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Decision No. 64151

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation into the operations and practices of the LOS ANGELES METROPOLITAN TRANSIT AUTHORITY.)

Case No. 7295

Musick, Peeler & Garrett by Thomas J. Reilly, for respondent.
Bodle & Fogel by George E. Bodle and Stephen Reinhardt, for General Grievance Committee, Brotherhood of Railroad Trainmen, Los Angeles Metropolitan Transit Authority; George W. Ballard, for Brotherhood of Railroad Trainmen AFL-CIO California Legislative Board; E. A. McMillan, for Brotherhood of Railway Clerks, interested parties.
Bernard F. Cummins, for the Commission staff.

McKEAGE, Commissioner

OPINION

Public hearing was held in this case at Los Angeles before Examiner Chiesa on June 13, 1962, and was submitted on that date upon briefs to be filed not later than June 30, 1962, by those electing so to do. Such briefs have now been filed and the matter is ready for decision.

The respondent, Los Angeles Metropolitan Transit Authority, appeared specially, offered no evidence and rested its defense upon a motion to dismiss on the general ground that the state Constitution denies to the Legislature authority to confer upon this Commission any regulatory jurisdiction over said respondent, and that, therefore, the Commission was without jurisdiction in the premises. The staff of the Commission presented evidence, both oral and documentary. Since this case, in essence, presents only a question of law, discussion of this evidence becomes unnecessary.

The narrow question for resolution is whether the Legislature had authority to confer upon the Commission regulatory jurisdiction over said respondent. That the Legislature had plenary authority to prescribe regulatory standards binding upon respondent cannot be doubted for the simple reason that said respondent was created by legislative act.

The Legislature, at its 1957 Regular Session, enacted the Los Angeles Metropolitan Transit Authority Act of 1957 (Chap. 547, Stats. 1957, p. 1609), which created the Los Angeles Metropolitan Transit Authority, respondent herein. As its name implies, this respondent was created for the purpose of engaging in the business of operating a public transportation system in the Los Angeles metropolitan area, located in the southern part of this state.

Pursuant to the provisions of said Act, respondent acquired the major privately owned passenger transportation systems operating in the Los Angeles metropolitan area and is presently operating as a public carrier of passengers, baggage and mail in that area. Primarily, respondent is engaged in the transportation of passengers by means of motor coaches, trolleys and buses, although not limited to such instrumentalities of transportation.

Section 3.2 of said Act specifically provides that said Authority is a public corporation of the State of California and not a "state agency," as defined by Section 11000 of the Government Code.

At the 1961 Regular Session, the Legislature amended Section 3.2 of said Act by adding thereto the following provisions:

> "The authority shall be subject to the jurisdiction of the Public Utilities Commission with respect to safety rules and other regulations governing the operation of passenger stage corporations and street railroad corporations as contained in General Order No. 98 of the commission, or any modification thereof." (Chap. 1571, Stats. 1961, p. 3396.)

Because of the fact that said respondent contends that the amendment to said section is unconstitutional and void, and because of the further fact that said respondent refuses to comply with the 1961 amendment to said section and the directions of the Commission issued pursuant thereto, the above-entitled case was instituted with a view to compelling compliance by respondent with said amendment to said section.

Preliminarily, we will dispose of the contention raised in the briefs that this Commission does not have the authority to declare an act of the Legislature to be invalid because it conflicts with the Constitution of this state. For the reasons we will hereinafter state, we hold that the Commission has such authority.

Within the limits of its jurisdiction, the Commission exercises the judicial (not merely quasi-judicial) authority of this state, and within those limits it stands next to the Supreme Court of this state, no other state court having any jurisdiction whatsoever over the Commission. (City of Oakland v. Key System Transit Lines, 52 Cal. P.U.C. 779, 783.) Had the Legislature so desired, it could have withdrawn from all state courts any jurisdiction whatsoever over the Commission, leaving any review of its action to the federal courts. (Clemmons v. Railroad Commission, 173 Cal. 254, 256-258; Pacific Tel. & Tel. Co. v. Eshleman, 166 Cal. 640.) That this Commission exercises the judicial authority of this state has been

repeatedly held in many decisions of the Supreme Court of California. That the state Constitution and the Public Utilities Act deliberately and designedly conferred judicial powers upon the Commission cannot be doubted. The fact that the Commission does not bear the name of "court" is wholly immaterial.

The Commission is both a court (judicial tribunal) and an administrative tribunal, exercising both judicial and legislative powers. (Pacific Tel. & Tel. Co. v. Eshleman, 166 Cal. 640, 650, 689; City of San Jose v. Railroad Commission, 175 Cal. 284, 288; People v. Western Air Lines, Inc., 42 Cal. (2d) 621, 631-632; Sexton v. Atchison etc. Ry. Co., 173 Cal. 760, 763-764.) The Supreme Court, in the case of Pacific Tel. & Tel. Co. v. Eshleman, supra, comprehensively construed the 1911 amendments to Article XII of the state Constitution and the Public Utilities Act for the first time and stated the judicial nature of the Commission in the following clear and unmistakable language:

> " . . . As the Public Utilities Act is here for the first time before this court, as the question is thus fairly within this case, and as to ignore it is but to necessitate its consideration in subsequent litigation, it is proper to say that we hold the powers and functions of the railroad commission in many instances, and in the present one, to be of a highly judicial nature. That judicial powers were with deliberation vested in the commission the language of the constitution and of the legislative enactments following the constitution leave no doubt. Thus the constitution itself declares: 'The commission shall have the further power . . . to hear and determine complaints against railroad and other transportation companies; to issue subpoenas and all necessary process and send for persons and papers; and the commission and each of the commissioners shall have the power to administer oaths, take testimony and punish for contempt in the same manner and to the same extent as courts of record.' (Sec. 22, art. XII.) While without quoting, a reading of sections 22 and 23

of article XII of the constitution and of sections 53 to 81 of the Public Utilities Act will establish beyond doubt that the railroad commission is empowered to sit, and in the performance of its most important duties must sit, as a tribunal exercising judicial functions of great moment. It may be said that the final order of the commission in many instances is legislative-administrative in character, but none the less the ordained procedure by which this result is to be reached, the determination of controverted facts between private litigants and disputants, and the decision upon these controverted matters, are strictly judicial. (Robinson v. Sacramento, 16 Cal. 208; Imperial Water Co. v. Board of Supervisors, 162 Cal. 14, /120 Pac. 780/.)" (166 Cal. 640, 650.) (Emphasis supplied.)

In this same case the Supreme Court concluded as follows:

"We may now sum up our conclusions as follows:

"1. The constitution has, in the railroad commission, created both a court and an administrative tribunal.

"2. The constitution has authorized the legislature to confer additional and different powers upon this commission touching public utilities unrestrained by other constitutional provisions.

"3. The legality of such powers as the legislature has or may thus confer upon the commission, if cognate and germane to the subject of public utilities, may not be questioned under the state constitution.

"4. That therefore the deprivation of jurisdiction of the courts of the state may not be questioned." (166 Cal. 640, 689.)

Later on, the Supreme Court, in the case of City of San Jose v. Railroad Commission, 175 Cal. 284, at pages 288 and 290, had the following to say with regard to the authority and judicial nature of the Commission:

> ". . . In the opinion in that case, which was prepared by Mr. Justice Henshaw, the following language was used at page 658 [of 166 Cal.]: 'We regard the conclusions as irresistible that the Constitution of this state has in unmistakable language created a commission having control of the public utilities of the state, and has authorized the legislature to confer upon that commission such powers as it may see fit, even to the destruction of the safeguards, privileges, and immunities guaranteed by the Constitution to all other kinds of property and its owners.'" (175 Cal. 284, 288.)
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> ". . . We do not regard the omission to provide definite process to bring the city before the commission at a hearing on the necessity for a safe crossing as being fatal to the acquirement of jurisdiction over the municipality by the commission. The latter is both a court and an administrative tribunal. As a judicial body it has by implication all the powers necessary for the exercise of its duty . . . ." (175 Cal. 284, 290.)

Between the time of the decision by the Supreme Court in the City of San Jose case and up to a few years ago, decisions had been rendered by the Supreme Court touching upon the status and authority of the Commission, which appeared to be contra to the holdings in the Eshleman, Sexton and City of San Jose cases. These conflicts came before the Court in the relatively recent case of People v. Western Air Lines, Inc., 42 Cal. (2d) 621, and the Supreme Court resolved these conflicts in the following language which set aside all doubt as to the judicial nature of the Commission:

> "It was also said in the Stratton case that 'the commission is essentially an administrative and legislative tribunal, and not a court,' and the fact that the commission must make determinations of fact for its own guidance 'does not make it a court or change the character of its decrees from administrative or legislative orders into judicial judgments.' These and other statements in the opinion in that case are inconsistent with the decisions of this court both before and after it on the subject of the judicial power of the commission. Insofar as they are so inconsistent they are overruled.
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> "There can be no question but that the commission exercised its judicial power in determining the three matters above referred to." (42 Cal. (2d) 621, 632.)

The fact is that the constitutional amendments of 1911 and the Public Utilities Act, which was enacted in implementation thereof, did take away from the courts of this state considerable of their jurisdiction as concerned the public utility regulatory field, and deposited that jurisdiction and authority with the Commission. As the Supreme Court pointed out in the Eshleman and Clemmons cases, supra, all review authority over the action of the Commission could have been removed from the courts of this state and judicial review left to the federal courts had the Legislature so determined. However, a limited statutory judicial review was granted to the Supreme Court of this state.

As an indication of the judicial authority exercised by the Commission, we point out that the Supreme Court has held that the Commission, in the exercise of its jurisdiction, has authority to set aside final judgments of the courts of this state, even though such judgments may have been affirmed by the Supreme Court. (Miller v. Railroad Commission, 9 Cal. (2d) 190, 197-198.) If the Commission has kept within the limits of those sections of Article XII of the state Constitution, which apply to the regulation of public utilities, and the legislative acts conferring jurisdiction upon it,

its action will prevail over any conflicting provisions of the state Constitution or any other act of the Legislature. (Pacific Tel. & Tel. Co. v. Eshleman, 166 Cal. 640, 650, 655-656, 658, 689; Clemmons v. Railroad Commission, 173 Cal. 254, 256-258; Sexton v. A.T. & S.F. Ry. Co., 173 Cal. 760, 762; San Jose v. Railroad Commission, 175 Cal. 284, 288; Miller v. Railroad Commission, 9 Cal. (2d) 190, 195; Southern Pacific Co. v. Public Utilities Commission, 41 Cal. (2d) 354, 359-361; Pickens v. Johnson, 42 Cal. (2d) 399, 404.) Such authority has been conferred by Sections 22 and 23 of Article XII of the state Constitution. To illustrate, the following language is quoted from Section 22 of Article XII:

> "No provision of this Constitution shall be construed as a limitation upon the authority of the Legislature to confer upon the Public Utilities Commission additional powers of the same kind or different from those conferred herein which are not inconsistent with the powers conferred upon the Public Utilities Commission in this Constitution, and the authority of the Legislature to confer such additional powers is expressly declared to be plenary and unlimited by any provision of this Constitution."

Section 22 of Article XII of the state Constitution confers conventional judicial powers upon the Commission, even to empowering the Commission to commit for contempt in the same manner as any court of record. Also, by virtue of the several provisions of the Constitution and the Public Utilities Act, the Commission is authorized to render judgments, issue injunctions and writs of mandate, and levy fines and penalties. These are strictly judicial powers. Unlike many regulatory agencies, the Commission is not required to rely upon the aid of the courts to enforce its decisions. The Commission is empowered to enforce its own decisions in the same manner as a court.

In light of the foregoing judicial powers possessed by the Commission, it is idle to cite authorities from other jurisdictions or the decisions of this Commission which may appear to question the authority of a regulatory body to declare unconstitutional a legislative act. As noted heretofore, the Supreme Court has repeatedly pointed out that the Commission is both a court and an administrative tribunal. For the foregoing reasons, we hold that the Commission has the authority to pass upon the constitutionality of Section 3.2 of the Los Angeles Metropolitan Transit Authority Act of 1957, as said section was amended in 1961.

Therefore, we shall proceed to inquire into that issue.

In limine, we must ever keep in mind the fundamental rules whereby the constitutionality of a statute is tested. All presumptions and inferences support the validity of the assailed statute. If it may reasonably be held that the statute is valid, it is the duty of the court to save the statute, even though it may equally be held that it is invalid. Furthermore, a court is "bound to assume the existence of any state of facts which would sustain the statute in whole or in part." (Alabama State Federation of Labor v. McAdory, 325 U.S. 450, 465-466; Pacific States Box & Basket Co. v. White, 296 U.S. 176, 185-186.)

The test repeatedly prescribed by the state Supreme Court as to the authority of the Legislature to confer jurisdiction upon the Commission is: Is the jurisdiction so conferred cognate and germane to the regulation of public utilities? (East Bay Municipal Utility District v. Railroad Commission, 194 Cal. 603, 608; Pacific Tel. & Tel. Co. v. Eshleman, supra.) If the answer is "Yes," such action of the Legislature may not be questioned under the state

Constitution. (East Bay Municipal Utility District v. Railroad Commission, supra; Pacific Tel. & Tel. Co. v. Eshleman, supra.) The critical issue may thus be stated: Does the exercise by the Commission of jurisdiction over respondent, as specified in the 1961 amendment to Section 3.2 of the Los Angeles Metropolitan Transit Authority Act of 1957, constitute a matter which is cognate and germane to the regulation of public utilities?

That respondent is performing a public utility service may not be doubted, albeit it is a public corporation. Does the fact that respondent is not privately owned constitute a jurisdictional bar to action by the Legislature pursuant to the powers conferred upon it by Sections 22 and 23 of Article XII of the Constitution? Let us reason by analogy.

The Commission, pursuant to the provisions of the Public Utilities Act (Sections 1201-1220), exercises exclusive jurisdiction over the matter of railroad grade crossings and is empowered to enforce a wide range of jurisdiction over the state, state agencies, counties, cities and other political subdivisions. No such entity may establish a grade crossing or separation of grades without the authority of the Commission. The Commission may establish or authorize the establishment of such a crossing or order or authorize the separation of grades and assess against such entities costs therefor. In numerous cases, the Supreme Court has held this authority in grade crossing matters to be cognate and germane to the regulation of public utilities and has broadly upheld the jurisdiction of the Commission. (San Mateo v. Railroad Commission, 9 Cal. (2d) 1, 4-6; San Bernardino v. Railroad Commission, 190 Cal. 562, 565.)

In connection with the Commission's jurisdiction over railroad grade crossings, other illustrations of authority exercised by it over public bodies could be cited, but we believe the foregoing illustrations are sufficient for present purposes.

The Commission has jurisdiction to fix the amount of the charge to be paid by a municipality for public utility service. (San Leandro v. Railroad Commission, 183 Cal. 229, 235.)

In the regulation of passenger stage corporations operating over city streets, the regulatory orders of the Commission, as to streets to be traveled, take precedence over any city ordinance, rule or regulation in conflict therewith. (Section 1033, Public Utilities Code; Bay Cities Transit Co. v. Los Angeles, 16 Cal. (2d) 772, 775; Los Angeles Ry. Corp. v. Los Angeles, 16 Cal. (2d) 779, 783.)

Regulation of private freight carriers by the Commission has been held to be a matter cognate and germane to the regulation of public utilities for the reason, among others, that the private carrier competes with the public utility carrier. (Morel v. Railroad Commission, 11 Cal. (2d) 488, 492.) We cite the fact that the respondent, herein, operates in competition with public utility carriers which are subject to this Commission's jurisdiction.

Since 1915, the Commission, pursuant to an act of the Legislature, has exercised jurisdiction over the construction, erection or maintenance of electric power lines owned or operated by the state, a county, city and county or other political subdivision. (Chap. 600, Stats. 1915, p. 1058.) In obedience to said statute, the Commission has promulgated General Order No. 95, and predecessor general orders, which have implemented such statute in extensive detail. The statute in question and the general order, also,

apply to private persons, including corporations. The salutary effect of the Commission's safety regulation in this field is illustrated by the decision of the Supreme Court in the case of <u>Snyder</u> v. <u>Southern California Edison Co.</u>, 44 Cal. (2d) 793.

In the promotion of public safety, as applied to publicly owned and operated underground electric lines, the Legislature, in 1917, placed under the jurisdiction of the Commission the regulation of the construction and maintenance of such lines and the underground chambers in which said lines are placed. (Chap. 575, Stats. 1917, p. 801.)

Chapter 600, Statutes of 1915 (overhead electric power lines), and Chapter 575, Statutes of 1917 (underground electric lines), heretofore referred to, are codified in the Public Utilities Code as Sections 8001-8057 of said code.

The cases of <u>Polk</u> v. <u>City of Los Angeles</u>, 26 Cal. (2d) 519, and <u>Los Angeles Metropolitan Transit Authority</u> v. <u>Public Utilities Commission</u>, 52 Cal. (2d) 655, cited by staff counsel, are pertinent to the issue here involved. In the case of <u>Polk</u> v. <u>City of Los Angeles</u>, the Supreme Court unequivocally held that Chapter 600, Statutes of 1915 (overhead electric power lines), and the implementing general order issued by the Public Utilities Commission were valid and binding upon the City of Los Angeles. The court further held that the matter of safety of overhead line maintenance is a matter of state-wide, rather than local, concern and that the state law is paramount. (26 Cal. (2d) 540-542.) While it is true that

the court stated that such did not constitute the exercise of jurisdiction over the city, such statement was plainly dictum. The matter there in issue and there decided by the Supreme Court was the applicability and binding nature of the general order of the Commission to and upon the City of Los Angeles. What was held in Polk v. City of Los Angeles, supra, is equally applicable to the instant case. In the case of Los Angeles Metropolitan Transit Authority v. Public Utilities Commission, supra (decided in 1959), the Supreme Court clearly implied that legislation conferring jurisdiction upon the Commission to regulate the operations of the Authority would be valid. The view of the court in that regard is expressed in the following language appearing at page 661 of the decision:

> "The 1951 Act gave the Authority some of the foregoing powers, but expressly provided that it could exercise its powers only under the regulatory control of the Public Utilities Commission. The Authority's routes and rates, and contracts were also subject to control by the Public Utilities Commission. Under the 1957 Act the commission has no control over the Authority with respect to any of these matters. In the absence of legislation otherwise providing, the commission's jurisdiction to regulate public utilities extends only to the regulation of privately owned utilities." (Emphasis supplied.)

In order to better delineate a pertinent and material frame of reference and background concerning the issue in this case, it will be helpful to refer to the genesis of this Commission. As pointed out by the Supreme Court in the case of Pacific Tel. & Tel. Co. v. Eshleman, supra, the people, at the special election of October 10, 1911, amended Article XII of the Constitution and created a constitutional body then known as the Railroad Commission (P. 653 of said decision.). Pursuant to the provisions of Section 23

of Article XII, the term "public utilities" was defined and said provisions of said section brought all such public utilities under the control of the newly-created Railroad Commission (P. 653 of said decision.) The court further stated that "In view of these considerations we regard the conclusion as irresistible that the constitution of this state has in unmistakable language created a commission having control of the public utilities of the state, and has authorized the legislature to confer upon that commission such powers as it may see fit, even to the destruction of the safeguards, privileges, and immunities guaranteed by the constitution to all other kinds of property and its owners . . . ." (P. 658 of said decision.) Further expounding the policy of the people as expressed in these constitutional amendments of 1911, the court pointed out "that the constitution itself has designedly conferred upon the legislature the fullest possible powers to legislate concerning public utilities <u>through</u> the board of railroad commissioners; that it was intended that upon the board of railroad commissioners should be conferred whatsoever powers the legislature saw fit, and that nothing in any other provisions of the constitution should hamper the legislature in so doing; . . . ." (P. 654 of said decision.) (Emphasis supplied.) Based upon these constitutional amendments and the Public Utilities Act, the Supreme Court has held that this Commission exercises <u>exclusive</u> jurisdiction over all public utilities. (<u>Pacific Tel. & Tel. Co</u>. v. <u>City of Los Angeles</u>, 44 Cal. (2d) 272, 280, and numerous other cases decided by the Supreme Court so holding.)

In light of the history concerning the genesis of this Commission and the many expressions by the Supreme Court of this state with regard to the jurisdiction of said Commission, it cannot be doubted that the people and the Legislature intended to place under the supervision and regulatory control of the Commission all public utility matters. (Sections 701 and 702, Public Utilities Code.) There is nothing in the history or the law over the period of more than fifty years during which the Commission has been in existence, as reconstituted by the constitutional amendments of 1911, to indicate that the view here expressed is incorrect.

With regard to the issue presented in this case, it may be reasonably inferred that the Legislature believed that the expertise of the Commission and its staff of engineering and safety experts were needed to protect the public safety and interest in connection with the operations of the respondent herein. This view is borne out by the fact that the first legislative act seeking to establish a Los Angeles Metropolitan Transit Authority placed the same under the jurisdiction of the Commission, as pointed out by the Supreme Court in the case of Los Angeles Metropolitan Transit Authority v. Public Utilities Commission, supra, at page 661 of said decision, and, thereafter, changed such policy in the 1957 Act to exclude Commission jurisdiction over the Authority. But, after a representative period of operation, the Legislature decided to subject said Authority to the jurisdiction of the Commission. In other words, the experience in operation convinced the Legislature that the respondent was in need of the regulatory jurisdiction of the Commission. The 1961 amendment to Section 3.2 of the Act is specific

in its grant of jurisdiction to the Commission and the subjecting of respondent to the provisions of the Commission's General Order No. 98. These facts and circumstances unite to compel the conclusion that the Legislature, being fully apprised of the expertise of the Commission, decided that the public interest required the exercise by the Commission of jurisdiction over respondent. This view is in keeping with the Legislature's policy, as heretofore pointed out, with regard to the safety aspects of overhead and underground electric lines, both privately owned and publicly owned. This legislative policy of uniform state-wide regulation of such safety matters has been clearly recognized by the Supreme Court in the case of Polk v. City of Los Angeles, supra, heretofore adverted to. There can be little doubt that a uniform state-wide policy of safety regulation is in the general public interest. Such matters are not matters of local interest and concern. The Commission, being a constitutional body exercising state-wide jurisdiction, is the logical agency of the state to exercise authority of this nature.

There are only two decisions cited by respondent which we need to consider. They are City of Pasadena v. Railroad Commission, 183 Cal. 526, and Water Users and Taxpayers Assn. of Merced v. Railroad Commission, 188 Cal. 437, which latter case is based upon the former. In the Pasadena case, the Supreme Court held that the constitutional amendments of 1911 and the Public Utilities Act did not confer jurisdiction upon the Commission to require the City of Pasadena to file with the Commission a schedule of rates, charges, rules and regulations for the service of electric energy supplied by an electrical plant owned and operated by said

city. In other words, the court held that the Commission did not have jurisdiction over an operation of that kind. Bear in mind that there was nothing in the Public Utilities Act which specifically conferred jurisdiction upon the Commission over an electrical plant operated by a city such as Pasadena. The Commission there relied upon the general provisions of the Public Utilities Act. The decision in the Merced case adds nothing to the decision in the Pasadena case, except that it extended, by way of dicta, the rule in the Pasadena case to include irrigation districts. (Water Users etc. Assn. v. Railroad Commission, supra, p. 443.) Therefore, if it be demonstrated that the Pasadena case has no application to the instant case, further discussion of the Merced case would be unnecessary.

The Pasadena decision was based upon the premise that Section 23 of Article XII of the Constitution comprehended only privately owned utilities and could not be extended to publicly owned utilities by implication. It will be noted that the type of operation comprehended in the Pasadena case is to be found in said Section 23. The operation concerned in the instant case is one having to do solely with public transportation. While there may be merit to the contention made by counsel representing the General Grievance Committee of the Brotherhood of Railroad Trainmen that the term "common carrier" appearing in Section 23 is not limited to privately owned utilities, we do not deem it necessary to rest our holding in any way upon this premise. Sections 17, 20, 21 and 22 of Article XII of the Constitution refer to railroads, common carriers and transportation companies. Nowhere in any of these

sections will be found any qualification upon those terms with regard to the entities therein referred to being either public or private corporations. The Supreme Court of the United States has held that the provisions of the Railway Labor Act apply to a publicly owned common carrier, although not specifically denominated as such. That court held that the publicly owned and operated San Francisco Belt Railroad was subject to said Act. (State of California v. Taylor, 353 U.S. 553, 561-564.) Also, said carrier is subject to the Interstate Commerce Act, the Supreme Court having so held (353 U.S. 562). If the Supreme Court of the United States has properly interpreted the Railway Labor Act and the Interstate Commerce Act, then it is good law to interpret the terms "railroad," "common carrier," and "transportation company," contained in said sections of Article XII, as comprehending both publicly and privately owned utilities. The respondent, under well recognized rules of construction, is a common carrier and a transportation company within the purview of the sections of Article XII just adverted to. (Western Assn. of Short Line Railroads v. Railroad Commission, 173 Cal. 802; People v. Western Air Lines, 42 Cal. (2d) 621.) We agree with the contention made by counsel for the General Grievance Committee of the Brotherhood of Railroad Trainmen that the Pasadena case is not applicable in the instant proceeding for the simple reason that jurisdiction over an entity such as respondent may be conferred upon the Commission by the Legislature pursuant to the provisions of Sections 17, 20, 21 and 22 of Article XII of the state Constitution. This cardinal distinction was clearly recognized by the Pasadena case, wherein the court uttered the following distinguishing language:

". . . Section 22, before the amendment of 1911, also created a Railroad Commission and granted to it certain powers over common carriers in language in many respects similar to the amendment. Considering all these circumstances, the only reasonable conclusion is that the authority intended to be given to the legislature by this section to confer powers upon the Railroad Commission must be limited to the subject of powers over common carriers and transportation and the control and regulation thereof by the commission, and such other things as may be necessary or convenient for the proper and effectual exercise of such powers of regulation and control. The subject of similar powers over all other classes of public utilities carried on by private corporations or persons is covered by the provisions of section 23, as we have seen. . . ." (183 Cal. 533-534) (Emphasis supplied.)

In light of these constitutional provisions, it cannot be doubted that the jurisdiction conferred upon the Commission by the 1961 amendment to Section 3.2 of the Los Angeles Metropolitan Transit Authority Act of 1957 constitutes matters cognate and germane to the regulation of public utilities, and that the Legislature had plenary authority, pursuant to the provisions of Section 22 of Article XII of the Constitution, to confer jurisdiction over respondent upon the Commission, as prescribed by the 1961 amendment to Section 3.2 of said Act.

It is unnecessary, of course, to consider the effect of the Pasadena case upon a utility which is not within the scope of Section 22 of Article XII.

Premised upon the foregoing authorities, we hold that Section 3.2 of said Act, as amended in 1961, does not conflict with or offend, in any way, the Constitution of this state, and that such section is valid and binding upon the respondent herein. Accordingly, the motion made by respondent to dismiss will be denied and an order will be entered herein ordering and directing said respondent to comply with the provisions of Section 3.2 of said Act.

C. 7295 ET*

I recommend the following form of order.

ORDER

Based upon the holding in the foregoing opinion,

IT IS ORDERED that:

1. The motion to dismiss made by the respondent, Los Angeles Metropolitan Transit Authority, be and the same is hereby denied.

2. Respondent, Los Angeles Metropolitan Transit Authority, shall comply immediately with the safety rules and other regulations governing the operation of passenger stage corporations and street railroad corporations as contained in General Order No. 98 of the Commission, or any modification thereof.

3. Respondent, Los Angeles Metropolitan Transit Authority, shall make available to the representatives of the Commission any and all of its records, equipment, and other instrumentalities and property to enable the Commission to carry out the provisions of Section 3.2 of the Los Angeles Metropolitan Transit Authority Act of 1957, as amended in 1961, and shall grant to said representatives access to its plant and properties for such purpose.

This decision shall become effective twenty days after personal service of a copy of this decision upon said respondent.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Public Utilities Commission of the State of California.

Dated at San Francisco, California, this 21st day of August, 1962.

George G. Grover, President

[signatures]

Commissioners