

Decision No. 32572

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

J. D. RATEKIN and  
F. H. ALNUTT,

Complainants,

vs.

Case No. 4407

THE DIRECTORS OF SMILEY PARK  
COUNTRY CLUB

L. M. ROWE, PRESIDENT

KARL S. NORTON, VICE PRESIDENT

MRS. J. CHARLESWORTHE, SECRETARY

GRACE CASE, Director

AUSTIN ERICKSON, Director,

Defendants.

E. Walter Guthrie and Harry W. Dudley  
for Complainants.

George W. Rochester for Defendants.

BY THE COMMISSION:

O P I N I O N

Complainants own property in a subdivision known as Smiley Park and located some seventeen miles from San Bernardino. Smiley Park Country Club, a California corporation which supplies water in Smiley Park, discontinued delivery of water to complainants, who seek restoration of service and allege utility status. Defendants contend that the Club has furnished water, not as a public utility,

but as a non-profit cooperative corporation supplying members only, and stopped furnishing water to complainants because of the latter's dismissal as members of the Club.

In 1923 two newly organized and related corporations acquired the property comprising Smiley Park from Fred Smiley, and caused the organization of defendant corporation, to which the property was transferred. <sup>(1)</sup>

The Club's articles of incorporation declare it to have been formed as a non-profit cooperative corporation to promote and encourage the recreation and social intercourse of its members, purchase and hold property, erect buildings, etc. The articles provide that there shall be no capital stock, that business shall not be carried on for profit, and that the voting power of each member shall be equal. They provide further that the Club shall have power to administer and maintain the improvements and water system on its property; to construct additional improvements; to supply and distribute water to members only for use on Club lands, and not elsewhere; and to act as a community corporation for the improvement and betterment of sanitary and other conditions in Smiley Park, and to preserve scenic beauties, forestry and other natural advantages of the tract. Memberships may be transferred on terms and conditions allowed by the board of directors.

The by-laws provide for an annual meeting of members, each of whom is entitled to one vote. A board of directors (which also acts as a Park Commission and is elected annually) is given power

---

(1) National Investment Company, Inc., and Home Foundation Company entered into certain contracts with defendant Club, which contracts gave the former companies the right to act as selling agents. In 1928 and 1935 the three companies were involved in litigation concerning these contracts and certain trust deeds.

to manage the affairs of the Club, call special meetings of the members, appoint and remove officers and employees, make rules governing officers and members, etc.

Smiley Park consists of 262 acres and is partly subdivided into about 800 lots, each of which is 20 by 50 feet. Some 460 leases ("Ninety-nine year Lease and Membership Certificate in Smiley Park Country Club") have been executed by the Club. Such leases certify that the lessee is a full member of the Club and holds a "pro rate" share of all Club assets. For ninety-nine years such membership "shall be appurtenant to the lot hereby leased and passes with an assignment of the lease. Thereafter, as members, former lessees will own all assets of the Club, including all lots leased." Particular lots are leased on condition that membership dues and taxes apportioned by the Park Commission are paid annually. Club dues shall not exceed \$2.00 per lot unless authorized by two-thirds of the lot lessees or owners in the Club. Leases are subject to certain additional restrictions, conditions and reservations. (2)

In addition to the leases, the Club has executed from twenty to twenty-five warranty deeds. The conditions in such conveyances are substantially the same as those contained in the form of lease used. (3)

---

(2) The Club reserves right of way easements for pipes, poles, etc., as well as all springs and water rights. Lessee shall not assign the "premises or lease and membership appurtenant thereto" to any person not of the Caucasian race, the Park Commission to have the right to remove "any objectionable persons." The Club reserves the right to prescribe and enforce such restrictions "as may be deemed best" for the benefit of members and for sanitation. Trees shall not be cut or destroyed except where necessary for certain improvements, and as approved by the Park Commission. The leases provide that in case of any condition broken or failure to pay taxes and dues, the Club may reenter and take possession and has the option of terminating the lease.

(3) "Warranty Deed and Membership Certificate in Smiley Park Country Club." The deeds provide that in case of any condition broken or failure to pay dues the Club may reenter and take possession.

Income from dues is used to maintain the park and office, as well as the water system. Water is obtained from springs located some distance from Smiley Park and on property not owned by the Club. The testimony indicates that a right to four miner's inches of water was acquired with the transfer of the property comprising the subdivision. Water is brought to the tract through a 2-inch main, and is distributed through laterals of varying sizes, the smallest of which consists of one-half-inch pipe. Water is also obtained from a creek. The Club has a 50,000-gallon storage tank, erected in 1931.

(4) Mrs. J. Charlesworth, secretary-treasurer of the Club since 1925, testified that the corporations which caused the organization of the Club donated the maintenance of the water system until 1931. Prior to that year there was no charge for water. At the Club's annual meeting in 1931 the members authorized collection of certain water maintenance fees, varying from \$3.00 per year where water was carried by hand from standpipes to \$5.00, \$7.50 or \$10.00 per year where water was piped to cabins, the annual charge depending upon the facilities in each cabin. In 1932 the Club established an annual charge of fifty cents per vacant lot for fire protection purposes.  
(5)

Water maintenance charges are payable on October 1 of each year, become delinquent on October 31, and the service is subject to discontinuance for nonpayment, as well as a reconnection charge

---

(4) The five individuals named as defendants are the officers and directors of the Club.

(5) While the Club charges \$1.50 for extending a distribution lateral to a cabin, fifteen of the ninety-four cabins on the property are without water because of the lack of funds for construction of extensions. Last year the Club expended \$60.00 in extending a distribution pipe to a point 150 feet from a new cabin and erected a standpipe at that point, from which water must be carried to the cabin.

of \$5.00. In 1931 the Club received about \$495 from water maintenance charges. A tank costing \$850 was erected, and the balance of the cost was paid from receipts for dues. Since 1931 the average annual yield from water charges has been between \$700 and \$800. Some five hundred dollars was collected during the first six months of 1939.

(6)  
Mr. Charlesworth, park manager for the past eight years and also in charge of the water system, is employed at a salary of \$700 per year. Mrs. Charlesworth is employed as secretary-treasurer at a salary of \$70.00 per month. The Club is behind in its payments on both salaries, and also owes about one hundred dollars for the purchase of pipe.

Total annual income approximates \$3,000, of which \$800 is derived from water maintenance charges, and the balance from dues. All money collected from members is deposited in a bank in a general account. Members' accounts are not segregated as between water maintenance and dues. Of the \$3,000 average annual income from dues and water charges, from \$200 to \$300 is used by the Club to pay county taxes upon leased lots. Owners of lots in the park pay taxes directly to the county.

The two complainants, as members of the Club, were furnished water prior to October of 1938. The Club discontinued supplying water to complainants because they were deprived of membership by the Club's board of directors. Counsel agreed that such action had been taken for reasons foreign to the furnishing of water and involving other Club rules and regulations.

The issue is whether any defendant (the Club or any of its

---

(6) Complainant Alnutt was employed as park manager for about four years prior to 1928.

five directors) is obliged to resume furnishing water to complainants' cabins because such defendant has undertaken to render service as a public utility. The complainants ask that such an order be issued. That order would have to be directed against the Club or its member-directors, and the only persons supplied with water through the Club's facilities, including complainants, have been the members of the Club. Any right which complainants may have to receive water appears to rest upon their status as members, for we cannot hold from the facts that the Club or any of the named defendants have so acted as to dedicate any private supply of water owned by them to the use of the public. And the Commission is without jurisdiction over disputes relating to the internal management and conduct of the Club's affairs. We may not order reinstatement of complainants as members, nor may we determine the respective rights and duties of the Club and its members under the provisions of the articles of incorporation, by-laws, deeds and leases. Such matters must be decided by some tribunal other than this Commission. As the record herein fails to support a finding of dedication to public use, the complaint must be dismissed.

O R D E R

The above proceeding having been submitted for decision upon the evidence taken by Examiner Cassidy at a public hearing, and based upon the record and upon the factual findings contained in the above opinion, IT IS ORDERED that the complaint herein be and it is hereby dismissed.

Dated, San Francisco, California, this 21<sup>st</sup> day of  
November, 1939.

Walter P. Sullivan  
W. L. Riley  
Justice F. C. ...  
Commissioners.