

ORIGINAL

Decision No. 48301

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

WILLIAM CASS, ALBERT FERNANDEZ)
and LELAND VAN CONETT,)

Plaintiffs,)

vs.)

HENRY F. SCHMIDT,)

Defendant.)

Case No. 5421

Charles O. Busick, for complainants.
Robert J. Mertz, for defendant.
Clyde F. Norris, for the Commission staff.

O P I N I O N

Nature of Proceeding

The complaint in this matter alleges that the three complainants and their predecessors have been buying water from defendant in the City of Galt for five years and that they have no other source of water. Defendant has been charging \$2 per month and now demands \$5 per month and threatens to discontinue service. Complainants pray that defendant be declared a public utility and that his water rates be fixed by the Commission. By his answer, defendant denies he is a public utility and denies complainants have no other source of water.

Public Hearing

The complaint was filed on October 27, 1952 and the answer on November 25, 1952. Upon the issues raised therein a public hearing was held on January 23, 1953 in Galt before Examiner Gillard, and the matter was submitted for decision at the conclusion of such hearing.

Evidence

Henry F. Schmidt purchased 2 acres of vacant land fronting on the north side of Amador Avenue in the City of Galt in March, 1947. The city was incorporated in the fall of 1946, but the service area of Galt County Water District, established in 1934, was not coextensive with the city limits. In the area involved herein; the northern boundary of the water district is approximately 700 feet south of Amador Avenue.

In May, 1947 Schmidt sold three lots from his 2-acre parcel for \$400 each. Each lot has 60 feet of frontage on Amador and is 150 feet deep. In the original agreements of sale for these lots, it is provided that "seller to furnish water until city is ready to supply same." In the earliest agreement covering the sale of the first lot, there had been inserted the clause "seller to furnish water in the event city does not furnish same when house is completed." This was lined out and the other clause inserted at the request of Schmidt, who would not agree to it, apparently because he had not yet installed his well and did not know when his water supply would be available, and because he wanted to be relieved of his promise to supply water when the city was ready to render service.

Schmidt drilled a well on his own property and installed a pump and 82-gallon pressure tank in August, 1947. He ran a 3/4-inch line on his own property and adjacent to the rear of the three lots sold. The owners of these lots had completed their homes by that time and tapped the line as soon as it was laid. One of these original owners testified herein. He stated he believed he paid Schmidt \$1.50 per month for water, but did not recall that he had any specific discussion with Schmidt concerning the amount to be paid.

Complainants purchased their respective lots in 1948. Each testified that he was told by his predecessor that Schmidt would supply water. None of them talked to Schmidt before he purchased and moved in. Each claimed that Schmidt called on him two or three weeks after he had moved in to collect \$2 for the water service, and that Schmidt told him that there was plenty of water and he would supply it until the "Galt Water Works" put water in. Schmidt denied these conversations took place. Each of the complainants paid Schmidt \$2 each month until September, 1952 when Schmidt gave notice that each must secure his own water or pay \$5 a month thereafter.

Defendant has served water to complainants continuously and without restriction except that commencing in the summer of 1951 he placed them, and himself, upon a rotation system for irrigation water. Each complainant was allowed to irrigate his lawn and garden two days a week, and defendant took the seventh day. Complainants complied with this program.

At the present time, defendant testified, the pump is insufficient to supply complainants with their needs, and defendant maintains he needs all the water being produced. When defendant first laid his line, five people were being served. Complainants and their families now number 12 people, and, in addition, lawn and garden area at each home has grown considerably.

The Galt County Water District will serve water to these homes if the owners will pay for the distribution line. It is estimated that it would cost \$1,000 to run a 2-inch main to and along Amador Avenue. Defendant desires this line to be installed and is willing to pay his proportionate share, even though his well and pump are sufficient to supply his own needs. Complainants have refused to participate in this project, and none of them has requested water service from the water district.

At the present time there are only eight water users in the area involved, all located within 1,000 feet along Amador Avenue. From the last house toward the west there is vacant land. The physical situation is as follows:

	Van	Service	U. S.
House; Cass; Fernandez; Conett; House; Schmidt; House; Station			Highway
			No.
			99

Amador Avenue

The service station and each of the plots marked "House" has its own well and water supply. Schmidt has never sold, nor offered to sell, water to anyone except Cass, Fernandez and Van Conett and their predecessors on the same property.

Conclusions and Findings

On the basis of the evidence of record we must conclude that this water system is not a public utility. In connection with the sale of three lots, Schmidt made a limited promise to supply water "until city is ready to supply same." This promise was made a few months after the city was incorporated and all the circumstances surrounding that transaction, including the original but rejected plan "to furnish water in the event city does not furnish same when house is completed", indicate that the parties, including Schmidt, expected that the new city would supply water within a short time. Schmidt has never sold, nor offered to sell, water to anyone else. The entire record makes it clear that Schmidt intended to supply water to these three lots, and these three lots only, on a temporary basis, and as a matter of accommodation, until the city was ready to serve. From such circumstances we cannot find that Schmidt has, by clear and unequivocal act, dedicated his property to public use. Therefore the complaint must be dismissed.

O R D E R

A public hearing having been held, and based upon the evidence submitted and the conclusions and findings set forth in the opinion,

IT IS ORDERED that the complaint be and it is hereby dismissed.

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

Dated at San Francisco, California, this 24th day of February, 1953.

[Signature]
President.

Justice F. Cannon
Harold Hule

[Signature]
[Signature]
Commissioners.