Decision No. 6390

ORIGINAL

BEFORE THE RAILROAD COMMISSION

OF THE STATE OF CALIFORNIA

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Ward A. Dwight, et al	:	
Complainants	:	
-vs-	:	Case No. 1277
Lyon & Hoag, a corporation	:	
Defendant	:	

Stoney, Rouleau, Stoney & Palmer, by Mr. Palmer for complainants.
Walter H. Linforth and J. E. McCurdy, for defendant.
M. M. Mannon, Jr. for Spring Valley Water Company.
John J. Dailey, for City and County of San Francisco.

EDGERTON, Commissioner:

O P I N I O N

The complainants herein (some 27 in number) ask that the Commission declare the defendant, a corporation, a public utility and thereupon order said defendant to resume the service of water to said complainants.

The defendant denies that it is now or ever has been a public utility and contends that even if it be declared to be a public utility the Railroad Commission is without jurisdiction to entertain this complaint because jurisdiction lies in the government of the City of San Francisco.

It appears that defendant prior to the 10th day of August, 1918, subdivided a tract of land called Lincoln Manor in the City of San Francisco and sold lots to individuals who erected houses thereon. These complainants all occupy lots in this tract. The defendant in laying out this tract installed a system of pipes for distributing water and a pumping station and purchased water from the Spring Valley Water Company at this pumping station and then at its own expense distributed this water throughout the tract and collected rates from these complainants.

It does not appear that defendant made any profit through the sale of this water, the evidence being that by reason of using water for irrigating small parks in this tract for which no compensation was had, defendant suffered a loss as between the money paid Spring Valley Water Company for water and the sums collected from consumers.

On August 10, 1918 defendant notified Spring Valley that thereafter it would not purchase any more water and that said Spring Valley Water Company must look to consumers of water on the tract for compensation for any water delivered.

At about this time defendant offered to give to Spring Valley Water Company the distributing system in this tract together with the pumping plant provided Spring Valley Water Company would supply these consumers with water. Spring Valley Water Company refused this offer unless in addition defendant would agree to pay any cost of pumping or other operating expense resulting from the delivery of the water beyond the pumping station. This defendant would not agree to do, and since said August 10, 1918 the pumping plant has not been operated and defendant has entirely abandoned all connection with this water system and has paid no bills for water.

Spring Valley Water Company at the request of city officials of San Francisco and of this Commission has continued to deliver water at the pumping plant for the use of these complainants with the understanding that the Railroad Commission or some competent authority would determine the question of who was responsible for payment for the water.

Defendant's articles of incorporation do not set out any public utility functions.

It is clear from the foregoing statement of facts that defendant is a public utility which has actually engaged in the service of water to the public, or a part thereof, for compensation. It performed every act of a public utility service and the mere fact that its articles of incorporation did not authorize it to pursue the business of a public utility cannot be taken advantage of by defendant in an attempt to escape the

responsibility which it assumed upon entering the business of serving water.

Defendant being a public utility had no right to abandon the service of water to these complainants without authorization from this Commission and it cannot now, by merely showing that Spring Valley Water Company serves other consumers in this vicinity with water, thus shift its burden to that company.

This Commission has jurisdiction to entertain this complaint and make an appropriate order.

Section 23, Article XII of the Constitution reserves to municipalities their powers of control over public utilities, other than the fixing of rates, until an election is held, as a result of which these powers are transferred to the Railroad Commission. The City of San Francisco has not transferred its powers and accordingly it is necessary to determine whether power to grant the relief requested rests in the City authorities or in the Railroad Commission.

Section 549 of the Civil Code provides:

> "All corporations formed to supply water to cities or towns must furnish pure fresh water to the inhabitants thereof, for family uses, so long as the supply permits, at reasonable rates and without distinction of persons, upon proper demand therefor; and must furnish water to the extent of their means, in case of fire or other great necessity, free of charge. The board of supervisors, or the proper city or town authorities, may prescribe proper rules relating to the delivery of water, not inconsistent with the laws of the state."

This section gives to municipalities power to prescribe proper rules relating to the delivery of water not inconsistent with the laws of this state. Defendant relies

in part upon this provision of the Civil Code, claiming that this vests jurisdiction in the City authorities to require utilities to give service and refers to Title Guarantee and Trust Company vs. Railroad Commission, 168 Cal. 295, in support of its position. In that case the Supreme Court held that under this section of the Civil Code, the City of Glendale had the right to make rules with reference to charges for service connections. It should be noted, however, that at the time of the decision in Title Guarantee and Trust Company vs. Railroad Commission, the Public Utilities Act, in Section 82, contained a provision similar to the constitutional provision reserving to municipalities their control over public utilities. That section of the Public Utilities Act, however, has since been eliminated. The Public Utilities Act now, therefore, is in direct conflict with Sec. 549 of the Civil Code, and the latter must fall by its own provisions which make it effective only when "not inconsistent with the laws of the state". In other words, the constitutional reservation of power to municipalities does not preclude the amendment or repeal of provisions of the Civil Code. Further, even if Sec. 549 of the Civil Code were effective, I believe it would not be construed to cover a case such as that under consideration.

The City Charter of San Francisco, in sub-sections 13 and 14 of Sec. 1, Chapter II, Article II, gives to the Board of Supervisors, among other powers:

"13. Except as otherwise provided in this charter, to regulate and control the location and quality of all appliances necessary to the furnishing of water, heat, light, power, telephonic and telegraphic service to the city and county, and to acquire, regulate and control any and all appliances for the sprinkling and cleaning of the streets of the city and county, and for flushing the sewers therein.

"14. To fix and determine by ordinance in the month of February of each year, to take effect on the first day of July thereafter, the rates of compensation to be collected by any person, company or corporation in the city and county, for the use of water, heat, light, power or telephonic service, supplied to the city and county, or to the inhabitants thereof, and to prescribe the quality of the service."

The City of San Francisco accordingly has power to "regulate and control the location and quality of all appliances necessary to the furnishing of water" and also ~~xxxx~~ "to prescribe the quality of the service." Regulating the quality of service presupposes the existence of a service. In the pending proceeding the relief asked is an order requiring the reestablishment of a service once given but since discontinued. Accordingly, the relief requested does not come within the charter provisions.

The Railroad Commission, therefore, and not the municipal authorities, is vested with jurisdiction to grant the relief sought.

I recommend that an order be made finding as a fact that defendant is a public utility and ordering the immediate resumption of service by said defendant to these complainants.

O R D E R

The complaint having been made by the above entitled plaintiffs against the above named defendant, and a public hearing having been had and the matter submitted;

IT IS HEREBY FOUND AS A FACT that said defendant is a public utility water company and is a water corporation as described in subdivision X, section 2 of the Public Utilities Act.

Basing its order on the foregoing finding of fact and the further facts set out in the foregoing Opinion,

IT IS HEREBY ORDERED BY THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA that defendant Lyon & Hoag, a corporation, within ten days from the date of this Order resume the service of water to the complainants named in this proceeding and thereafter continue to give such service.

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 5th day of June 1919.

Edwin O. Edgett

H. D. Loveland

H. M. Brundage

Commissioners.