

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

LONG BEACH CHAMBER OF COMMERCE,

Complainant,

vs.

PACIFIC ELECTRIC RAILWAY COMPANY,

Defendant.

Case No. 281

EDGERTON, COMMISSIONER.

O P I N I O N

This action was heard on the 22d day of November, 1912, and thereafter counsel for both parties submitted briefs, the last of which briefs was filed on March 22, 1913.

On February 8, 1913, complainant herein filed a petition praying for a peremptory order to prevent defendant from laying "T" rails upon Pine Avenue in the City of Long Beach, pending a decision of this suit by the Railroad Commission.

In this petition it was alleged, among other things, that on the 13th day of January, 1913, the City of Long Beach, at an election duly called and regularly held, voted to amend the city charter of the City of Long Beach by adding various amendments thereto, among them being amendment known as No. 30, a true copy of which is as follows:

"Proposed Charter Amendment No. 30. - That the charter of the City of Long Beach be amended by adding thereto another article to be known as Article XVII, pertaining to Common Carriers and by repealing certain provisions of said Charter in conflict therewith; said Article XVII to read as follows:

Article XVII.  
Common Carriers.

The Railroad Commission of the State of California is hereby granted and given all the powers, rights and jurisdiction over every common carrier (as defined in Section 2 of the Public Utilities Act, approved December 23, 1911), operating within the City of Long Beach or serving the inhabitants thereof, conferred upon said Railroad Commission by the constitution, the Public Utilities Act, as approved December 23, 1911, and any other law or statute of the State of California.

The provisions of Section three (3) of Article I of the City Charter of the City of Long Beach, and the provisions of Section ten (10) of Article VI of the City Charter of the City of Long Beach, in so far as the same may be in conflict with, or contrary to this Article pertaining to Common Carriers, are hereby expressly repealed."

It is further alleged that said charter amendment was at the time of filing said petition, and is now, a part of the organic law of the City of Long Beach. Complaint is made in said petition that defendant was preparing and would, unless enjoined by this Commission, lay "T" rails upon Pine Avenue in the City of Long Beach, and that said "T" rails would not be a proper kind of rails to lay in said street.

The prayer in said petition is that this Commission, either issue a peremptory order to defendant to refrain from laying said rails until the decision in this case by the Commission, or that this Commission decide whether or not the transfer of jurisdiction, attempted to be made by the charter amendment aforesaid, did, as a matter of law, transfer such jurisdiction to the Railroad Commission.

Shortly after filing said petition, the parties to this action joined in a stipulation, as follows, to-wit:

"It is hereby stipulated and agreed by and between the parties to this proceeding that until the Railroad Commission has rendered its Opinion and Order in this proceeding the Pacific Electric Railway Company, defendant in this proceeding, shall refrain from laying on or along Pine Avenue, or on or along any other street within the corporate limits of the City of Long Beach, California, any rails of the kind generally designated and understood by the term "T" rails.

We are now asked by the Pacific Electric Railway Company to release said company from the effect of this stipulation on the

ground that the city authorities of Long Beach insist that rails be laid in certain streets in the City of Long Beach, and threaten the arrest of the officials of said railway company unless said rails are laid immediately.

Therefore, I deem it proper that a determination be had as to whether or not jurisdiction over common carriers in the City of Long Beach was conferred upon this Commission by the adoption of the charter amendment above set out.

This Commission has heretofore held that incorporated cities and towns in the State of California retain such power over public utilities as was vested in them on the 23 of March, 1912, and as the City of Long Beach on that date had certain powers, specified in its charter, over common carriers in said city, it remains only to be considered whether such powers could be divested and transferred to the Railroad Commission by a charter amendment.

The Constitution provides, Section 23, Article XIII, as amended October 10, 1911:

"The Railroad Commission shall have and exercise such power and jurisdiction to supervise and regulate public utilities in the State of California and to fix the rates to be charged for commodities furnished, or services rendered by public utilities as shall be conferred upon it by the Legislature and the right of the Legislature to confer powers upon the Railroad Commission respecting public utilities is hereby declared to be plenary and to be unlimited by any provision of this Constitution.

From and after the passage by the Legislature of laws conferring powers upon the Railroad Commission, respecting public utilities, all powers respecting such public utilities vested in boards of supervisors, or municipal councils, or other governing bodies of the several counties, cities and counties, cities and towns, in this State, or in any commission created by law and existing at the time of the passage of such laws, shall cease so far as such powers shall conflict with the powers so conferred upon the Railroad Commission; provided, however, that this section shall not affect such powers of control over any public utility vested in any city and county, or incorporated city or town, as at an election to be held pursuant to laws to be passed hereafter by the Legislature, a majority of the qualified electors voting thereon of such city and county, or incorporated city or town, shall vote to retain, and until such election such powers shall continue unimpaired \* \* \*."

The language contained in this section is clear and unequivocal to the effect that the powers of control over public utilities vested in municipal corporations shall remain unimpaired until divested in a specific way, to-wit: By a majority vote of the electors cast at an election to be held pursuant to laws to be passed thereafter by the Legislature.

There can be no room for doubt that the intent was first, to retain to the municipalities the powers over utilities then vested, and in addition to provide, through legislative enactment, an exclusive method of divesting such power. Had it been the intent to permit this divestment to be brought about by charter amendment, the Constitution could have easily so provided.

In pursuance of this constitutional provision, the Legislature did pass an act, Chapter 40, Statutes of 1911 Extra Session, which is now in force, providing a complete scheme for presenting to the voters, the question of the retention or giving up of powers over utilities now vested in municipalities.

I recognize the rule to be that every doubt should be resolved in favor of an election held by the people, yet the results of an erroneous finding by this Commission that an election such as this was valid and served to divest this city of its power over utilities to the extent proposed, would be so serious in its result that I am constrained to recommend that the Commission hold that the powers now vested in municipalities over public utilities cannot be divested through the adoption of a charter amendment, but must be brought about under the scheme provided by the Legislature for this purpose.

I submit herewith the following form of order:

ORDER

For the reasons given in the foregoing opinion, it is hereby ordered that the petition filed by the Long Beach Chamber of Commerce, complainant herein, wherein it is prayed that the Railroad Commission take certain action under a charter amendment wherein it was attempted to convey to the Railroad Commission certain jurisdiction over certain public utilities, be and the same is hereby dismissed.

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 29<sup>th</sup> day of March, 1913.

*John W. Eckelman*  
*H. S. Loveland*  
*Edwin O. Edgerton*

Commissioners.