

ORIGINAL

Decision No. 49728

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

HERMAN OPAS

Complainant,

vs.

THE PACIFIC TELEPHONE AND
TELEGRAPH COMPANY, a
corporation,

Defendant.

Case No. 5510

Maurice Gordon, for complainant. Pillsbury,
Madison & Sutro, by John A. Sutro, and Lawler, Felix
& Hall, by L. B. Conant, for The Pacific Telephone
and Telegraph Company.

O P I N I O N

The complaint alleges that Herman Opas, who owns and operates a business known as Grand Liquor and Cut Rate Sundries at 1525 South Grand Avenue, Los Angeles, prior to July 10, 1953, was a subscriber and user of telephone service furnished by defendant telephone company under number Richmond 7-9018. On or about July 9, 1953, these telephone facilities were disconnected by police officers of the City of Los Angeles, and on or about July 10, 1953, the defendant received a communication from the Police Department asserting that complainant was being charged with a violation of the bookmaking statute of the Penal Code. Thereafter the complainant was tried for a violation of the said bookmaking statute, and after a trial on the merits was acquitted.

The complainant has made demand on the telephone company to restore service, but it has refused to do so. It is also alleged that complainant will suffer irreparable injury and great hardship if he is deprived of the use of his telephone and further that complainant did not use and does not now intend to use said telephone facilities as an instrumentality to violate the law.

Under date of December 1, 1953, this Commission, by Decision No. 49387 in Case No. 5510, issued an order granting temporary interim relief directing the telephone company to restore telephone service to complainant pending a hearing on this matter. On December 10, 1953, the telephone company filed an answer, the principal allegation of which was that the telephone company had reasonable cause to believe that the use made or to be made of the telephone service furnished to complainant under number RIchmond 7-9018, at 1525 South Grand Avenue, Los Angeles, was being or was to be used as an instrumentality to violate the law.

A public hearing was held in Los Angeles on January 22, 1954, before Examiner Syphers, at which time evidence was adduced and the matter submitted.

At the hearing the evidence disclosed that the complainant operates on the premises at 1525 South Grand Avenue, a store in which he sells liquors and sundry items. On July 9, 1953, police officers of the City of Los Angeles entered the store, arrested complainant, and took out the telephone. While the police were in the establishment they found a sack containing a number of betting markers for horses running at a local track. A police officer testified that the telephone rang twice

and that bets were received on both occasions. The complainant testified that he knew nothing of such telephone calls and that the betting markers were mutual tickets which he had secured at the race track the day before the raid. The complainant was tried in court on October 3, 1953 on charges of bookmaking, and the matter was submitted on the preliminary transcript, with no witnesses for the prosecution. The complainant was found not guilty.

The complainant further testified that he needs his telephone in connection with his business.

Exhibit 1 is a copy of a letter dated July 10, 1953, from the Chief of Police of the City of Los Angeles to the telephone company, requesting that telephone service under number Richmond 7-9018 be disconnected. The position of the telephone company was that it had acted with reasonable cause in disconnecting the telephone service inasmuch as it had received the letter designated as Exhibit 1.

After a consideration of this record we now find that the telephone company's action was based upon reasonable cause as such term is used in Decision No. 41115, dated April 6, 1948 (47 Cal. P.U.C. 853). We further find that the telephone facilities here in question were used as an instrumentality to aid and abet the violation of the law. While it is true that the complainant here was acquitted upon a charge of bookmaking, nevertheless the evidence is uncontroverted to the effect that the telephone was used for the placing of bets. Our order in Decision No. 41115, supra, relates to the use of the telephone facilities rather than to whether or not any particular individual is guilty of bookmaking.

O R D E R

The complaint of Herman Opas against The Pacific Telephone and Telegraph Company having been filed, public hearing having been held thereon, the matter now being ready for decision, and the Commission being fully advised in the premises and basing its decision upon the evidence of record and the findings herein,

IT IS ORDERED that the complainant's request for restoration of telephone service be denied and that the said complaint be and it hereby is dismissed. The temporary interim relief granted by Decision No. 49387 in Case No. 5510 is hereby set aside and vacated.

IT IS FURTHER ORDERED that upon the expiration of thirty days after the effective date of this order the complainant herein may file an application for telephone service, and if such filing is made The Pacific Telephone and Telegraph Company shall install telephone service at complainant's place of business at 1525 South Grand Avenue, Los Angeles, California, such installation being subject to all duly authorized rules and regulations of the telephone company and to the existing applicable law.

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

Dated at San Francisco, California, this 2nd day of March, 1954.

A. Z. [Signature]
President
Justice F. [Signature]
[Signature]
[Signature]
[Signature]
Commissioners