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ORIGINAL

Decision No. 54823

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA.

JOHN E. TEVERBAUGH, H. D.
ROBERT D. TEVERBAUGH,

Complainants

vs

CONTRA COSTA GOLF CLUB,

Defendant

Case No. 5847

Ring & Turner, by Harold H. Turner, for com-
plainants;
Sam W. Hall, Jr., for defendant;
Robert C. Roock, for the Commission staff.

OPINION AND ORDER

The above-entitled complaint, filed November 7, 1956, alleges in substance that defendant is a public utility water corporation and as such is subject to the jurisdiction of this Commission.

Defendant denies that it is now or ever has been engaged in the public utility water business and alleges that it provides water service solely to its members.

Public hearing in the matter was held before Examiner F. Everett Emerson on March 1, 1957, at San Francisco. The matter was submitted on the record made on that date and after oral argument.

Defendant's articles of incorporation declare it to have been formed as a nonprofit corporation for social purposes. The articles provide that the club may acquire, use and occupy lands and other property, both real and personal, for the purpose of promoting social intercourse among and furnishing pleasure and happiness to the members thereof, and in connection therewith to

provide suitable sites, clubhouses and other buildings, equipment and improvements. It is further provided that the club may also sell, lease and convey real and personal property. The articles are dated January 13, 1925 and state that the term of existence is fifty years. The corporate powers, business and property of the club are conducted and controlled pursuant to regularly established by-laws.

Defendant's by-laws provide for classes of membership, applications and admission to membership, the issuance of certificates of membership, resignations, membership transfers, serving of notices, fees and dues, assessments, payment of dues and indebtedness, discipline, and complaints, fines and suspensions and expulsions, annual and special meetings, government by a board of directors, election of and duties of officers, standing committees, the introduction of visitors and guests, amendments to the by-laws, and a specific provision (Article V) that "In all cases, application for membership of any kind, receipt or transfer of any membership, or payment of any fees or dues, shall constitute and create unconditional assent to the By-Laws of this Club, and thereby create an executed contract binding upon such member."

The club acquired land, constructed a golf course, erected a clubhouse and in its early years had certain cabins or houses erected on the property for rent to its members. It obtained water service from the public utility serving the general area and piped the water to various parts of its properties. From time to time it has sold portions of its land to its members and the rental units no longer exist. Members have erected homes on sites purchased from the club. The club presently has a membership of 513 of which approximately 39 own homes within the boundaries of

the club's original lands. Water service has been rendered to these homesites over a period of many years and charges for measured water usage have been additive to the members' monthly statement of club dues. In no instance has the club extended its piping system beyond the limits of its original boundaries nor has it ever provided water service to any but itself and the properties of its members and we so find.

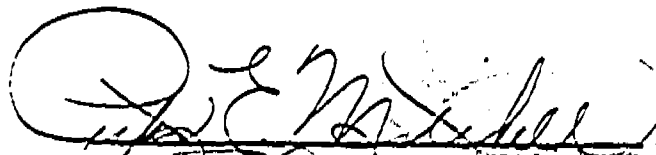
Complainants are members of the club and now hold certain parcels of land at one time owned by the club. They have subdivided or desire to subdivide their parcels into additional homesites and to sell such homesites to others. They have had a water pipe installed along the rear of the newly created lots and such pipe has been connected to the piping of the club, with the intent that the new lots would receive water from the club's water system. Defendant, however, will not supply water to such lots unless the owners thereof are members of the club. Complainants desire to sell the lots but cannot find purchasers, they assert because of the present high cost of club membership. Hence, they desire to sell to non-members but find that the lots cannot be so sold because of the refusal of the club to supply water to non-members. Complainants apparently brought this action before the Commission in the hope that defendant would be found to be a public utility and that thereby water service would be made available to the lots irrespective of the membership status of the new purchasers.

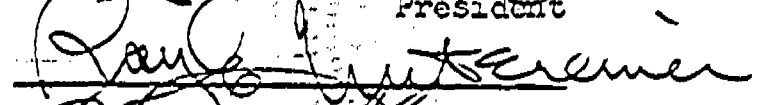
Complainants seem to place considerable reliance on those sections of the Public Utilities Code numbered 2701 to 2705 and urge that because defendant is not organized for the purpose solely of delivering water to its members it necessarily follows that defendant is a public utility. Such premise is faulty.

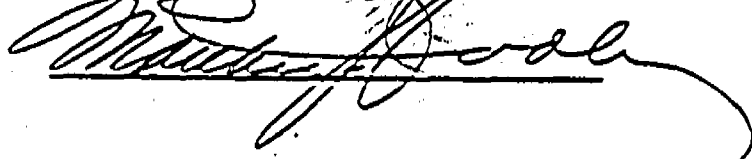
Irrespective of what other or supplemental criteria may be applied, the basic premise must be that of clear and unequivocal dedication to a public use. Such dedication is never presumed but must be based upon evidence of unequivocal intention or other action which, in law, results in dedication. As the record herein fails to support a finding of dedication to public use but to the contrary will support only a finding that a private use devoted solely to defendant's own members is the most that has been established, the complaint must be dismissed; therefore,

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

Dated at San Francisco, California, this 22 day of APRIL, 1957.



President




Commissioners

Rex Hardy

Commissioner C. Lyn Fox, being necessarily absent, did not participate in the disposition of this proceeding.