ORIGINAL

Decision No. 66565

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

UTILITY USER'S LEAGUE OF CALIFORNIA, a non-profit citizens association, and EDWARD L. BLINCOE, a consumer of services, Complainants vs. THE ATCHESON, TOPEKA AND SANTA FE RAILWAY COMPANY, a corporation, THE HARBOR BELT LINE ROAD, THE LOS ANGELES JUNCTION RAILWAY COMPANY, a corporation, THE PACIFIC ELECTRIC RAILWAY COMPANY, a corporation, SOUTHERN PACIFIC COMPANY, a corporation, UNION PACIFIC COMPANY, a corporation, VENTURA COUNTY RAILWAY COMPANY, a corporation, THE CONTINENTAL BUS LINES, a corporation, THE SANTA FE TRANSPORTATION COMPANY, a corporation, THE WESTERN GREYHOUND COMPANY, a corporation, THE YELLOW CAB COMPANY, a corporation, Corporations 1 to 50, Partnerships 1 to 10, John Doe 1 to 10, Mary Roe 1 to 10, Defendants.	Case No. 7767

ORDER OF DISMISSAL

The above complaint was filed by Edward L. Blincoe, "in person and as President, Utility User's League of California." It names as defendants seven railroad corporations, three bus companies, a taxicab company, and the Los Angeles Metropolitan Transit Authority.

The complaint contains four causes of action. The first cause alleges discrimination in that defendants are failing to

provide through service and joint rates, with adequate transfer privileges, at hours convenient for commuting, as compared to such service provided by some of the defendants in the San Francisco-East Bay Area.

The second cause alleges that defendants have failed to furnish such adequate and reasonable transportation service as is needed to meet the needs of the citizens of the Los Angeles Metropolitan Area.

The third cause alleges that defendants have failed to provide through routes, joint fares, and interchange of passengers, under schedules of fast and frugal service, needed in the Los Angeles Metropolitan Area.

The fourth cause alleges that testimony before a legislative committee indicates various persons propose there be built additional transportation facilities, and propose that general tax revenues of the area be hypothecated to guarantee any revenue deficit from the fare boxes. It is alleged there is currently in operation over 600 miles of rail lines in the area, that such operation has been accepted by adjacent users of land, and could be extended without substantial popular objection. Unless defendants are required to provide adequate, frequent, fast and frugal service there will be a vast expenditure for duplication of existing right of way and trackage. This would divide existing revenues even further, and require the traveling public to support operation, tax, depreciation, and return on investment of duplicate facilities.

The prayer of the complaint is for an order as follows:

> "1. said defendants and each of them should be required to provide to the public a frequent, fast and frugal commuter service for passengers within the LOS ANGELES METROPOLITAN AREA on through routes and joint rates and with suitable local transfer privileges;

2. the defendants providing the service do so as a joint venture pooling the revenue and dividing the same in such fashion as they may find agreeable to them and approved by this Commission, or

3. the Commission seek such legislation as may be needed to bring about a fully integrated transportation system for this area."

In essence complainant Blincoe seeks to have the Commission order the various defendants (including a taxicab company, the Metropolitan Transit authority, and several railroads and bus companies) to engage in a joint venture passenger commutation service.

The Commission has jurisdiction over operations of a "passenger stage corporation", but taxicab operations are not subject to Commission regulation. (In re Martinez, 22 Cal.(2d) 259.)

The Commission's jurisdiction over safety practices of the Los Angeles Metropolitan Transit Authority (L. A. Met. Transit Authority v. Public Utilities Commission, 59 A.C. 891), does not extend to regulation of the rates and service of the Authority. The Legislature created the Authority to establish an integrated mass rapid transit system in the area. The Authority has power to enter into agreements with any public utility operating transportation facilities for the joint use of property of the Authority or utility, or the establishment of through routes, joint fares, and transfer of passengers. Creation of the Authority "clearly contemplates that ultimately there shall be a single integrated system of public transportation" in the area, operated by the Authority. Commission "certification of new privately-operated public transit need not interfere with the ultimate achievement of a single integrated system operated by the Authority. It must be assumed that the commission will give heed to that legislative objective and not authorize privately-owned carriers to provide service that the Authority is willing and able

to provide and that the commission will not thereby impede the growth of the Authority's system." (L.A. Met. Transit Authority v. Public Utilities Commission, 52 Cal. (2d) 655, 663, 665.)

Complainant's request for legislation to bring about "a fully integrated transportation system" should be addressed to the Legislature.

There is no allegation in the complaint that defendants are common carriers of passengers within the Los Angeles area, and we take official notice of the fact that several of the defendants are not public utility common carriers of passengers in that area.

Complainant alleges discrimination in that defendants have failed to provide services in the Los Angeles area which "some of the defendants" are providing in the San Francisco area. Complainant refers to Article XII, sec. 21 of the Constitution of California, providing that no "discrimination in charges or facilities for transportation shall be made by any railroad or other transportation company between places or persons, or in the facilities for the transportation of the same classes of freight or passengers ***." An ambiguous allegation that all defendants do not provide a service which "some of the defendants" provide elsewhere, in a pleading which seeks establishment of a joint venture passenger commutation service but does not even allege that defendants are common carriers of passengers in the area, does not state a cause of action under the constitutional provision relating to discrimination.

The allegations of inadequate service are vague, uncertain, and indefinite, and do not comply with procedural Rule 10, which requires that a complaint shall set forth fully and clearly the specific act complained of, in ordinary and concise language, so as to advise completely of the facts constituting the ground of complaint.

Complainant Blincoe should not be unaware of Commission procedure and the requirements of pleading. He has had many complaints dismissed for failure to state a cause of action, dismissed after hearing, or had portions of complaints stricken. For example, see

Utility Users v. Pacific Telephone, (Nov. 12, 1963), Decision No. 66299, Case No. 7738

Robinson v. Cal. W. & Tel. Co., 60 Cal.P.U.C. 687

Blincoe v. Pacific Telephone, 60 Cal.P.U.C. 434

Blincoe v. Pacific Telephone, 60 Cal.P.U.C. 432

Utility Users v. Pacific Telephone, 58 Cal.P.U.C. 22

Utility Users v. Pacific Telephone (Aug. 22, 1961) Decision No. 62442, Case No. 7076

All of the defects inherent in the present pleading have not been mentioned, but they are so numerous and of such a nature that the complaint must be dismissed for failure to state a cause of action. IT IS ORDERED that Case No. 7767 is hereby dismissed.

Dated at San Francisco, California, this 7th day of JANUARY, 1964.

President

Commissioners

Commissioner William M. Bennett, being necessarily absent, did not participate in the disposition of this proceeding.