

Decision No. 2466

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BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

In the Matter of the Application of  
SAN FRANCISCO NEWSPAPER UNION for  
Authority to receive Passenger Trans-  
portation from any Carriers in Exchange  
for Advertising Space.

ORIGINAL

Application No. 227

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O. K. Cushing for applicant.

THELEN and GORDON, Commissioners.

O P I N I O N.

SAN FRANCISCO NEWSPAPER UNION applies to this Commission for an order permitting petitioner to exchange advertising space with common carriers in the State of California for transportation issued to petitioner, under the provisions of Section 17-a-3 of the Public Utilities Act, providing in part "that passenger transportation may issue to the proprietors and employees of newspapers and magazines and the members of their immediate families, in exchange for advertising space in such newspapers or magazines at full rates, subject, however, to such reasonable restrictions as the Commission may impose."

This is really an application to secure the Commission's opinion whether on the state of facts outlined in the application and on the hearing, the San Francisco Newspaper Union may lawfully receive transportation in exchange for advertising space. This Commission has no power to grant authority for the exchange of advertising space for transportation. The statute itself gives that power in so far as it exists. The restrictions which the Commission may impose may diminish but cannot increase that power.

Petitioner is a corporation organized under the laws of New Jersey, and is a subsidiary corporation of the American Type Founders Company. Petitioner prints and sends to some eighty weekly

newspapers of the State certain pages which are to be used as a portion of those newspapers. For instance, in four page newspapers, such as the Middletown "Independent," petitioner prints pages 1 and 4 and then sends the paper to the Middletown "Independent," which prints pages 2 and 3. In an eight page paper, such as the "Peninsula News," petitioner prints pages 2, 3, 6 and 7, and the proprietors of the "Peninsula News" then print pages 1, 4, 5 and 8. The pages printed by petitioner contain general news and also certain space devoted to advertising. The advertisers pay the petitioner for this space and receive an identical service in each of the eighty weekly newspapers heretofore referred to. The petitioner secures a compensation from the newspapers for its printing and paper and also a compensation from the advertisers for the space devoted to them.

Applicant also prints what is known as the "San Francisco Newspaper Union," a four page paper, which it sends to the advertisers whose advertisements have appeared in the pages which have been sent to the eighty weekly newspapers. This paper contains matters of general information and is sent out for the purpose of showing to advertisers the relative location of their advertisement in the weekly newspapers. In the Middletown "Independent" of September 28, 1912, petitioner inserted some eleven advertisements which ran in all the other seventy-nine weekly newspapers during that week. During that week the petitioner printed some two hundred copies of its paper and sent the same to these eleven advertisers and to petitioner's agents in different portions of the country, and other people.

Petitioner frankly admits that the two or four pages which it prints and which are used by the weekly newspapers as a part of their paper, do not constitute a newspaper, as that word is used in the Public Utilities Act. These pages are a part of the makings of a newspaper. Petitioner contends, however, that the "San Francisco Newspaper Union," either by itself or in conjunction with the pages which are sent to the weekly newspapers, amounts to a newspaper. It is clear to us that the "San Francisco Newspaper

"Union" is not a newspaper. It is not sent out for the purpose of disseminating news, nor does it have any general circulation among the public, or any class of the public. It is sent out in lieu of a letter or statement informing the advertiser in what portion of the weekly newspapers his advertisement appears and in which newspapers.

Nor are we convinced that the conjunction of the "San Francisco Newspaper Union" with the printed pages which petitioner sends out to the weekly newspapers make a newspaper any more than either of the elements considered alone.

Prior to the effective date of the Public Utilities Act, petitioner received transportation from certain carriers of the State in return for advertising on the pages which it sent to the weekly newspapers. This advertising was general in its nature and some of these weekly newspapers at the same time published in the pages which they printed, advertisements from the same carriers, dealing generally with more detailed information, such as time tables or other matters affecting particularly the community in which the newspapers circulated. If petitioner is correct, such carriers would be giving transportation to two classes of persons, each claiming to be a "newspaper", in connection with a single paper. The statute authorizes the issue of transportation "to the proprietors and employees of newspapers." There certainly cannot be two sets of proprietors and employees for one and the same newspaper. It seems to us that this line of reasoning shows the fallacy of holding that the petitioner is printing a "newspaper" as that word is used in the Public Utilities Act. Petitioner does print a portion of the makings of a newspaper and a sort of news letter to its advertisers, but we are of the opinion that it is not the proprietor or employee of a newspaper, as those words are used in the Public Utilities Act.

We recommend that the petition be denied, and submit herewith the following form of order:

O R D E R.

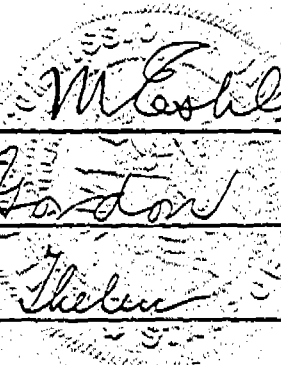
SAN FRANCISCO NEWSPAPER UNION having applied to this

Commission for an order permitting it to exchange advertising space with common carriers in the State of California for transportation to be issued to petitioner, and a public hearing having been held on the application, and it appearing to the Commission that San Francisco Newspaper Union is not the proprietor or employee of a newspaper, as said words are used in the Public Utilities Act,

IT IS HEREBY ORDERED that said application be and the same is hereby denied.

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 8th day of October, 1912.

  
John M. Eastburn  
W. L. Gordon  
Max Thelen  
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Commissioners.