

Decision No. 37576

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

ORIGINAL

Investigation upon the Commission's own motion to inquire into the effect upon the rates and operating expenses of public utilities of Federal War Taxes on income accrued and paid by the utility.

Case No. 4731
(Contempt Proceeding)

Everett C. McKeage and Roderick B. Cassidy,
for Affiant Mathewson.

Grove J. Fink and Carlton D. Keyston, for
Respondents.

BY THE COMMISSION:

OPINION ON ORDER OF DISMISSAL

The general investigation in Case No. 4731 was instituted by the Commission on June 27, 1944 and set for public hearing at San Francisco on August 10, 1944. Hearings in said investigation were held on August 10 and 11, 1944. Further adjourned hearings were held, and no decision has yet been issued in that investigation proceeding. (1)

(1)

The nature of the proceeding in Case No. 4731 was stated at the opening of the hearing on August 10, 1944, by Presiding Commissioner Sachse, in part as follows (Tr. p. 3,4):

"The subject of the instant investigation is of nation-wide interest and is engaging the attention and consideration of both the courts and public utility regulatory commissions throughout the country. Several of the Federal and State regulatory bodies are now engaged in the consideration of this subject.

The San Francisco Examiner is a daily newspaper published and circulated by Hearst Publications, Incorporated, Clarence R. Lindner being the Publisher of that paper, William C. Wren the Editor and Managing Editor, and E. V. McQuade the City Editor. The August 12, 1944 issue of the San Francisco Examiner contained an article relating to the proceedings before the Railroad Commission at the hearing held on August 11, 1944 in Case No. 4731, which

(1) Contd.

"The nature and scope of this investigation are set out in the order, copies of which have heretofore been served upon all those utilities enumerated in Exhibit 'A' annexed to the order.

"The Commission would like to have it understood that this investigation is exploratory and fact finding in its nature. We are seeking information on this important matter and, particularly on the question of how the public utilities in California and California rate payers are affected. It is hoped that as a result of this investigation the Commission will secure sufficient facts and information upon which to base a policy applying to the subject matter under consideration.

"The Commission wishes to make it plain that no rate reductions are contemplated in this proceeding. Any rate reduction made by us must necessarily come as the result of a separate and independent proceeding against the public utility whose rates may be called into question. We are here seeking information and facts from the utilities bearing upon the subject of this investigation and nothing more. The Commission hopes that the utilities and the representatives of the public who may wish to appear will give us their best cooperation and assistance to the end that a proper understanding of the various aspects of the problem may be had and a sound and equitable solution found. The Commission believes that it is its duty to inform itself thoroughly on all pertinent facts that may have a bearing upon the questions involved in this proceeding."

said news article is hereinafter set out as follows:

"STATE RAIL COMMISSION IN STORMY MEET

"3 Members Attack Veracity of Reporters and
Assail Firms For Turning to Newspapers

"Three members of the State railroad commission, infuriated because corporations had the temerity to bring their case before the public through the press, yesterday lost all semblance of dignity, and labeled 'practically every one from corporations to newspaper reporters as liars..'

"The three commissioners--President Richard Sachse, Frank Clark and Franck Havenner--are all appointees of former Governor Culbert L. Olson. Ostensibly, the commission is sitting here for an 'investigation' of the relation of corporation excess profits taxes and other Federal income taxes to operating expenses. The commission's procedure in this matter has been criticized by legal authorities, who say the subject is solely within the jurisdiction of Congress.

"The fireworks started when the three members sharply denounced the Pacific Telephone and Telegraph Company for daring to criticize the commission's 'purposes' in ordering the hearing.

"BACKED BY HAVENNER.

"Plainly showing his anger, Sachse summarily ordered company attorneys to 'produce' N. R. Powley, president of the utility, and place him on the stand. Clark and Havenner backed Sachse's order.

"His anger, Sachse told astonished witnesses and spectators, was aroused because Powley dared to furnish the press with a preliminary statement, explaining his company's position on the extremely technical and complicated matters under 'investigation' by the commission.

"I demand that Powley be brought here and put on the stand," Sachse told Arthur George, the utility's attorney.

"The commission is entitled to an explanation from Powley for daring to make a statement to the press prior to his appearance here as a witness," barked Clark. "The only proper place to criticize the commission is at the hearing, not in the press."

"HOW DARE YOU?"

"Then, as George took the stand, preliminary to Powley's appearance, the three members took turns abusing him and the company, the press, reporters, and all who dared to question their motives or authority.

"How dare you argue the case in the newspapers?" Clark demanded of George.

"Why haven't you consulted with us, the three members of the commission, before you rushed to the newspapers?" shouted Havenner.

"Then, grasping a copy of yesterday's Examiner in his trembling hand, Havenner shrieked:

"This story is a lie. The reporter who wrote it is a liar."

"CRAEMER SPEAKS UP."

"After some of the excitement had subsided, Commissioner Justus Craemer jarred the three Olson appointees on the commission by reminding them that the Pacific Telephone and Telegraph Company's statement, which had been furnished to the press, and to which Sachse, Clark and Havenner objected so strenuously, had been filed with the commission last Monday.

"I don't want to wash the commission's dirty linen in public," Craemer said, "but I feel it is my duty to get this fact into the record."

"Sachse, Clark and Havenner jumped to their feet with denials, but nobody could understand what they said.

"All other discussion of the subject under consideration was tabled yesterday while the three members frothed and fumed.

"What its real aims were, in ordering the hearing, the commission did not divulge. The three members, interrupting one another and witnesses constantly, kept mumbling about 'fair and equal rates, justifiable expenditures,' and

'its duty to the public, corporations and everyone else.'

"Clark, speaking only for himself, finally read into the record that 'this hearing is not a step to cripple the utilities by reducing their rates arbitrarily. On the contrary, I would be willing to grant them rate increases, if it is necessary to do so.'

"GIVEN SHARP LOOK.

"As he made this statement, Sachse and Havenner looked at Clark sharply but made no additional comment.

"Only a few of the large number of witnesses, scheduled to appear before the commission Thursday and Friday, had an opportunity to be heard because of the amount of time wasted by the three members in arguing with each other, heckling witnesses; and attempting to explain why the hearing was ordered.

"Before the commission lost its dignity, B.E. Backett, rate engineer for the Pacific Gas and Electric Company, contrasted the rise of the cost of living in San Francisco and Bay area, from 1939 through 1943, with the reduction in gas and power charged to consumers, during the same period. This irrefutable data was obtained from the Bureau of Labor Statistics (BLS) and the company's records.

"BRIEF IN RECORD.

"The commission also finally permitted the Pacific Telephone and Telegraph Company to place its formal brief into the record. The statement stressed the fact that the company had not profited at the expense of the Nation's war effort, but, on the contrary, its current earnings were not sufficient to maintain a sound, long time credit position, necessary to protect both customers and stockholders.

"The present hearing will be continued in Los Angeles, August 18, to be followed by another session here."

On September 12, 1944 an Affidavit and Application for Order to Show Cause was filed with this Commission by H. G. Mathewson.

Said document alleged in part that the newspaper article of August 12, 1944 was a false and grossly inaccurate report of the hearing held before the Commission on August 11, 1944 and constituted a contempt of said Commission. On September 13, 1944 the Commission issued an Order to Show Cause, which order directed the corporation and the three individuals hereinabove mentioned to appear before the Commission on October 5, 1944 and show cause, if any they had, why they and each of them should not be adjudged to be in contempt of the Railroad Commission and punished therefor in the manner provided by law, for the alleged contempt set forth in the Affidavit and Application for Order to Show Cause.

Public hearings in said proceeding in contempt were thereafter held on October 5, November 29, 30, December 1, 12, 15 and 19, 1944. (2) At the hearing of December 19, 1944 counsel for Affiant submitted a motion that the proceeding be dismissed, for the reasons hereinafter stated in this opinion. Such motion was taken under submission. The Commission then adjourned with the understanding that should the motion be denied, the proceeding would be reset for further hearing on the merits upon due notice to the parties.

With the foregoing chronological recital of facts in mind, we now turn to a consideration of the action this Commission should take pursuant to said motion, all the circumstances being considered.

The proceeding in this case brings into bold relief and puts at issue the age-old conflict between the maintenance of the freedom of the press on the one hand and the maintenance of the orderly administration of the lawful proceedings of public tribunals on the other.

(2) Commissioners Sachse, Clark, Havener and Rowell participated in this proceeding; Commissioner Craemer did not participate.

While courts have attempted to reconcile this conflict and have laid down various rules and formulae for the reconciliation of such conflict, nevertheless, each case must be decided upon the particular facts therein existing. There is no more generally established and accepted principle in a free government than the necessity for freedom of expression, which includes freedom of speech and freedom of the press, but in the same free government there is also an equally well established principle which is that one who seeks to exercise freedom of speech or freedom of the press must be held responsible for any abuse thereof. Lord Mansfield bluntly stated it when he said that one publishes at his peril. Those who are wedded to the idea of free government experience no difficulty in equally supporting the two principles adverted to above, that is, freedom of expression and strict accountability for those who abuse that freedom. It could not be otherwise if we subscribe to the belief that there must be some power residing in government that enables it to maintain its orderly and democratic processes.

The newspaper article published by the respondents, which has heretofore been set out, needs no interpretation or elaboration, for that article speaks for itself. The transcript of the proceedings before this Commission, which this newspaper article sought to describe, is conclusive upon the point that the article in question is untrue in many vital respects and, to characterize it moderately and dispassionately, is, as a whole, a false and grossly misleading report of said proceedings.

It is obvious that the article is insulting to the Commission and in the mind of the reader must raise doubt of the Commission's integrity of purpose and its capacity to function properly in the present proceeding.

Bearing in mind that this contempt proceeding did not arrive at the stage of the putting in by respondents of a factual defense, (demurrals and motions to dismiss by respondents having been presented and argued and overruled and denied by the Commission) we are not assuming to make findings of fact upon controverted issues that may have been raised by the complaint in this proceeding and the answer or answers which might have been filed by the respondents. However, we are of the opinion that this newspaper article, on its face and without more, constituted contempt of this Commission. For support of our conclusion in this regard we cite the case of In the Matter of San Francisco Chronicle, et al., 1 Cal.(2d) 630, 636. Nothing said in Bridges v. California or Times-Mirror Company v. Superior Court, 314 U.S. 252; 86 L. ed. 192, militates against this view.

We realize, as was pointed out in the motion to dismiss, that a person having committed contempt, it does not follow that such person must of necessity suffer the pains and penalties prescribed by law for his transgression. All the attending circumstances surrounding the act in question must be taken into consideration and while the absence of an intent to commit contempt does not constitute of itself a defense to a proceeding of this character, nevertheless, we shall take respondents plea into consideration as a mitigating circumstance. By sworn affidavits the respondents have disavowed any intent to commit a contempt of this Commission and have stated that they published the newspaper article in question upon the honest belief that the reporter who wrote the article wrote a factual account of the proceedings before this Commission, which said newspaper article purported to describe. Respondents further state that they exercised reasonable care in the

employment of this reporter and believed him to be a competent and able newspaper reporter. We also have in mind the circumstance that very few persons in the journalistic profession had actual knowledge of the fact that this Commission is possessed of the same powers to commit for contempt that a court of record has. It is also to be noted that this Commission has very sparingly exercised, in the past, its power to commit for contempt. During the time covered by the various hearings in this contempt proceeding, the respondents have published reasonably fair accounts of those hearings and by so taking the lead, other newspapers have done likewise. Thus, the general public has been made acquainted with the fact that this Commission does have the power to punish for contempt. This fact, of itself, has made this proceeding in contempt serve a public purpose which must not be overlooked in arriving at a decision in this matter. The general public is now informed that the proceedings before this Commission are entitled to the same respect that is accorded to proceedings before any court of record.

A contempt proceeding is instituted for the purpose of protecting a court or other tribunal in the orderly conduct of proceedings before such court or tribunal. When a contempt proceeding has subserved this purpose, it should be brought to an end. A spirit of vindictiveness or spitefulness has no place in the prosecution of a contempt proceeding.

With the foregoing views in mind, we arrive at the conclusion that a continuation of this proceeding could serve no further public or useful purpose and we think it should be dismissed. It is our hope that the action we are herein taking will not be misconstrued or misunderstood. We are of the opinion that the newspaper article in

question did constitute contempt but the circumstances of the case now make it appropriate that this proceeding against the respondents be dismissed.

ORDER OF DISMISSAL

For the reasons stated in the foregoing opinion, and good cause appearing therefor,

IT IS HEREBY ORDERED that the within proceeding in contempt as to all of the respondents herein be and the same is hereby dismissed, and the order to show cause, heretofore issued herein, be and the same is hereby discharged.

Dated at San Francisco, California, this 28th day of

December, 1944.

Richard L. Chase

Francis R. Havenner

James W. East

Commissioners