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Decision No. 10929

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

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ORIGINAL

In the Matter of the Application of the Hollywood Chamber of Commerce for an order for certain car lines of the Los Angeles Railway Corporation to be extended northerly into Hollywood territory, for the removal of discrimination in fares and for universal transfers.

Case No. 1714.

Robert Young, Attorney, for
Hollywood Chamber of Commerce,
Hollywood, California.

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Los Angeles, California.

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The Pacific Electric Railway Co.,
Los Angeles, California.

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BY THE COMMISSION:

O P I N I O N

On February 11, 1922, the Hollywood Chamber of Commerce filed a complaint in which it alleged that the street car service of the Pacific Electric to the Hollywood District of Los Angeles was inadequate. Three forms of relief were asked for; the extension of the lines of the Los Angeles Railway Company into Hollywood, removal of discriminatory fares and granting of universal transfer privileges in the event the extensions of

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the Los Angeles Railway lines are made.

Answers were filed by the Pacific Electric Railway Company and the Los Angeles Railway Company denying that the Commission had jurisdiction to order the Los Angeles Railway Company to extend its lines. The Pacific Electric Company also denied that its service was inadequate.

The Commission was in doubt as to the question of jurisdiction thus raised and a hearing was held for the purpose of receiving argument on that question. Subsequently briefs were filed and the matter is now ready for decision on the preliminary question of jurisdiction.

The extensions asked for are wholly within the corporate limits of the City of Los Angeles. This suggests the question as to whether the power to require such extensions is not one of the exclusive powers of control over public utilities reserved to cities by Sec. 23, Art. XII of the Constitution. If so, the Commission would not have jurisdiction to grant the relief asked for.

The Constitutional Amendments reorganizing the Railroad Commission and authorizing the legislature to confer broad and exclusive powers upon it were adopted in 1911. Sec. 23, Art. XII, provided that from and after the passage of laws conferring powers upon the Commission, all powers respecting public utilities vested in governing bodies of counties, cities and counties and cities, should cease in so far as they conflicted with the powers conferred upon the Commission. This section also contained the proviso that such powers of control over any public utility as were vested in cities or cities and counties, should be retained and should continue unimpaired until transferred to

the Commission by a vote of the people of the city or city and county. The City of Los Angeles, therefore, retained all power over public utilities which it had in 1911 when this Constitutional Amendment went into effect.

An examination of the Los Angeles City Charter, as it was in 1911, discloses no specific provisions empowering the City to order utilities to make extensions. There was, of course, Sub. 34, Sec. 2 which authorized the City to make and enforce local, police and sanitary regulations. While all public utility regulation is in a broad sense referable to the police power, we think that these general powers did not authorize the city to order a street railway company to extend its lines. We are satisfied that when Sec. 23 of the Constitution went into effect in 1911, the City had no power to require extensions and hence none was reserved to it by the reserving clause of that section.

In 1913, Sub. 30 of Sec. 2 of the Charter was amended to authorize the city "to require the construction, operation and maintenance of extensions necessary for the accommodation of the public". It is doubtful if this amendment added anything to the cities' powers. The Public Utilities Act became effective in 1912. Sec. 36 authorized the Commission to require extensions. After that Act became effective all powers vested in the City ceased. Since the City did not have the power to require extensions in 1912, it could not vest itself with that power by subsequent charter amendment in 1913, and that portion of the amendment which is in conflict with Sec. 36 of the Public Utilities Act is void and of no effect.

App. of James A. Murry, et al. 2 R. C. D. 464-502.

However, even if it be assumed that by the amendment to Sub. 30, Sec. 2 of its Charter, the City did obtain power to require extensions, we have still to consider the fact that Sec. 23 of the Constitution was again amended in 1914 and by that amendment the powers over public utilities formerly reserved to cities were materially abridged. By the change of 1914, all rate fixing power both within and without cities was vested in the Commission. Also instead of retaining all powers of control over public utilities which were vested in them, cities retained only such powers of control over public utilities as related to the making and enforcement of police, sanitary and other regulations. Complainant argues that the power to order extensions of railway lines is not included within "police, sanitary or other regulations". In support of this argument, the similar language of Sec. 11, Art. XI of the Constitution is referred to and numerous cases, including Pratt v. Spring Valley Water Company, 4 R. C. D. 1077, are cited which hold that the term "police, sanitary and other regulations" does not include the power to regulate the relationship between a utility and its patrons. In view of the case referred to and the authorities cited therein, we are of the opinion that the reservation to cities of such power of control over utilities as relates to police, sanitary and other regulations, does not include the power here in question. It follows therefore, that unless the City derives the power to require extensions from some other constitutional provision, that power has ceased so far as the City is concerned and is now vested in the Commission.

In 1914, Sec. 6 of Art. XI relative to city charters was amended to authorize cities to amend their charters so as to become empowered to make and enforce laws respecting municipal affairs without restriction by any outside authority.

Assuming for the moment that the extension of street car lines wholly within a city is a municipal affair, we have this situation. Sec. 23, narrowing the scope of the reservation of power to cities, has deprived the city of any power over this municipal affair, (if the city ever had such power) and vested it in the Railroad Commission. Sec. 6, on the other hand, has authorized the city to amend its charter so as to legislate on the same municipal affair and declared that when the city has done this, it shall be free from all other control. These two constitutional provisions became effective on the same day and are of equal force in point of time. According to established rules of construction, if one of two conflicting provisions of law deals specifically with a subject and the other relates only generally to that subject, the former will prevail. In dealing with these same two provisions of the Constitution in the case of Civic Center Assn. v. Railroad Commission, 175 Cal. 441-449, the Supreme Court said:

> "The provisions of sections 6 and 8 of Article XI related particularly to municipal corporations. The provisions of section 23 giving the legislature the right to confer additional powers upon the Railroad Commission are more general, and they only affect municipal affairs incidentally and where the operations of railroads take place within the limits of a municipal corporation. The express provision of section 23 that the power to fix rates in municipalities shall be vested in the Railroad Commission, if conferred upon it by the legislature, being a special provision on a specific subject, would,

upon the rule of construction stated, be superior to the general provisions of sections 6 and 8 of article XI, exempting all municipal affairs from legislative control. But with respect to other municipal affairs, the provisions of sections 6 and 8 of article XI must prevail, and in all cities which have availed themselves of these provisions such municipal affairs will remain free from legislative interference, whether by means of an act giving power to the Railroad Commission or otherwise."

On January 16, 1917, the City of Los Angeles availed itself of the provisions of Sections 6 and 8 of Article XI by adding the following subdivision to Sec. 2 of its charter.

"51. To make and enforce all laws and regulations in respect to municipal affairs, subject only to the restrictions and limitations provided in this charter".

Discussing the effect of this section, the Supreme Court said, in the Civic Center case, (p. 448):

"By subdivision 51, as will be observed, the city has brought itself within the conditions of the amendments of 1914 to sections 6 and 8 of article XI of the Constitution. Thereupon, according to the terms of those sections of the Constitution, its powers over municipal affairs became all embracing, restricted and limited by the charter 'only" and free from any interference by the state through general laws, including laws giving the Railroad Commission powers over public utilities."

If the extension of street railway lines is a municipal affair, it would seem clear from this statement that as to such matters the City is "free from any interference" by the Railroad Commission. And this is true whether there is any valid provision in the city charter relative to extensions of railway lines or not. In the Civic Center case, the Court, in discussing a municipal affair said:

"The laying out, opening and improving of streets and the ordinary uses thereof are municipal affairs, and therefore the provisions of the Los Angeles charter relating thereto are superior to those of the Public Utilities Act, as far as the two are

> inconsistent. Indeed, as the Constitution now reads, it is clear that even if the charter were silent, the legislature, after the amendment of 1917 to that charter, could not confer power upon the Railroad Commission to interfere with any municipal affairs of that city, other than rate-fixing, and that any powers heretofore given to the Railroad Commission by the legislature respecting such municipal affairs must yield to the charter, regardless of the effect prior to such charter amendment".

In view of these statements of the Supreme Court, we are of the opinion that when the city, by charter amendment in 1917, availed itself of the provisions of Sec. 6, Art. XI of the Constitution as amended in 1914, the Railroad Commission was automatically divested of all powers which it may have possessed respecting municipal affairs in the City of Los Angeles, with the specific exception of rate fixing. And this is true, even as to municipal affairs other than those reserved to the City by Sec. 23 relating to local, sanitary and police regulations.

Complainant, in its opening brief, seems to recognize the force of the above quotations and urges that they are merely dicta and not rendered in deciding any point in the case. It is pointed out that certain dictum in the same case has been subsequently modified by the Supreme Court. We do not believe, however, that this fact would justify the Commission in disregarding other statements of the Supreme Court in which issues identical with those before us were being considered, and which are squarely decisive of those issues. Furthermore, there is a clear distinction between the statement from the Civic Center case which the Court itself modified and those which we have quoted. The statement which was modified was as follows:

"The result is that the City has become independent of general laws upon municipal affairs. Upon such affairs a general law is of no force with respect to Los Angeles. If its charter gives it powers concerning them, it has those powers; if its charter is silent as to any such power, no general law can confer it."

In the cases of Cole v. City of Los Angeles, 180 Cal. 617; Morgan v. City of Los Angeles, 182 Cal. 301; and Hayes v. Handley, 182 Cal. 273; it was held that the City itself has power to adopt and make use of any state law applicable to a municipal affair as to which its own charter makes no provision. But this does not mean that some outside authority, such as the Railroad Commission may step in and make laws or regulations as to municipal affairs within the City of Los Angeles. We think the statement of the Civic Center case that the city is "free from any interference by the state through general laws, including laws giving the Railroad Commission powers over public utilities" is in no way modified by the above decisions. In the present case, the legislative body of the City of Los Angeles has taken no action looking to the adoption of the state law relative to extensions of street railways. Any attempt on the part of an outside tribunal to make the general law relative to such a municipal affair applicable within the city would, in our opinion, be ineffective. This position is strengthened by the case of ex parte Nowak 184 Cal. 701. In the Nowak case, the Court held that the present status of the law relative to the Los Angeles charter is that, as to municipal affairs, it is a limitation and not a grant of powers and hence the city may exercise all power in municipal affairs subject only to the restrictions of the charter itself. We think this means that the city has power to order extensions (if that be a municipal affair)

whether the charter authorizes it or not, providing the charter does not forbid it. While this ruling is not inconsistent with the proposition that the city may avail itself of any general law, it seems to us to exclude the idea that some outside authority can exercise concurrent control within the city respecting such affairs.

We have been assuming that the extensions sought by complainant come within the definition of municipal affairs. Of course, if they do not, a different conclusion would result for the sole basis of the cities authority rests on this assumption. We think, therefore, that the question should be carefully examined.

The only argument advanced by complainant on this question is that it is no concern to the City of Los Angeles as a whole, whether the lines of the railway company are extended into Hollywood or not, but it concerns only the Hollywood community, hence it is not a municipal affair. With this contention, we cannot agree. Very few so-called municipal affairs affect an entire municipality. In the case of Cole v. City of Los Angeles, 180 Cal. 617, it was held that the creation of an improvement district within the City of Los Angeles and the issuance of improvement bonds within such district was a municipal affair. The matter involved there did not concern the interests of the people of the entire city as a whole. It concerned only those owning property within the district but it was nevertheless a municipal affair.

There are other considerations, however, which have an important bearing on the question. The Los Angeles Railway has lines extending outside the city limits of Los Angeles. At

least four other municipalities are served by these lines; Vernon, Inglewood, Huntington Park and Eagle Rock. The system is more than local in its extent. The extensions here sought would furnish access into Hollywood by a single line for the people of all these towns. Likewise the people of Hollywood would obtain access by means of such extensions into all these cities without departing from the lines of the Los Angeles Railway. Municipal affairs refer to the internal business affairs of a municipality. Where several municipalities are affected as here, we think it is doubtful if the matter under consideration is a municipal affair even though the things to be done are wholly within one city.

But even if we disregard the interests of these other communities and treat the Los Angeles Railway as wholly within the City of Los Angeles, we think there is still a serious question as to whether these extensions concern solely "the internal business affairs of a municipality". They affect the use of the public highways of the city as a means of travel and communication. This is more than a local concern. "The streets of a city belong to the people of the state and every citizen of the state has a right to the use thereof, subject to legislative control". (Ex parte Daniels 183 Cal. 639.) In the Daniels case it was held that the regulation of traffic upon the streets of a city was not a municipal affair and hence was subject to general law if there was a conflict between state law and city ordinance.

In the case of Murphy v. Missouri Pacific Railway Co. (Mo. Public Service Commission) P. U. R. 1915 F, 149-167, Commissioner Eugene McQuillin, a recognized authority on the subject,

discussed exhaustively the question as to whether the control of the streets in cities is a municipal or state affair. After a review of the authorities both of the common law and of this country he concluded that the control of highways including streets and public ways in urban centers is strictly a state function and state control is paramount. It is pointed out in this case that the granting of franchises to public service corporations to use the streets for railroad tracks and the running of cars thereon, for electric wires, cables, conduits, etc., and certain police powers relating to the regulation of streets and avenues are confided to the municipal corporation; but the municipal corporation acts as merely the agent of the state in the exercise of these powers and the state may resume its powers of control, "at any time after such control has been granted to incorporated cities and towns, whether operating under legislative charter, general or special, or/a constitutional charter, as in Kansas City."

We think the reasoning of this and of the Daniels case is applicable to the use of streets by street railways and to the extensions of street railway lines. The street railway is a common carrier of passengers. It carries all persons who desire to ride. Though it obtains its franchises from the city, it cannot exercise those franchises without the consent of the state expressed through the Railroad Commission. Sec. 50(b) of the Public Utilities Act provides that,

> "No public utility of the class specified in subsection (a) hereof (this includes street railways) shall henceforth exercise any right or privilege under any franchise or permit hereafter granted, * * * without having obtained from the Commission a certificate that public convenience and necessity require the exercise of such right or privilege."

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Under this section the Los Angeles Railway could not extend its lines if it desired to do so and had obtained the necessary franchises without first obtaining the consent of the Railroad Commission. The City could grant the franchises but the railway company could not use them unless the Commission found that public convenience and necessity required the extensions. The city's power has to do with the use and occupation of the street; the Commission's power deals with the necessity for the extension itself. If the company must apply to the Commission for consent to make the extension we think the reverse of this is true and the Commission has power to order the company to make the extension.

The distinction between the local police power of the city relative to the streets and the power of the Commission to regulate the business of the utility is pointed out in the case of Oro Electric Company, v. Railroad Commission, 169 Cal. 466. In that case the Commission refused to grant the Oro Electric Company permission to extend its lines into the City of Stockton.

The Court said, (p. 475-476):

> "The granting or withholding of the certificate is an exercise of the power of the state to determine whether the rights and interests of the general public will be advanced by the prosecution of the enterprise which it is proposed to carry on for the service of the public. (See People v. Willcox, 207 N. Y. 86, (45 L.R.A.N.S.) 639, 100 N. E. 705.) This is an entirely different question from that of the local control of the streets, and power over the two subjects may well be vested at the same time in different governmental bodies, without the one in

> any way clashing with or interfering with the other. The railroad commission might grant a certificate authorizing a public utility to engage in its business in a given city, but the certificate would not authorize the use of the streets, unless the right to so use them had been given by the authority vested with the power to grant such right. This is recognized by subdivision (c) of section 50 itself, where we find an express provision that the applicant shall furnish to the Commission evidence that the required local consent, franchise or permit has been obtained. On the other hand the fact that a city may, in the exercise of its control over its own streets, give or withhold the right to use its streets, has no direct bearing upon the power to decide whether or not a given business, in the conduct of which the use of the streets may be convenient or necessary, shall be carried on. Where there is this limited control, its exercise is not impaired by legislation under which the state reserves to itself the determination of how far, if at all, the given business may be conducted. The city's powers are fully preserved if its streets are not occupied except by its consent, given as may be provided by law."

We think from the above quotation it is clear that the question of whether the extensions here sought should be made involves the question of whether the rights and interests of the general public will be advanced by the prosecution of such an enterprise and that this is not a municipal affair but a question for the state to determine.

Our conclusion is that the powers of the Commission under section 36 of the Public Utilities Act have not been impaired by the Los Angeles Charter or by Sec. 6 of Art. XI of the Constitution.

Certain other objections made by the Los Angeles Railway Company and by the Pacific Electric Railway Company must now be considered.

It is claimed that the Commission is not empowered to make orders which might be rendered futile by reason of the action or non-action of other bodies beyond the Commission's control. To comply with an order requiring extensions of lines,

the company would have to obtain franchises from the City of Los Angeles. It might be unable to do this, hence it is claimed, the order here sought would be void. In support of this contention the cases of State v. Public Service Commission, 192 S. W. 958, Allied Associations v. Public Service Commission, 70 Penn, Superior Ct. Reports 13, and in re, Union Railway Company of New York, P. U. R. 1916-F 773 are cited. These cases seem to hold that an order which cannot be enforced is not a valid order. For instance it is said in State v. Public Service Commission,

> "A permissive order, such as here seeks judicial sanction, is a contradiction in terms and is unknown to the law. A mandatory order is burdened with no modifications, and emanates from a source having power to enforce it. Lacking these essentials, it is a mere nullity."

However, we do not think that these authorities are conclusive of the question. There are points in all these cases that distinguish them from the case at bar. It is not necessary to discuss these distinctions at length for the reasons that there is sufficient authority to the contrary to satisfy us that these cases are not controlling.

An order which is incapable of enforcement without the precedent procurement of consent from some other body is certainly not unknown to the law. The most common instance of such an order is one which requires the utility to exercise the power of eminent domain. Commissions frequently make orders which cannot be enforced until the utility brings suit in a court and obtains a judgment of condemnation. Such orders have been sustained by the United States Supreme Court and by other courts in the following cases:

Wisconsin M. & P. R. Co. v. Jacobson, 179 U. S. 287; 45 L.ed. 194-201,

quoted with approval in

Pac. T. & T. Co. v. Eshleman, 166 Cal. 672;

Muhlke v. N. Y. & Harlem R. Co., 197 U. S. 544; 49 L.ed. 872;

Atlantic Coast Line R. Co. v. North Carolina Corp. Comm. 206 U. S. 1; 51 L.ed. 933, 945;

Mobile etc., Ry. Co. v. Mississippi, 210 U. S. 187; 52 L.ed. 1016-1024;

Grand Trunk R. Co. v. Michigan R. R. Com., 231 U. S. 470; 58 L. ed. 318;

Ala. Great So. Ry. v. R. R. Commission of Ala., 64 So. 13; 185 Ala. 354.

With regard to an order awarding reparation the Supreme Court of So. Dakota said in Turner Creamery Co. v. Chicago, Milwaukee & St. Paul Ry., 154 N. W. 819, P. U. R. 1916 A, 1083,

> "The mere fact that the board has no power to enforce its orders cannot be successfully urged as a denial of the power to make the order when the statute expressly gives it that power."

In the Oro Electric case (supra), at p. 476, the Court said:

> "The railroad commission might grant a certificate authorizing a public utility to engage in its business in a given city, but the certificate would not authorize the use of the streets, unless the right to so use them had been given by the authority vested with the power to grant such right."

We think this last statement applies with equal force to an order of the Commission. The Commission might order the extension but this would not authorize the use of the streets. Just as the Commission has power to grant the certificate so it has power to make the order, although in neither case will the action of the Commission avail anything unless subsequent consent is obtained from the City. But in both instances the

statute authorizes the Commission to take the action and hence it is valid when taken.

In the case of City of San Jose v. Railroad Commission, 175 Cal. 291, the court was reviewing an order of the Commission authorizing the Southern Pacific Company to cross certain streets in San Jose. The Court said, (p. 291)

> "Petitioner's remaining point is that the commission acted in excess of its jurisdiction in failing, as a prerequisite to the grant of any authority to the Southern Pacific Company to cross certain specified streets in the city of San Jose, to require the said company to obtain a franchise from the municipality for such crossing. There is no merit in this point. The order of the commission did not assume to enumerate all of the conditions with which the public service corporation must comply before being permitted to cross the streets in question."

In addition to these cases there are a number of Commission cases from other states in which orders have been made directing a utility to apply for a franchise. In Hannibal v. Hannibal R. & E. Co. P. U. R. 1916 A 1013-1028, the Missouri Commission said:

> "It is needless to say that this Commission has no power to grant the necessary franchise or compel the municipal authorities of Hannibal to do so. If we should order the extension (assuming the conditions justify such action, which question is considered later herein) and the city should object, we could not enforce the order, since our authority in this respect is over the defendant only, not the city. Auburn v. Street R. Co. 2 P. S. C. (2d. Dist. N.Y.) 1. c. 356. However, this Commission may direct defendant in a proper case to apply to the appropriate municipal authorities and take the necessary legal steps to secure the required franchise and rights of way. West End Business Men Asso. v. United R. Co. 2 Mo. P. S. C. 357, 375; Murphy v. Missouri P. R. Co. 2 Mo. P. S. C. 471. See Merrill v. Merrill R. & L. Co. 5 Wis. R. C. R. 418."

From all the above authorities we are satisfied that the Commission has power to order the company to take all steps necessary to the procurement of the rights of way for, and to proceed to construct, such extensions as the public need may

be found to require. If the company is unable to acquire the right of way because the city refuses to grant the franchises the order could not, of course, be enforced. But this fact does not prevent the Commission from making the order in the first instance or excuse the company from making every reasonable attempt to comply with it. The situation would be the same as if the Commission had made an order which required the company to exercise the power of eminent domain and the company, for some good reason, was unable to obtain a judgment of condemnation. This does suggest, however, the need for co-operation between the city authorities and the Commission in carrying out any extension or improvement where action of both bodies is required.

It is urged by the Los Angeles Railway Company that under the City Charter the terms of any franchise which the city could grant are onerous and even confiscatory and that the company could not be compelled to accept such a burdensome franchise even though the city is willing to grant it. We do not think it is necessary to pass upon the validity of the franchise provisions of the City Charter. We may assume that these provisions are valid and the company may be required to operate under them. It may be added, however, that the company can not be required to operate at a loss; but would be entitled to collect a rate which will produce a fair return on all new capital which might be required to carry out the extensions, should they be ordered.

A more serious objection is that to order these extensions would be to require the company to perform a new public service which it has never undertaken to render. This raises

the question of whether the proposed service comes within the scope of the undertaking which the Railroad Company has assumed. There is no doubt as to the legal principle that a public utility cannot be required to dedicate its property to a new and additional enterprise not theretofore undertaken by it.

Atchison, Topeka and Santa Fe Ry. v. Railroad Commission, 173 Cal. 577.

It is argued that when a company is required to have separate franchises for each street upon which a car line is operated, the undertaking to serve is defined and limited by these franchises. In other words, that the obligation to serve can not be extended beyond the rights which have been granted. No authority is cited which would justify such a narrow construction of the law as this. The Santa Fe and Del Mar cases hold that a utility cannot be required to engage in an entirely new undertaking but they do not hold that the present undertaking is limited by, and coincident with, the exact franchise rights held by the utility. We do not think that franchise rights are the correct measure of the scope of a utility's undertaking. When a street railway has entered a given territory, it may, by declarations made to the city council or by other acts or statements, have signified its intention to serve all of that territory. The fact that it does not have franchises to serve all such territory would not relieve it of its obligation. If it has entered and undertaken to serve a community it must make all extensions necessary to fully perform that service.

A different situation arises when a territory has never been entered at all and the utility has never signified its intention of serving it or has always signified its intention of

not serving it. In that event there can be no doubt that an order requiring extensions into such territory would be invalid. It is claimed by the railroad companies that this is the situation here.

Complainant, on the other hand, alleges in its amended complaint that the Los Angeles Railway was organized for the specific purpose of serving the city of Los Angeles of which the Hollywood community is a part and that said company has already entered the Hollywood region by extending two of its lines into it. Complainant contends that for the purposes of this decision those allegations should be deemed to be true. The question of the scope of a utility's undertaking is, we think, a question of mixed law and fact. The mere allegation that the Company was organized for the specific purpose of serving the City of Los Angeles, if taken as true, would not, standing alone, necessarily establish that service to the Hollywood community was within the scope of the company's undertaking. While this is a jurisdictional question, it is one which cannot be conclusively established without the taking of evidence. Our conclusion is that the undertaking is not strictly limited by existing franchise rights but that its full scope cannot be determined without the taking of evidence.

We have now discussed all the jurisdictional questions involved in the proceeding and while we have expressed definite opinions on all of them, we recognize that none of these questions is entirely free from doubt. They are all novel in their present application and will not be definitely settled until our Supreme Court passes on them and construes them in the light of our peculiar Constitutional and Statutory provisions.

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The complaint before us asks for very important and expensive changes and extensions in the Los Angeles street car system. The company has already signified its unwillingness to make them. The jurisdictional questions we have discussed will undoubtedly be carried to the Supreme Court by one party or the other after the hearing. A complete hearing on the merits of the complaint would involve an extensive and costly investigation and a long delay, and when the hearing was completed and the Commission had made its order the doubtful jurisdictional questions would still be unsettled.

In view of the importance of this case and the fact that by it a precedent will be established as to the matter of extensions in chartered cities throughout the state, we think it would be to the advantage of all parties and of the public generally if these questions were determined by the Supreme Court prior to any exhaustive hearing on the merits. This can be brought about by a dismissal of the present complaint and by application on the part of complainant, or other interested parties, to the Supreme Court for a writ of mandate to compel the Commission to proceed.

There is precedent for such a course of action in the case of Civic Center Assn., v. Railroad Commission, where the Commission, though, as here, believing it had jurisdiction, dismissed the complaint in order to bring about a speedy and authoritative determination of important jurisdictional questions before proceeding with a long and expensive investigation and hearing.

The transportation problem in the Hollywood district is an important one and merits the earnest consideration and cooperation of the city, the Commission and the street railway companies. We take this occasion to suggest and recommend that a conference be held between representatives of the city, the Commission, the street railway companies and complainant with

the view to working out this problem; and that as the first step of such a program action be brought at once along the lines indicated to test the jurisdictional questions which we have just discussed.

We recognize that the last question discussed, ie, the scope of the railway company's undertaking, perhaps cannot be determined on the present record. Evidence may have to be taken. But in view of the provisions of Sec. 1090 of the Code of Civil Proceedure, relative to determination of questions of fact in mandamus proceedings, we do not believe a further delay, for the purpose of taking evidence on this question alone, would be justified. If, upon mandamus proceeding being instituted, the Supreme Court determines that there is a question as to a matter of fact essential to the determination of the question, it may direct that the question be tried as provided in Section 1090.

In addition to said extensions, complainant asks for removal of discriminatory fares and for universal transfers.

The question of fares is now being considered in another proceeding to which this complainant is a party. As complainant has been fully heard on the question of fares in that case, we think further hearing is unnecessary.

The matter of universal transfers in Los Angeles has also been under consideration in another pending proceeding. But as complainant was not a party to that case, the order herein

will be made without prejudice to the right of complainant to file further complaint regarding universal transfers.

O R D E R

For the reasons above stated,

IT IS HEREBY ORDERED that the complaint of the Hollywood Chamber of Commerce herein be and the same is hereby dismissed.

Provided this dismissal is without prejudice to the right of complainant to file a further complaint in the matter of universal transfers in the City of Los Angeles.

Dated at San Francisco, California, this 1st day of ~~August~~ September, 1922.

H. C. Brundige

Irving Martin

Alex Gruwell

H. D. Benedict

Commissioners.