

Decision No. 47284

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

LEE E. BASSETT,)
 vs.) Petitioner,
 THE PACIFIC TELEPHONE AND TELEGRAPH)
 COMPANY, a corporation,) Respondent.)

Case No. 5306

WILLIAM MUSSO, individually, and)
 WILLIAM MUSSO and PHILIP MUSSO,)
 co-partners, doing business under)
 the firm name and style of HOWARD)
 LOAN AND JEWELRY, and HOWARD LOAN)
 AND JEWELRY, a co-partnership,) Petitioners,)
 vs.)
 THE PACIFIC TELEPHONE AND TELEGRAPH)
 COMPANY, a corporation,) Respondent.)

Case No. 5307

PETITION FOR RE-HEARING

Leland S. Fisher, for Lee E. Bassett and William Musso, et al., Petitioners. Pillsbury Madison & Sutro by John A. Sutro and Noble K. Gregory, for The Pacific Telephone and Telegraph Company, Respondent. Arthur H. Sherry, Chief Assistant Attorney General, and Clarence A. Linn, Assistant Attorney General, for the State of California, interested party.

O P I N I O N

On June 21, 1951, each petitioner herein filed a complaint against The Pacific Telephone and Telegraph Company, the complaints being substantially similar and alleging in substance that the petitioners had been notified by respondent telephone company of a threatened discontinuance and disconnection of petitioners' telephone facilities. This action

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was proposed by respondent telephone company as a result of information it had received to the effect that petitioners' telephone facilities were being put to uses prohibited by the law. Petitioners alleged such discontinuance and disconnection would cause them to suffer irreparable injury and great hardship, and would be contrary to law since there had been "no determination, judgment, or decision by any Court of the State of California that the communication facilities" concerned were "used as an instrumentality to violate the law, or to aid and abet the violation of the law."

By Decisions No. 45887, dated June 26, 1951, in Case No. 5306, and No. 45888, dated June 26, 1951, in Case No. 5307, temporary restraining orders were issued directing the respondent telephone company to refrain from the proposed disconnections pending a hearing in the matter. Hearings were held and Decision No. 46587, dated December 21, 1951, in Cases Nos. 5306 and 5307, was issued denying the complaints for restoration of telephone service and setting aside and vacating the temporary restraining orders.

A petition for rehearing was filed jointly by the two petitioners herein and under date of January 22, 1952, an order granting rehearing was issued. Rehearing was held at San Francisco on February 25, 1952, before Commissioner Huls and Examiner Syphers, at which time further evidence was adduced and the matter submitted subject to the parties being given the right to file briefs. Briefs now have been filed by all parties and the matter is ready for decision.

At the rehearing it was stipulated that the evidence

introduced at the original hearing be considered as part of this record.

Testimony was presented by petitioner Bassett to the effect that he resides at 1519 Lemon Street, Vallejo, California, and his telephone there is listed under number Vallejo 3-7183. He also conducts an Army and Navy surplus business at 337 Couch Street, Vallejo, California.

He stated that he and petitioner Musso, for a period of about seven months, immediately prior to the last week in April 1951, had operated a bookmaker's establishment at Spenger's Fish Grotto located in an old ferry boat in the water near Benicia. This business, which the witness stated he knew was being operated contrary to law, was a partnership arrangement. Bassett and Musso shared in the profits. Three telephones were used in the business, number Benicia 714 and 715, and a third phone, the number of which the witness did not remember. (The evidence of the prior hearing establishes this number as Benicia 415.) This witness also testified that on at least two other occasions he and Musso had engaged in other book-making businesses.

The witness admitted that there were occasions when he made calls from his home telephone to the bookmaking establishment, and also received calls. However, he maintained that his home telephone was primarily used for personal affairs and not in connection with his business.

Petitioner Musso also presented testimony disclosing that he resides at 619 Virginia Street, Vallejo, California,

and maintains a jewelry and loan business at 222 Georgia Street, with a telephone listed under number Vallejo 3-6098, and has other businesses at 215 and 225 Georgia Street. He further testified that he had been in the bookmaking business for about ten years, and became associated with petitioner Bassett in various bookmaking enterprises, the first commencing about two to four years ago. One of these enterprises was the bookmaking establishment at Spenger's Fish Grotto.

There were occasions, according to this witness, when he would use the telephone at 222 Georgia Street, number Vallejo 3-6098, to place or receive calls from the boat. In addition to this telephone, there is a second telephone located at the Howard Loan and Jewelry Company, listed under the name of R. W. Hoag Company, number Vallejo 2-1271. This telephone is used to contact the remaining accounts of R. W. Hoag Company, which company was formed to sell goods to Army and Navy PX's, but suffered heavy losses and, accordingly, the accounts are being wound up.

In considering the record in this matter after re-hearing, we find no evidence which would justify a change in our prior findings made in Decision No. 46587, supra. The new evidence adduced consists of the testimony of the petitioners themselves, who both admitted that their business at Spenger's Fish Grotto was that of bookmaking and was conducted in violation of the law. Furthermore, both testified that telephones were used in the conduct of this business to receive racing results, and also to receive and lay off bets.

There are five telephones concerned herein, three which were at the boat under numbers Benicia 415, 714 and 718, one at the residence of Bassett under number Vallejo 3-7183, and one at the Howard Loan and Jewelry Company under number Vallejo 3-6098. While there was testimony at the rehearing as to a sixth phone listed in the name of R. W. Hoag Company under number Vallejo 2-1271, there is no evidence that this telephone was used in the bookmaking business.

As to the three telephones, Benicia 415, 714 and 718, the direct testimony of petitioners admits that they were used in the operation of a bookmaking establishment. As to the residence telephone of Bassett, Vallejo 3-7183, and the telephone which Musso maintains at the Howard Loan and Jewelry Company under number Vallejo 3-6098, the evidence in the original hearing and the testimony of petitioners show that calls were made between these phones and the bookmaking establishments.

That these calls were in connection with the bookmaking business is the only conclusion we can make from the facts of record. Both petitioners Bassett and Musso were partners in the business, sharing equally in the profits. Neither of them was at the boat continuously, but both were concerned with the supervision of the business and were in contact with it by telephone. At the original hearing evidence was introduced showing the number of such calls made during

certain periods. This evidence is tabulated as follows:

Calls from telephones at bookmaking establishment on Spenger's boat to telephones of Bassett and Musso.

<u>Period</u>	<u>Telephone calls</u>		<u>Number</u>
	<u>from</u>	<u>to</u>	<u>of calls</u>
Feb. 21 to April 20, 1951	Benicia 415	Vallejo 3-6098	28
	" 714	" 3-6098	53
	" 718	" 3-6098	16
	" 415	" 3-7183	5
	" 714	" 3-7183	8
	" 718	" 3-7183	3
Jan. 24 to April 20, 1951	Vallejo 3-6098	Benicia 415	2
	" 3-6098	" 714	29
	" 3-6098	" 718	8
Jan. 23 to April 16, 1951	" 3-7183	" 415	6
	" 3-7183	" 714	45
	" 3-7183	" 718	3

In Decision No. 46587, supra, we found it reasonable to infer that the telephones of complainants were used in bookmaking transactions. In the light of the additional evidence adduced at the rehearing, we now find as a fact that the three telephones used by petitioners while conducting their operations at Spenger's Fish Grotto, number Benicia 415, 714 and 718, were used in the conduct of a bookmaking business, and we further find that the telephone of Bassett at his residence, number Vallejo 3-7183, and the telephone of Musso at the Howard Loan and Jewelry Company, number Vallejo 3-6098, were used in connection with bookmaking transactions.

The position of the petitioners herein, as stated in the petition for rehearing and in the brief they have filed, is that Decision No. 46857, supra, and the decision upon which it is predicated, No. 41415, dated April 6, 1948, in Case

No. 4930 (47 Cal. P.U.C. 853), are unconstitutional, erroneous and unlawful in that they attempt to (1) "clothe the Public Utilities Commission with jurisdiction or authority to determine the guilt or innocence of a person with respect to an alleged violation of an act made punishable by the Penal Code of this State," (2) "subject persons not convicted of any crime to penalties imposed by the Commission," (3) "deprive petitioners of a contract right without due process of law," (4) "vest authority in the office of the Attorney General of the State of California to enforce the laws of the State of California in a manner other than according to law," and (5) "deprive petitioners of the presumption of innocence."

As to these contentions, we reiterate our holdings in Decision No. 46587, supra. We are not attempting in this proceeding to impose a criminal penalty upon petitioners, nor are we attempting to prove guilt or probable guilt as to a violation of the Penal Code. Our concern is with the use made or to be made of the telephone facilities. In Decision No. 41415, we pointed out that the right to utility service is not an inherent right but stems from the police powers of the state under which those provisions of the Public Utilities Act requiring the utility to serve the public without undue or unreasonable discrimination have been enacted. As a corollary to the state's authority to compel the utility to render service, it likewise has the authority to impose conditions under which the service may be furnished or terminated.

Petitioners rely upon the case of People vs. Brophy 1942, (49 Cal. Ap. 2nd 15). Therein the Court stated, among

other things, that public utilities are not the censors of public or private morals, that the furnishing or receiving of racing information is not gambling and that the Attorney General had no authority to request the telephone company to discontinue or disconnect telephone service. But in that case, the Court proceeded to point out that such jurisdiction was exclusively in the Public Utilities Commission. Since that decision in 1942, this Commission issued its order in Decision No. 41415, supra, which holds that any communications utility must discontinue and disconnect service to a subscriber whenever it has reasonable cause to believe that the use made or to be made of the service is prohibited by law. Further, one form of reasonable cause is held to be a written notice from any official charged with the enforcement of the law. In the instant case, the respondent telephone company was advised by the Attorney General that the communication facilities of petitioners were being put to uses prohibited by the law. This conclusion is amply supported by the evidence adduced herein. Petitioners were not engaged merely in the furnishing or receiving of racing information, but were actually engaged in unlawful bookmaking. Therefore, we now find that the action of the telephone company was based upon reasonable cause as such term is used in Decision No. 41415, supra, and that the telephones of petitioners as hereinabove enumerated were used in connection with bookmaking transactions.

O R D E R

Decision No. 46587, dated December 21, 1952, in Cases Nos. 5306 and 5307, having been issued as a result of complaints filed by petitioners herein, a petition for rehearing having been filed and an order granting rehearing having been issued, rehearing having been held, and the Commission being fully advised in the premises and basing its decision upon the evidence of record and the finding herein,

IT IS ORDERED that Decision No. 46587 be, and it hereby is, affirmed.

The effective date of this order shall be twenty (20) days after the date hereof.

Dated at San Francisco, California, this 17th day of January, 1952.

R. D. Smith
President

Justin J. Casper

Harold P. Niles

Therese Pottor

John E. Nicholls
Commissioners