this Commission requiring said defendant corporation to establish, maintain, and operate over and

along such streets as the Commission shall designate within said Fink-Smith District within said City of Fresno, a transportation system of such type as may be approved by this Commission, and under such rules and regulations as may be fixed by it.

The defendant Fresno Traction Company filed with the Commission its answer to the complaint and interposed several defenses. One of the defenses raised was directed at the jurisdiction of the Commission to grant relief sought in the complaint. It was alleged that the Commission was without authority to compel the defendant or any other street railway company to extend its lines into territory not theretofore served by it. It was the prayer of the defendant that the complaint be dismissed.

The matter was set down for hearing on the jurisdictional question raised by the defendant, and a public hearing was held in the City of Fresno on October 25, 1926.

At said hearing counsel for the City argued in substance that the Commission was possessed of jurisdiction over the complaint by virtue of the provisions of Ordinances Nos. 964 and 1187, above mentioned. Ordinance 964, sub-division 16, of Section 2 provides in part that the City Commission by an affirmative vote of four-fifths of its members may declare an extension of the service of the company to be a public necessity and call upon the company to make such extension, and upon its failure, within a reasonable time to be fixed by the Commission, to make such extension, the Commission may make an application to the Railroad Commission asking for an order requiring that such extension be made. It is further provided that the matter of the reasonableness of such extension, and the terms thereof shall be left to the jurisdiction and order of the Railroad Commission, and should said Commission order the Company to make such extension, it shall be its duty to do so within a reasonable time. It was pursuant to these provisions of Ordinance 964 that this complaint was filed with this Commission.

We are of the opinion that this defendant street railway utility has not dedicated its properties to service in the so-called Fink-Smith District of the City of Fresno either by its acceptance of City Ordinance 964 or by any other act alleged in the complaint. If the position which we take is sound, it must follow that this Commission has no jurisdiction to direct defendant to make the desired extension (Hollywood Chamber of Commerce v. Railroad Commission (1923), 192 Cal. 307) This Commission cannot, of course, determine the question whether the City of Fresno possesses a cause of action to compel this extension in a court of law as a private contractual right.

O R D E R

The City of Fresno having filed with this Commission its complaint in this matter; the defendant, Fresno Traction Company, having challenged the jurisdiction of the Railroad Commission over the subject matter of the complaint; a public hearing having been held, and the question of the jurisdiction of the Commission having been fully argued by counsel, the Commission now being fully advised in the premises and being of the opinion that it is without jurisdiction to grant the relief desired by complainant,

IT IS HEREBY ORDERED that the complaint in this matter, Case No. 2187, be and the same is hereby dismissed.

The foregoing Opinion and Order are hereby approved and ordered filed as the Opinion and Order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this <sup>4<sup>th</sup></sup> day of ~~January~~ <sup>April</sup>, 1927.

Edmund G. Smith  
W. B. Rindge  
W. J. ...  
Thos. D. ...  
Commissioners