

LEM

Decision No. 24443.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

LOS ANGELES WAREHOUSEMEN'S
ASSOCIATION, a non-profit
organization,

Complainant,

vs.

LYON FIREPROOF STORAGE COMPANY,

Defendant.

ORIGINAL

Case No. 2955

Gibson, Dunn & Crutcher, by Paul R. Watkins,
for complainant.

Faries & Williamson, by McIntyre Faries,
for defendant.

BY THE COMMISSION:

O P I N I O N

Los Angeles Warehousemen's Association, a non-profit organization, complainant in the above named proceeding, alleges in substance and effect that the above named defendant, Lyon Fireproof Storage Company, a corporation, has no right to transact the business of a warehouseman as a public utility in the State of California and has no certificate of public convenience and necessity to operate such a warehouse in the City of Los Angeles in the State of California; that on July 28, 1927, said defendant filed with this Commission its warehouse tariff No. 1, C.R.C. No. 1, effective on July 30, 1927, and has never since said date held itself out to the public, or any portion thereof, for the regular storage of merchandise for the public

generally other than second-hand household goods or effects. Complainant alleges further that if defendant ever had any right to operate as a public utility warehouseman, its conduct and certain annual reports filed for the years 1927, 1928 and 1929 show an abandonment of such operative rights, and therefore prays for an order striking from the files and records of the Railroad Commission the said tariffs and any and all other evidence of a right of operation as a public utility warehouseman by said defendant, Lyon Fireproof Storage Company.

The above named defendant, by its written answer herein, alleges that it is operating a public utility warehouse business in the City of Los Angeles, State of California, and has the right to so operate, and that it has not abandoned or forfeited its rights, and that the said annual reports referred to in complainant's complaint were made and filed, as prescribed by law. Defendant prays that complainant be denied all relief and that the said complaint be dismissed.

Public hearings on said proceeding were conducted by Examiner Satterwhite at Los Angeles, the matter was submitted and is now ready for decision.

The undisputed record in this proceeding clearly shows that if the defendant had actually or at all been operating in good faith during the years of 1925, 1926 and 1927 and part of 1928 a public utility warehouse business, it deliberately abandoned that public utility service on July 1, 1928, when it leased, without the consent of the Railroad Commission, and turned over its properties, equipment and assets, excepting real estate, to the Lyon Van & Storage Company and ceased entirely and went out of its alleged public utility business; but, in view of the conclusions and determination of this Commission that the evidence in this proceeding shows that the said defendant had never actually operated a public utility warehouse busi-

ness in good faith, in accordance with the provisions of the Public Utilities Act of this state, the question of abandonment becomes an immaterial and irrelevant issue in this case.

The issues presented by the pleadings of the respective parties involve an interpretation and construction for the first time by this Commission of certain terms and provisions of the following sections of the Public Utilities Act pertaining to the business of warehousemen in connection with their private and public service.

Section 2 $\frac{1}{2}$, Page 12 of the Public Utilities Act, is as follows:

"The term 'warehouseman,' when used in this act, includes every corporation or person, their lessees, trustees, receivers or trustees appointed by any court whatsoever, owning, controlling, operating or managing any building, or structure, or warehouse, in which merchandise, other than second-hand household goods or effects, and other than merchandise sold but retained in the custody of the vendor, is regularly stored for the public generally, for compensation, within this state, excepting warehouses conducted by any nonprofit, cooperative association or corporation which is engaged in the handling or marketing of the agricultural products of its members; also excepting warehouses conducted by the agents, individual or corporate, of such associations or corporations, while acting within the limitations imposed by law on the principal of any such agent. (Added Statutes 1927, Chapter 278)."

Section 50 $\frac{1}{2}$, Page 47, of the Public Utilities Act, is in part as follows:

"No warehouseman shall hereafter begin to operate any business of a warehouseman, as defined in section 2 $\frac{1}{2}$ of this act, in any incorporated city, or city and county of this state having a population of one hundred fifty thousand or more, without first having obtained from the railroad commission a certificate declaring that public convenience and necessity require or will require the transaction of business by such warehouseman, nor shall any such warehouseman hereafter add to, extend, or otherwise increase his storage or warehouse floor space by more than fifty thousand square feet in any incorporated city, or city and county with a population of one hundred fifty thousand or more, without first having obtained from the railroad commission a certificate declaring that public convenience and necessity require or will require such addition or extension or increase of such storage or warehouse floor space; provided, however, that any warehouseman may without securing such certificate, extend or increase his storage or warehouse floor space for the sole and exclusive purposes of storing therein the goods, wares and merchandise owned by the lessor or owner of the building or premises in which the additional or increased storage or warehouse floor space is situated.

No such certificate shall be required by any warehouseman as to storage or warehouse space actually operated in good faith at the time this act becomes effective, under tariffs and schedules of such warehouseman lawfully on file with the railroad commission."

This Commission is clearly of the opinion that the conduct of defendant, as to whether it has actually operated in good faith its warehouses for several years prior to and including July 28, 1927, as a public utility, must be gauged and tested by all its acts of commission, as well as omission, and the defendant's alleged public utility warehouse service must obviously be judged or determined not by an intention hidden in the mind of the defendant, but an intention expressed in its conduct and by the acts and things done or not done during the years covered by the record therein.

The evidence shows that the Lyon Fireproof Storage Company during the years of 1925, 1926 and 1927 and up to July 1, 1928, was actively and aggressively engaged in the business of storing second-hand household goods or effects and enjoyed a profitable business. During these three and a half years it did all the usual things and pursued the accustomed practices ordinarily adopted by those in the business of storing second-hand household goods and effects, with the result that its two warehouses were filled almost wholly with this class of goods. The defendant obviously attracted and built up its lucrative household storage business because, as shown by the record herein, it solicited and advertised specifically for the storage of household goods. Its solicitors, outside men or estimators were experienced men who devoted practically all of their time to soliciting second-hand household storage business and gave but little, or incidental, if any, effort to obtain any other kind of storage to which we will later advert. Continuous advertising for household goods storage was done by signs upon its vans and buildings and by specific advertising in the classified section

of the telephone directory in Los Angeles solely as a storer of second-hand household goods. The warehouse receipts used by defendant was the non-negotiable form issued and utilized by storers of household goods. Its form or character of rates or tariffs used and which were finally filed with this Commission at a belated date is primarily adaptable to household goods storage.

The defendant contends that during the years above mentioned it had dedicated its warehouses to a public utility service and was actually endeavoring in good faith to secure and do a commercial storage business as a public utility warehouseman; but the evidence in this proceeding, both oral and documentary, entirely fails, in our opinion, to sustain such contention and clearly shows that while the defendant on the one hand, as indicated in detail above, had actively and intensely done all those acts and things which a storer of second-hand household goods does, the evidence shows, on the other hand, that defendant had completely failed and neglected to do and omitted doing those things which are matters of common knowledge and experience, and which public utility warehousemen ordinarily, usually and continually do as a necessary part of their business.

The record clearly shows that defendant did no solicitation for merchandise storage at all except in a very incidental and sporadic fashion and it appears that the very few accounts of commercial goods covering the period of three and a half years, consisting of no more than ten or twelve accounts in all, were "Distress Storage" accounts. "Distress Storage" accounts in common warehouse parlance is storage of commodities with no regularity and with no repetition of patronage or business, and is done by some individual or company who has temporarily no space to accommodate it, as distinguished from those storers or patrons of public utility warehouses who bring in and take out merchandise more or less regularly or constantly.

No advertising was done by defendant whatever in newspapers or periodicals as a merchandise storer. No advertising in any way was placed by the defendant in the classified section of the telephone directory as a merchandise storer, as it had done for second-hand household goods.

There never was an issuance of both negotiable and non-negotiable receipts in any form whatever different from that used for household storage which is quite contrary to the conduct of utility warehousemen whose common and established practice is the issuance of a special type of both negotiable and non-negotiable receipts for public utility merchandize.

There was no handling of accounts for merchandize moving in and out of the warehouse constantly. No rates or tariffs of any kind were ever filed by the defendant with this Commission pursuant to either General Order No. 15 or General Order No. 61 of this Commission, which orders defendant always was aware of and had full knowledge of and which orders were entirely ignored. It appears, however, that defendant for some reason or design not clearly appearing herein filed with the Commission on July 28, 1927 just on the eve of the effective date of Section 50 $\frac{1}{2}$ of the Public Utilities Act, above quoted, a belated tariff, which tariff, as already above indicated, was adaptable primarily to household storage. No annual reports were ever filed by defendant with this Commission, prior to the transfer of its warehouse property and equipment above referred to, save and except a skeleton report for the year 1927 which contained only a brief statement or endorsement on Page 11 thereof to the effect that no public utility service was furnished for the year 1927.

The record further indicates that there was never any segregation or attempt to segregate in the slightest degree by the defendant its alleged public utility accounts from its household storage

accounts or to keep or maintain in any fashion separate accounting of household furniture storage and merchandise storage and no warehouse space was ever allotted or set aside to merchandise commercial storage.

Upon the record before us we must find as a fact that upon the effective date of Section 50½ of the Public Utilities Act, defendant was not acting as a public utility warehouseman within Los Angeles in good faith under tariffs lawfully on file with this Commission.

ORDER

Public hearings having been held in the above entitled proceeding, the matter having been submitted, and being now ready for decision:

IT IS HEREBY FOUND AS A FACT, that the defendant, Lyon Fireproof Storage Company, was not actually operating in good faith as a public utility warehouseman as to storage or warehouse space in the City of Los Angeles, State of California, on August 2nd, 1927.

IT IS HEREBY ORDERED, that defendant's Warehouse Tariff No.1, C.R.C. No. 1, filed with this Commission on July 28, 1927, effective on July 30, 1927, be, and the same is, stricken from the files and records of the Railroad Commission of the State of California and any and all other evidence of a right of operation as a public utility warehouseman.

Dated at San Francisco, California, this 1st day of February, 1932.

C. C. [Signature]
Leon [Signature]
M. A. [Signature]
M. B. [Signature]
Frederic G. [Signature]
7- Commissioners.