

Decision No. 67882

**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's  
own notion into the operations,  
rates and practices of RUSSELL  
THOMAS PHILLIPS. )

Case No. 7179

Franklin G. Campbell, for the Commission  
staff and for the affiant, Noel Coleman.

William H. Kessler, in propria persona,  
respondent.

ORDER DENYING MOTION  
TO DISMISS ORDER TO SHOW CAUSE  
IN RE CONTEMPT

On the 16th day of June, 1964, this Commission issued an order requiring William H. Kessler to show cause why he should not be held in contempt of the Commission for each of the alleged contempts set forth in the Affidavit and Application for Order to Show Cause attached to the application.

At the hearing on this Order to Show Cause held before Commissioner Grover and Examiner Cline in Fresno on Thursday, August 27, 1964, the respondent William H. Kessler moved that the present proceeding be dismissed upon the following grounds:

1. The affidavit supporting the Order to Show Cause does not set forth facts sufficient to constitute a contempt of the Commission.

2. The affidavit in support of the Order to Show Cause is insufficient and defective in that:

(a) It shows on its face that it was signed by Mr. Coleman, the Acting Secretary, at the direction of the Commission.

(b) It shows on its face that it was prepared by someone else for the signature of the affiant.

(c) It appears on the face of the document that neither the affiant nor the person or persons who prepared the affidavit were thoroughly familiar with the facts or the law of the case.

3. Decision No. 63441 is invalid, void and in excess of the jurisdiction of the Commission to the extent that it purports to require the respondent, Russell Thomas Phillips, to collect undercharges, barred by Section 339, Subsection 1 of the Code of Civil Procedure.

4. The Order to Show Cause and the supporting documents deprive the respondent, William H. Kessler, of his constitutional right in a quasi-criminal proceeding to be confronted by his accusers.

5. The Commission and the lawyer members of the Commission and the lawyer members of the Commission staff do not have the power or the jurisdiction to tell a practicing attorney how to practice law in the civil courts.

The motion was taken under submission by the Presiding Commissioner and has been presented to the Commission for its consideration.

The affiant, Noel Coleman, the Acting Secretary of the Commission, was present at the hearing and testified that, although the said affidavit was prepared by someone else, he checked the truth of the statements therein contained and willingly adopted them as his own before he executed said affidavit.

At the close of the presentation of the case by the Commission staff, the respondent, William H. Kessler, requested that the matter be continued to a later date for the presentation of his own case. The matter was continued to 9:30 a.m., Monday, October 5, 1964, at the Commission Courtroom in San Francisco.

IT IS ORDERED that said motion to dismiss be denied without prejudice to its renewal at the close of the further hearings.

Dated at San Francisco, California, this 22nd day of SEPTEMBER, 1964.

Fredrick B. Holbrook  
President

John E. Hill

Charles W. Rogers

George L. Grover

Dallan M. Beund  
Commissioners