

ORIGINAL

Decision No. 70053

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

GERALD H. KILGORE,
Petitioner,

vs

GENERAL TELEPHONE AND
TELEGRAPH COMPANY, a
corporation,

Respondent.

Case No. 7971
(Filed August 5, 1964)

GERALD H. KILGORE,
Petitioner,

vs

WESTERN UNION TELEGRAPH
COMPANY, a corporation,

Respondent.

Case No. 7976
(Filed August 10, 1964)

Lemaire and Mohi, by Gary Mohi, for complainant.
Albert M. Hart, H. Ralph Snyder, Jr., and
Donald J. Duckett, by Donald J. Duckett, for
defendant, General Telephone and Telegraph
Company.

Lawler, Felix & Hall, by Robert C. Coppo, for
defendant, Western Union Telegraph Company.

Roger Arnebergh, City Attorney, by James H. Kline,
for the Police Department of the City of
Los Angeles, intervener.

O P I N I O N

Complainant seeks restoration of telephone service in
Case No. 7971 and sports ticker service in Case No. 7976 at
11087 Santa Monica Blvd., Los Angeles 25, California. Order
restraining service discontinuance and interim restoration were
issued pending further order (Decision No. 67684, dated

August 11, 1964, in Case No. 7971, and Decision No. 67715, dated August 18, 1964, in Case No. 7976).

The answer of defendant, Western Union Telegraph Company, in Case No. 7976, alleges that on or about July 30, 1964, it had reasonable cause to believe that the use of the sports ticker service to Gerald H. Kilgore, was being or was to be used as an instrumentality directly or indirectly to violate or aid and abet violation of law, and therefore defendant would be required to disconnect service pursuant to the decision in Re Telephone Disconnection, 47 Cal. P.U.C. 853, except that a temporary restraining order was served on defendant directing defendant to continue the service.

The answer of defendant, General Telephone Company of California, in Case No. 7971, admits that complainant has telephone service under numbers TR 9-0613, TR 9-0614, TR 9-0615, TR 9-0616, TR 9-0617 and GR 4-3402, but denies all other allegations of the complaint.

The two matters were consolidated for hearing by stipulation of all parties and were heard before Examiner DeWolf at Los Angeles on February 16, 1965, and submitted on the same date subject to filing of briefs which are now on file.

By letter of July 27, 1964, the Chief of Police of the City of Los Angeles advised defendant, General Telephone Company of California, that the telephones under numbers GR 4-3402 and TR 9-0613 were being used to disseminate horse-racing information used in connection with bookmaking in violation of Penal Code Section 337a, and requested disconnection (Exhibit 1).

By letter of July 24, 1964, the Chief of Police of the City of Los Angeles advised defendant, Western Union Telegraph Company, that the communication facilities were being used to

disseminate horse-racing information used in connection with book-making in violation of Penal Code Section 337a, and requested disconnection (Exhibit 2).

Exhibits 3, 4, and 5 are copies of the sport pages from the Los Angeles Herald Examiner and are dated Monday, October 12, 1964; Monday, November 16, 1964; and Thursday, November 19, 1964, respectively.

Complainant objected to the intervention of the City of Los Angeles and the participation of the City Attorney in the proceeding on the grounds that the City of Los Angeles is not a proper party before the Commission in this case and that the complainant had no formal notice of its motion to intervene. The City Attorney for the City of Los Angeles contended that it is a real party in interest for the reason that the Los Angeles Police Department investigated and took action against complainant and caused the removal of his telephone and telegraph services. Complainant, in support of his objection, cited People vs. Brophy, 49 Cal. App.2d, page 35. The objection of complainant to the intervention of the City of Los Angeles in the proceeding was overruled by the hearing examiner on the ground that a substantial interest in the proceeding was shown by the City of Los Angeles, intervenor. We affirm that ruling for the same reason.

The complainant testified that: he is a publisher and handicapper and has operated the business listed at 11087 Santa Monica Boulevard for 2½ years under the name of the J. K. Sports Journal; he has six telephones and a sports ticker service; he furnishes scores on various sports, whichever is in season, plus his opinion of the handicap lines (by "line" is meant the odds on a game which are furnished to his subscribers); he does not

take bets or place bets over the telephone; he was arrested and charged with bookmaking and conspiracy and aiding and abetting and the case against him was dismissed and there are no charges pending against him at this time. Complainant testified that his subscribers do not give their names but ask for an identification by a number, and when they call up for handicapping information, identify themselves by such number; his charges for this service would be up to \$25 per week; he did not know the business or occupation of his customers, and did not keep records of their addresses or identities; he also publishes a sports journal and during the baseball season, 2,000 baseball books are published a month of approximately forty pages each, printed weekly, some copies being mailed and others being sold on newsstands at Olympic and LaBrea, in Los Angeles, California; he notifies his subscribers not to use the information from his service for gambling purposes and he had no knowledge that the phone equipment or the Western Union ticker sports service was ever used for any unlawful purposes.

Complainant further testified that he receives scores and bulletins from different happenings in the sports world over Western Union Telegraph from all parts of the world, the East Coast, West Coast and Midwest; his customers would phone in and identify themselves by number and he would give out the scores on the different games and other sporting news, plus the "line" which he makes up, and about half of his customers just take scores and not the "line." Complainant testified that by the "line" is meant the handicap number on a game and that the line on a football game is the point spread between the two teams and in baseball it is the handicap number on a game which is made up

basically by pitchers in the game; his subscribers ask for two different types of "lines", one "line" above a hundred and another "line" below a hundred, and he makes up these "lines" by himself and does not get them elsewhere.

Complainant introduced into evidence pages from the Herald Examiner, Exhibits 3, 4, and 5, mentioned above, and testified that he distributes information similar to the information contained in the sports section of the newspapers about betting on sports events such as baseball games, basketball and boxing.

Defendants' evidence consisted of Exhibits 1 and 2, introduced by stipulation of the parties, and no witnesses were called by defendants.

The intervenor, City of Los Angeles, called four police officers and an agent of the Federal Bureau of Investigation.

The four police officers testified that they were assigned to the Administrative Vice Division of the Los Angeles Police Department, having from two to eleven years' experience in the department. One of the witnesses testified as to his experience in bookmaking investigation and stated he testified as an expert on the subject in the Municipal Court and in the Superior Court and before the Grand Jury, and has taught sports bookmaking at the Los Angeles Police Academy and at the Los Angeles State College.

The witnesses testified that complainant furnishes the betting line for his customers, and this is the betting line which bookmakers and bettors use to place and accept wagers in the County of Los Angeles and it is not possible for sports bookmakers to exist, for any extended period of time, without a service such as complainant provides, and such service aids and abets the

operations of sports bookmaking. The witnesses further testified that all of the people who utilize the type of service which complainant furnishes to his customers are engaged in sports bookmaking or are bettors who can afford to pay for the service; and bookmaking is operated on a business basis not founded on luck and the bookmaker balances his averages so as to maintain a constant profit.

One of the witnesses testified that complainant told him that he would like to quit the publication of the Sports Journal as he did not make a profit on it, but he could not do this as he had been told it was necessary for him to put out a publication in order to obtain the ticker sports service and if he discontinued the publications, he would lose the sports service.

One witness testified as to the operations of gamblers on world series games and described the odds posted by Las Vegas gamblers where such operations are licensed, and testified that the information furnished by complainant was the same as that. One of the witnesses testified that he was put on the service free by complainant and given the designation No. 4 for calling identification and later called twice and got the betting line for the day.

One of the witnesses testified that complainant was arrested on July 17, 1964, and that he then answered complainant's telephones and took 20 to 25 calls and gave out the betting line to the callers; that bets were placed with three different subscribers of the complainant's service, for the purpose of showing the business of the subscribers; that on July 18, 1964, he telephoned complainant at his place of business and assumed the identity of one of the subscribers to complainant's service;

that a voice, which he recognized as complainant's, stated words to the effect, "You stupid jerk, you gave your phone number out to the cops yesterday and you just missed getting arrested. I have told you many times never to give your phone number out over this phone."

One of the witnesses subscribed to the complainant's service and was furnished the service free of charge during the course of investigation of the activities of complainant. One witness testified that he called complainant at various times and was given the sports line for the day in basketball and baseball. An officer also testified that he was in complainant's office while complainant was answering the telephone and observed him giving out a point spread on a sporting event to the other parties on the telephone.

One of the officers testified that in sports contests other than horse races the odds of bettors are determined by a difference in points and someone must figure how many points one team is superior to another team and that sports bookmaking cannot continue without such services. The officer testified that a bookmaker accepts those bets in which he has what is commonly called "an edge in the betting going for him" and that this edge is known as "vigorous" in bookmaking terms, referring to all sporting events except horse racing. One of the officers testified that he entered complainant's place of business on July 17, 1964, with a search warrant and in the presence of other officers, and that when they entered complainant was talking on the telephone. The officer testified that complainant then said he was giving out the line to his customers or subscribers, and that he wished to finish this, and continued with his telephone calls. The officer testified

that in the search of complainant's premises he found papers with baseball betting lines, baseball parlay cards and journals and that they answered complainant's telephone and took down information and called back three of these parties to ascertain that they were bookmakers by placing bets with them over the complainant's telephone, and that officers were sent out and arrested three bookmakers who were customers of complainant. An officer testified that the bookmakers operate their business with the aid of betting services, so that they do not lose money. All of the officers testified that complainant's services were used to aid and abet the operation of bookmakers in violation of law.

An F.B.I. agent testified that complainant told him he was charging \$10 to \$25 per week for his sports service and that he did not know of anyone other than bookmakers or gamblers who would pay such a fee, and he did not care to know the identity of his customers.

Upon a consideration of all the evidence herein it is clear that complainant's operations do not involve the mere dissemination of facts of interest to the general public. The evidence is all too clear that the furnishing of betting odds and flash results of man-to-man betting odds over the telephone for a price as done herein is of value only to bookmakers and gamblers, and the conclusion is inescapable that such information does aid and abet bookmaking contrary to the provisions of Sections 31 and 337a of the Penal Code of California. (People vs. McLaughlin, 111 Cal. App.2d, 781; McBride vs. Western Union Tel. Co. 171 Fed. 2d 1; Telephone News System, Inc., vs. Illinois Bell Tel. Co. 220 Fed. Supp. 621). The testimony regarding complainant's telephone conversations with his subscribers, the effort to make

his subscribers anonymous by designation of code numbers and the testimony that complainant's service is of no value to anyone other than bookmakers and gamblers impart sufficient guilty knowledge of the wrongful use of the information by his subscribers, and make complainant an aider and abettor of the crime of bookmaking. Under the circumstances, complainant's claim that his operations are protected by the California and United States Supreme Court Constitutions is without merit.

Based upon the record, we find that:

1. The actions of General Telephone Company of California and Western Union Telegraph were based upon reasonable cause.
2. Complainant's telephones and sports ticker service were used to aid and abet bookmaking purposes contrary to law and said telephones and sports ticker service should be disconnected.
3. Complainant's services as a handicapper of sporting events are of value to and were sold to gamblers or bookmakers, who are operating in violation of Section 337a of the Penal Code of California.

O R D E R

IT IS ORDERED that complainant's request for restoration of telephone service and of the sports ticker service be denied

and that the temporary interim relief granted by Decision No. 67684, dated August 11, 1964, and Decision No. 67715, dated August 18, 1964, is vacated and set aside.

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

Dated at San Francisco, California, this 7th day of DECEMBER, 1965.

Fredrick B. Holliff
 President

George H. Trover

Morgan

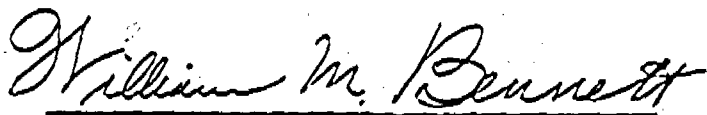
Commissioners

C. 7971
C. 7976

BENNETT, William M., Dissenting Opinion:

As I have previously set forth in my dissenting opinion in the Sokol decision this entire procedure which is utilized herein is contrary to law. But more than that in this case this telephone subscriber is being penalized upon the erroneous notion that even though a crime has not been committed in the record herein nonetheless his telephone use in some way warrants disconnection of the service. The activities of this subscriber here described do not make out criminal conduct -- no matter how suspicious the majority may be.

Further, the penalty here even if one were warranted is out of all proportion. This telephone is being denied for all time. This strikes one as a bit extreme bearing in mind that even felons and convicted bookmakers are never deprived of liberty for all time nor of ultimate return to telephone service even by the courts. Such a penalty here is harsh and excessive and is particularly grievous when based upon such an unsound theory as adopted by the majority.


WILLIAM M. BENNETT
Commissioner

San Francisco, California
December 7, 1965