

Decision No. 24796.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

LOS ANGELES WAREHOUSEMEN'S)
 ASSOCIATION and CALIFORNIA)
 WAREHOUSEMEN'S ASSOCIATION,)

Complainants,)

vs.)

DOERMANN COMMERCIAL COMPANY,)

Defendant.)

Case No. 3164.

ORIGINAL

LeRoy M. Edwards, for Los Angeles Warehousemen's
 Association, complainant.

L. A. Bailey, for California Warehousemen's
 Association, complainant.

Kelly, Stuart & Hendrick, by Edward A. Stuart,
 for defendant.

Charles E. Schaeffer, for Young's Market, inter-
 vener.

BY THE COMMISSION:

O P I N I O N

Complainant the Los Angeles Warehousemen's Association, is a commercial organization composed of various public utility warehouses doing business in Los Angeles. Complainant the California Warehousemen's Association is a similar institution composed of various public utility warehouses throughout the State of California, including Los Angeles. The defendant is a corporation organized under the laws of the State of California, with its offices and place of business in Los Angeles.

The complaint alleges that this defendant is engaged

in the business of a warehouseman where merchandise other than second-hand household goods is regularly stored; that the defendant accepts commodities for storage, issues warehouse receipts, and holds itself out to the general public as a storer of property for compensation, and that the operations so conducted by the defendant constitute a public utility warehouseman as the term is defined in Section 2½ of the Public Utilities Act. It is further alleged that defendant subsequent to August 2, 1927, the date when Section 50½ of the Public Utilities Act became effective, has stored merchandise for compensation in Los Angeles, which city has a population in excess of 150,000, and that therefore its operations as a warehouseman without a certificate of public convenience and necessity is in violation of Section 50½ of the Public Utilities Act. The prayer is that defendant, having violated the statute, shall be enjoined, restrained and prohibited from storing property for hire as a public utility in Los Angeles.

Defendant in its answer to the complaint denies that it now or at any time has offered its facilities to the public generally as a storer of property and also denies that it has engaged in the warehouse business in violation of any of the provisions of the Public Utilities Act.

A public hearing having been held before Examiner Geary at Los Angeles February 4, 1932, and the proceeding having been submitted and briefs filed, is now ready for an opinion and order.

The evidence presented discloses that defendant has a long-term lease on a warehouse building having five stories and a basement located at No. 1308 Factory Place in Los Angeles. Originally the entire warehousing space was employed by this defendant and its subsidiary companies, but because of

changed conditions the building is now only partly occupied. During the past two years storage has been accepted from seven concerns for limited periods of time under verbal agreements based on space occupied at a rate per square foot. At the present time only one firm has property in defendant's building. An office is maintained in the building primarily for the purpose of recording and guarding defendant's own property. Only three employees are used, who perform the clerical-labor duties and operate the elevators. Defendant keeps no detailed record of the goods deposited, has no control of the individual packages, and the only protection given the owner of the property is to see that none but authorized parties take the goods away. Warehouse receipts are never issued, it engages no solicitors and is not listed in the telephone directory.

All evidence given was furnished by witnesses called by the complainants, the defendant contenting itself with a cross-examination of these parties, two of whom were its own employees.

Section 2 $\frac{1}{2}$ of the Public Utilities Act is in part 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.

The application of Sections 2 and 2 $\frac{1}{2}$ of the Act have been discussed in prior decisions of this Commission: Case No. 2807, April 29, 1932 (34 C.R.C. 630) and Case No. 2955, Decision No. 24443, February 1, 1932 (unpublished).

It does not appear from this record that defendant

has undertaken to regularly store for the public generally, and under the record as made, we do not believe that complainants have sustained the burden of showing that defendant is operating at the present time as a public utility warehouseman. However, any increase in the present storing activities of defendant may bring it within the provisions of the regulatory statute. The complaint should therefore be dismissed.

O R D E R

A public hearing having been held upon the complaint as above entitled, the matter submitted upon briefs and now being ready for decision; and basing its order upon the findings and conclusions in the opinion above,

IT IS HEREBY ORDERED that said complaint be and it is hereby dismissed.

Dated at San Francisco, California, this 23rd
day of May, 1932.

C. Deane
Leon C. White
M. A. Carr
W. B. Harris
Fred G. Stewart
Commissioners.