

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

In the matter of the application of)
P. T. Durfy for an order authorizing) Application No. 942
the sale of a water system.)

T. C. Gould for P. T. Durfy

Gurney E. Newlin for John Hanlon

EDGERTON, Commissioner.

O P I N I O N

This is an application by P. T. Durfy, owner of a water producing and distributing system adjacent to and in the town of Sherman, Los Angeles County, for an order authorizing the sale of a portion of the property belonging to said water system to the City of Los Angeles.

This Commission, in an order in Application No. 576, Decision No. 830, gave authority to applicant herein to sell its water system to the Sherman Water Company, a corporation.

This authorization was not acted upon, and we are now informed that no transfer of this system was made to said corporation; that said corporation is now defunct and applicant requests that said order be annulled.

John Hanlon appeared in this proceeding by a separate application, No. 941, which application was heard with the application herein.

Both applications set forth a contract executed by P. T. Durfy and John Hanlon, dated March 17, 1913, wherein it appears that Durfy agreed to convey to Hanlon this water system

for the sum of \$23,850, and wherein also, Durfy agreed to convey to Hanlon a part of this water system for the sum of \$10,000.

This contract contains a provision for a delivery of possession of said property by Durfy to Hanlon on or before the 1st day of April, 1913, or as soon as title to land is shown clear and proper bill of sale is executed, together with permission for transfer from the Railroad Commission.

No transfer of property has been made under this contract, and no mention of this contract was made in the proceedings which resulted in the order heretofore mentioned.

We are now asked by Durfy to authorize him to sell a portion of the property connected with this water system to the City of Los Angeles, regardless of this contract, and we are asked by Hanlon to authorize the sale and conveyance of this water system by Durfy to him under the terms of said contract.

We are urged by Durfy to grant his application and to disregard this contract, on the ground that the privilege extended therein to Hanlon to purchase a part of this system would result, if exercised by Hanlon, in the water producing and distributing parts of the plant being separated in different ownerships, and that this is against public policy, and would be to the detriment of the consumers; that notwithstanding that the contract, in addition to the privilege just above mentioned, gives Hanlon the right to purchase this system as a whole, that the whole contract is vitiated by the inclusion of the first mentioned option.

Hanlon, on the other hand, admits that this water system should not be separated as contemplated by the privilege contained in this contract for the purchase by him of a portion only of the system, and urges that it is not his purpose to purchase a part of this system, but to purchase the whole thereof, and suggests that the Commission make as a condition of its order, provision for the transfer of the property as a whole.

Both parties have submitted briefs discussing this matter at considerable length, but I think both have overlooked the status of this matter before the Commission, and the functions of the Commission in relation thereto.

The Public Utilities Act provides, Section 51-A:

"No . . . water corporation (which includes persons) shall henceforth sell, lease, assign, mortgage or otherwise dispose of or encumber the whole or any part of its railroad, street railroad, line, plant or system, necessary or useful in the performance of its duties to the public. . . without having first secured from the Commission an order authorizing it so to do."

It is apparent from the above that the action of the Railroad Commission is merely permissive. It cannot order the owner of public utility property to sell the same, and it seems equally obvious that it was the intention of the Legislature in this provision that the application should be made by the owner of the public utility property, because the authority must run to such owner.

I think, therefore, that the only application that should be considered here is that by Durfy, No. 942, in which request is made for authority to sell a portion of his water system to the City of Los Angeles.

I realize that this avoids any expression of opinion by the Commission as to the status of the contract which has been brought to our attention, but it seems to me that the only matter properly before us for consideration is whether the public interest would be served by the disposal of a part of Durfy's water system to the City of Los Angeles, leaving the question as to the status of the contract, above referred to, to the Courts, where it belongs.

Considering then the application of Durfy to sell a part of this system to the City, it appears that the portion of the plant proposed to be sold to the City of Los Angeles,

may be separated from the water system without injury to the consumers, and this is emphasized by the provisions of a conveyance by Durfy to the City of Los Angeles in which the production and the conveyance of water in the system of applicant is safeguarded against interference by the City. The price to be paid by the City for this property is \$2,500.

I recommend that this application be granted, and submit herewith the following form of order:

O R D E R

Application having been made by P. T. Durfy for an order authorizing the conveyance to the City of Los Angeles of a certain portion of the water system owned by applicant and known as the Sherman Water Company, and a hearing having been duly held, and the Commission being fully apprised in the premises,

IT IS HEREBY ORDERED by the Railroad Commission of the State of California that P. T. Durfy is hereby authorized to sell and convey to the City of Los Angeles for the sum of \$2500, that certain portion of the water system known as the Sherman Water Company under the terms and conditions of an indenture dated the 21st day of February, 1914 by Peter T. Durfy and Sallie L. Durfy, his wife, and the City of Los Angeles, a municipal corporation, a copy of which indenture is on file herein and reference to which is hereby made for a more particular and detailed description of the property herein authorized to be conveyed.

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 23rd day
of March, 1914.

John W. Eschman

H. D. Loveland

W. G. Gordon

Max Heles

Erwin H. Edgerton

Commissioners.