

**ORIGINAL**

Decision No. 73760

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own motion into the rates, practices, operations and facilities of LOYALTY WAREHOUSE CORPORATION.

Case No. 8571  
(Filed December 27, 1966)

In the matter of the application of LOYALTY WAREHOUSE CORPORATION, a California corporation, for authority to operate a public warehouse in the City of Commerce, County of Los Angeles, State of California, pursuant to the provisions of Section 1051 of the Public Utilities Commission Code.

Application No. 49289  
(Filed April 14, 1967)

Wyman, Finell & Rothman, by  
Frank Rothman and Charles Fonarow,  
for applicant in Application No. 49289  
and respondent in Case No. 8571.  
James Quintrall, for Los Angeles Warehouse-  
men's Association, protestant in  
Application No. 49289 and interested  
party in Case No. 8571.  
John C. Gilman, Counsel, Joseph C. Matson  
and J. B. Hannigan, for the  
Commission staff.

O P I N I O N

The above-entitled matters were consolidated for hearing, and hearings thereon were held in Los Angeles before Examiner Rogers on July 10 and 21, and in San Francisco on September 28, 1967. On the latter date the parties were given authority to file concurrent briefs. The briefs were filed. The matters are ready for decision.

Case No. 8571 is an investigation, on the Commission's own motion, to determine (1) whether or not respondent is a warehouseman as defined by Section 239(a) of the Public Utilities Code;

(2) whether respondent is a public warehouseman as defined by Section 239(b) or Section 2508 of the Public Utilities Code and has failed to obtain a certificate of public convenience and necessity, as such, as required by Section 1051 of said code; (3) whether or not respondent has failed to and should be required to file and publish a schedule of its rates and charges as required by Sections 489 and 2551 of the Public Utilities Code, and (4) whether or not respondent should be ordered to cease and desist from offering and providing storage to the public generally until it has obtained from the Commission a certificate of public convenience and necessity.

The records of this Commission show, and we find, that respondent has no certificate of public convenience and necessity as a warehouseman or food warehouseman pursuant to Section 1051 of the Public Utilities Code and has no tariff or tariffs on file pursuant to either Section 489 or 2551 of the Public Utilities Code.

The respondent filed a reply to the order of investigation on April 14, 1967 whereby it denied that it is a warehouseman or public warehouseman as defined by Sections 239(a), 239(b) or 2508 of the Public Utilities Code, denied that it should be required to file and publish a schedule of its rates and charges as required by Section 489 and Section 2551 of the Public Utilities Code and denied that it should be ordered to cease and desist its operations until it has obtained a certificate of public convenience and necessity. Respondent alleged that at all times it has operated a private warehouse which is not open to the public generally and that it does not operate in connection with or to facilitate the transportation of

property by a common carrier or the loading or unloading of property, and further alleges that by reason thereof the Public Utilities Commission has no jurisdiction over the respondent's operations.

On the same day on which it filed its reply in Case No. 8571, Loyalty Warehouse Corporation filed the herein-considered application for a certificate of public convenience and necessity as a public warehouse corporation to operate 10,000 square feet of warehouse space in the City of Commerce. The application refers to Case No. 8571, denies that applicant<sup>1</sup> is operating a public warehouse and alleges that, in the event the Commission finds that applicant is operating a public utility warehouse, the principal purpose of the application is to secure a certificate of public convenience and necessity if the Commission determines that such a certificate is required in order for applicant to continue its operations. Applicant further alleges that it reserves the right to abandon the application once it establishes to the satisfaction of the Commission that it has at all times, in fact, operated as a private warehouse which does not come within the jurisdiction of this Commission.

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<sup>1</sup> Both respondent and applicant will hereinafter be referred to as "Loyalty" inasmuch as the case and the application have been consolidated.

Prior to the hearing, the Commission's counsel and Loyalty's counsel executed an "Agreed Statement of Facts" relative to Case No. 8571.<sup>2</sup> It was stipulated by said parties that:

1. Each party to the stipulation agrees that each statement of fact in the attached Agreed Statement and Exhibits shall be taken as true for the purposes of these proceedings and may be received in evidence.
2. No party to this stipulation waives any right to question the materiality or relevancy of any fact stated herein.
3. Each party hereto reserves the right to produce additional or supplementary evidence on any or all of the issues covered herein.

Facts

On the record herein, the Commission finds the following facts to be true:

1. Loyalty Warehouse Corporation (Loyalty) is a California corporation. Its articles of incorporation were filed with the Secretary of the State of California on August 16, 1965. The primary purpose for which it was formed is to engage in the leasing and renting of warehouse space and to operate a private warehousing business. It is authorized to issue 500 shares of stock at the stated value of \$50 per share. One hundred shares of stock have been issued. Hy Brokowsky is president and general manager. He has 25 of the issued shares which were issued to him without the payment of any tangible assets. One person owns the remaining 75 issued shares of stock. The books of the corporation reflect \$5,000 for capital stock issued.

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<sup>2</sup> This Agreed Statement of Facts includes the agreed set of facts plus various documents referred to therein and numbered as Exhibits 1 through 16.

2. Brokowsky formerly was employed by Pacific Commercial Warehouse and Dart Warehouse. Pacific was a public utility warehouse while Brokowsky was employed by it. While so employed he was its warehouse manager. He terminated his connections with Pacific and entered the employment of Dart Warehouse as vice president and general manager. At the inception of Brokowsky's employment by Dart it was a private warehouse, but about the time he severed connections with Dart early in 1965 it became both a public warehouse and a private warehouse. Brokowsky is experienced in the operations of public and private warehouses.

3. In June or July, 1965, after he left Dart, Brokowsky decided to operate a warehouse. In the latter part of July, 1965, he determined the warehouse would be private. In July, 1965, Brokowsky leased 14,000 square feet of warehouse space in the City of Commerce, California, for Loyalty. This space was determined by Brokowsky to be necessary as a result of his past experience and vast acquaintance. At that time Brokowsky had no commitments for storage. On August 15, 1965, Loyalty commenced storing goods in the 14,000 square-foot area it had leased. Brokowsky adopted a policy of no solicitation due to limited space and his opinion that he would not need to solicit to acquire business for Loyalty.

4. On January 1, 1966, Loyalty's space was increased to 65,400 square feet because Brokowsky had had many inquiries from his friends for warehouse space, but he had no contractual arrangements with storers for space. As of August 1, 1966, 60 to 70 percent of the warehouse space was occupied. On December 1, 1966, 70 percent of the space was occupied.

5. Loyalty's warehouse contains a cooler room of 1,071 square feet. The warehouse has concrete floors and walls and is fully sprinklered. Loyalty has a five-year lease on the premises, commencing on January 1, 1966, with an option to renew for an additional five years. There is a private rail spur connecting to a line of The Atchison, Topeka and Santa Fe Railway Company. This spur will accommodate five standard rail cars for unloading. A portion of the premises is utilized as a parking area and terminal for Bob & Jack Trucking Co., Inc., which leases space from Loyalty. Bob & Jack is a highway carrier operating under authority from this Commission.

6. Loyalty employs two full-time and one part-time office clerks and two full-time and one part-time warehousemen, in addition to Brokowsky, the president and general manager. Its operations return an approximate gross revenue of \$12,000 per month.

7. Loyalty's warehouse has no sign of any kind thereon. Loyalty is listed in the Yellow Pages of the telephone directory under "Private Warehouses." Loyalty has refused to be listed in the Central Manufacturing District Industrial Directory. It has a policy of not soliciting accounts. All of its stationery, invoices, bills, etc. bear the following letterhead:

Loyalty Warehouse Corporation  
Private Contract Warehouse

In some cases the phrase "Serving a select group of companies" is added. Loyalty engages in no advertising in trade journals or in newspapers or other media of general circulation.

8. Loyalty is a member of Food Industries, the purpose of which is to secure a more effective distribution of products. The association includes some public and some private warehouses. It also includes some chain stores, none of which stores with Loyalty. Food Industries members meet once a month. Loyalty had been a member for approximately one year at the time of the hearings herein.

9. In an average month approximately 20 rail shipments aggregating 1,900,000 pounds will be delivered to Loyalty's warehouse for storage. The shipments by rail received at Loyalty's warehouse are directed to Loyalty Warehouse; to a storer care of Loyalty Warehouse, or to a storer at the address of Loyalty's warehouse. Loyalty has no proprietary interest in the goods and receives them as an independent contractor and bailee for the storer. Loyalty unloads the rail cars and places the goods in storage. If rail cars containing inbound shipments are delayed at Loyalty's spur, Loyalty rather than the shipper is responsible for demurrage charges.

10. During an average month Loyalty will receive approximately 20 truckloads of inbound merchandise with an average weight of 30,000 pounds each for a total of 600,000 pounds per month. A substantial number of the delivering highway carriers are common carriers. The inbound shipments by highway carriers are generally consigned and handled in the same manner as rail shipments. On any inbound shipment, if directed, Loyalty will pay shipping charges if not prepaid and thereafter bill the appropriate storer.

11. In most cases, before goods are accepted for storage Loyalty will secure a "standard" warehouse agreement which specifies its charges for storage. The term "standard" is Loyalty's terminology. Blank spaces in the agreement are filled in in accordance with the agreement between the parties. The printed terms of the agreement state it will continue from month to month after execution but may be terminated upon thirty days' prior written notice given by either party to the other. The agreement also provides that the (shipper) will bear no responsibility for demurrage charges accrued at the warehouse on carload shipments. It provides that the Loyalty Warehouse Corporation is not an agent or employee but an independent contractor. Loyalty will, in addition to the services specified in the agreement, perform inventorying, reworking, and arrange for split deliveries and consolidated shipments at stated additional prices. The handling rates included in the basic charge include the preparation of bills of lading, the preparation of shipping documents, the mailing of the original bills of lading to the shippers and the keeping of inventory controls. Loyalty has terminated one contract under the 30-day termination provision. Since Loyalty commenced operations it has lost five or six accounts. Loyalty has not undertaken any obligation to any storer to reserve any portion of its storage facilities for such storer. It has no obligation to pay damages or to obtain extra storage space on behalf of any storer who at any time tenders a quantity of goods beyond the then-available capacity of Loyalty's warehouse.



Each storer pays only for the amount of goods actually stored. No storer has undertaken any obligation to store any minimum amount of goods, to make any payment or incur any other obligation in lieu of storage fees if the amount of goods stored by such storer falls below any minimum. Any storer may withdraw all goods from storage without incurring any obligation to Loyalty and without losing any contractual rights.

12. Loyalty asks each storer to execute the "standard" warehouse agreement but has stored goods for some storers prior to the return of an executed written agreement on the storer's promise to sign and return the written agreement. At the time of the hearings Loyalty had a written agreement with each storer except one which had a written agreement in its possession but had not returned it to Loyalty.

13. During the year 1966 Loyalty received merchandise by either rail or truck for 42 storers. Twenty-four of such storers were represented by a total of nine brokers. Loyalty considers a broker as one account.

14. On June 30, 1966, Loyalty had 16 contracts which covered storage for 18 storers. Between June 30, 1966 and the dates of the hearings herein, Loyalty acquired 17 additional accounts which included 20 storers.

15. The brokers for which Loyalty stores have, in some instances, more than one principal. Some of the contracts are signed by the broker and some are signed by the principals. No goods brought in by a broker-customer have been rejected even if there was no signed contract with the principal. Loyalty

considers an account lost when the principal states it is moving or foregoing warehousing. If a broker brings in a new principal, Loyalty considers this a part of the original contract with the broker.

16. The majority of Loyalty's accounts were secured by reference from acquaintances, by voluntary transfer by the principal or broker of accounts from Pacific or Dart to Loyalty, or by request of the principal or broker. Loyalty has no solicitors and has not solicited new accounts. Prior to the time Loyalty commenced business, Brokowsky contacted several traffic managers for Loyalty's present storers and advised them he was intending to start a warehouse.

17. Brokowsky's personal friends have been instrumental in obtaining a large portion of Loyalty's storage accounts. Brokowsky has never told his personal friends not to advise potential storers that Loyalty exists or is in the business of storing goods.

18. In an average month, total outbound shipments from Loyalty's warehouse will approximate 2,500,000 pounds. With few exceptions, outbound shipments are carried by highway carriers. Approximately 60 percent of the total outbound shipments are carried by Bob & Jack's.

19. Loyalty ordinarily makes arrangements for outbound shipments pursuant to storers' directions. Loyalty often advances transportation charges for outbound shipments. If the storer is represented by a broker, Loyalty will bill the storer rather than the broker for advances. On request, Loyalty will prepare bills

of lading for outbound shipments. If instructed, Loyalty will move portions of stored goods to the loading dock for pickup. If the storer does not select a carrier for an outbound movement, Loyalty will select a carrier authorized to perform the requested transportation. If such transportation is within the operating authority of Bob & Jack, Loyalty will normally select that carrier.

20. Loyalty will consolidate several small shipments by different storers into a single shipment to secure lower rates. In this event, Loyalty acts as consignor of the consolidated shipment. In December, 1966, and January and February, 1967, Loyalty, as consignor, consolidated a total of 386 individual shipments into 150 outbound shipments via Bob & Jack. It also consolidated other shipments via other common carriers.

21. Loyalty has no written regulations concerning the products which will be stored. Prospective storers are advised whether their goods will be stored when they tell Brokowsky what they intend to store. Loyalty does not store seasonal merchandise for the reason that it is in storage for a short period only. This breaks up the continuity of doing business and causes an unequal distribution of work. Loyalty does not store very bulky items, including textiles, as they are too difficult to handle and might require special equipment. Break-bulk items are not stored as they require too much labor. Liquor, drugs, cosmetics and tobacco are not stored as the insurance costs are too high and the temptations for theft are too great. Bonded merchandise is refused as Brokowsky is not familiar with it. Stereos and televisions are refused storage because of high insurance rates.

22. Since the commencement of business, Loyalty has refused storage for approximately 23 accounts. The reasons were lack of space, not interested in the business, too much chance of theft, break bulk operation, too much space requested, could not improve the service, excessive handling, dislike of representative's approach, desire of storer for cheap storage, small volume, storage seasonal, and storer a stranger. Some accounts have been refused storage due to lack of space.

23. Between 90 and 95 percent of the goods stored by Loyalty consist of grocery food items, industrial lighting fixtures, and chemicals.

24. If Loyalty is granted authority from this Commission to operate a public utility warehouse, it will store general commodities, including food. Rates will be those set forth in Warehouse Tariffs Nos. 28-A and 29-A.

25. Loyalty proposes to dedicate 10,000 square feet of the warehouse space it has leased in the City of Commerce to the public utility warehouse business, to physically separate the public utility space from the private warehouse space, keep the books of the two operations separate and to use different employees in the operations. Loyalty has the financial ability to operate the proposed services.

26. Loyalty proposes to operate the public warehouse business pursuant to law and the rules of this Commission, offering the same kind of handling service for both public and private warehouse customers but using different bills of lading.

27. Loyalty intends to store the same types of goods in the public warehouse that it stores in the existing warehouse, i.e., general commodities including food but excluding seasonal merchandise, extremely bulky items, break-bulk items, liquor, tobacco, bonded merchandise, carbon black and television and stereo sets.

28. There is tremendous growth in the Los Angeles area in general and in the City of Commerce. Such growth could require increased warehouse space in the City of Commerce.

29. There are 23 public warehouses operating in a radius of ten airline miles of Loyalty. Two of these are approximately one mile from Loyalty and have a total of 25,000 square feet of vacant space. There are two public warehouses between one and two miles from Loyalty with a total of 30,000 square feet of vacant space. There are seven public warehouses within two to three miles of Loyalty with a total of 32,500 square feet of vacant space. There are seven public warehouses within three to five miles of Loyalty with a total of 91,500 square feet of vacant space. There are five public warehouses within five to ten miles of Loyalty with a total of 57,500 square feet of vacant space.

30. The total dedicated space of the eleven public warehouses within three miles of Loyalty is 1,083,374 square feet. This space does not include the voluntary expansion permitted by Section 1051 of the Public Utilities Code.

31. Loyalty's present operations are in competition with the existing public warehouses in the area. Many of Loyalty's storers formerly used public warehouses in the area.

Statutes

The statutory material governing the public utility status of warehouses is located in the different parts of the Public Utilities Code, Part 1 of Division 1; Sections 207, 216(a), 239(a), 239(b), and 1051, and Chapter 1, Part 2 of Division 1; Sections 2501 to 2574, inclusive.

The particular statutes with which we are here concerned are as follows:

Section 207

"'Public or any portion thereof' means the public generally; or any limited portion of the public, including a person, private corporation, municipality, or other political subdivision of the State, for which the service is performed or to which the commodity is delivered."

Section 216, insofar as pertinent, provides as follows:

"(a) 'Public utility' includes every . . . warehouseman, . . . where the service is performed for or the commodity delivered to the public or any portion thereof.

(b) Whenever any . . . warehouseman . . . performs any service or delivers a commodity to the public or any portion thereof for which any compensation or payment whatsoever is received, such . . . warehouseman . . . is a public utility subject to the jurisdiction, control, and regulation of the commission and the provisions of this part."

Section 239, insofar as pertinent, provides as follows:

"(a) 'Warehouseman' includes :

Every corporation or person owning, controlling, operating or managing any building or structure in which property, other than liquid petroleum commodities in bulk, is regularly stored for compensation within this state, in connection with or to facilitate the transportation of property by a common carrier or vessel, or the loading or unloading of property, other than liquid petroleum commodities in bulk, and other than a dock, wharf, or structure, owned, operated, controlled, or managed by a wharfinger.

"(b) Every corporation or person owning, controlling, operating, or managing any building, structure, or warehouse, in which merchandise, other than secondhand household goods or effects, and other than liquid petroleum commodities in bulk, and other than merchandise sold but retained in the custody of the vendor, is stored for the public or any portion thereof, for compensation, within this state, except warehouses conducted by any nonprofit, cooperative association or corporation which is engaged in the handling or marketing of the agricultural products of its members and warehouses conducted by the agents, individual or corporate, of such associations or corporations, while acting within limitations imposed by law on their principals."

Section 1051, insofar as pertinent, provides:

"No warehouseman shall begin to operate any business of a warehouseman, as defined in subdivision (b) of Section 239, without first having obtained from the commission a certificate declaring that public convenience and necessity require or will require the transaction of business by such warehousemen . . ."

Food Warehousemen Act (2501 Et Seq. PUC)  
Section 2507 provides:

"Every food warehouseman doing business in this State is a public utility, and is subject to the jurisdiction, control, and regulation of the commission."

"No food warehouseman shall engage in the storage of food commodities in the State, except in accordance with the provisions of this chapter."

Section 2508, insofar as pertinent, provides:

"'Food warehouseman' includes every person, or corporation, . . . owning, controlling, operating, or managing any building, structure, warehouse, elevator, or plant in which food commodities, received from the public or any portion thereof are stored for compensation, including cold storage plants and refrigerating plants, but not including private homes, hotels, restaurants, or exclusively retail establishments, or others not storing articles of food for other persons for compensation. Every person, or corporation controlling, operating, or managing any building, structure, warehouse, elevator, or plant as aforesaid, is deemed to be engaged in the storage of food commodities within the meaning of this chapter."

The final hearing on the herein-considered matters was held on September 28, 1967. At that time Section 239(b) contained the phrase ". . ., is regularly stored for the public generally, . . ." and Section 2508 contained the phrase ". . . regularly received from the public generally, . . ." Effective November 3, 1967, the two sections were amended to read as hereinbefore quoted.

Loyalty urges that the statute as it existed at the time of the hearing is applicable. The staff urges that the matters should be decided on the basis of the amended statute. We agree with Loyalty that we must take the statutes as they existed at the time the hearings were held if the subsequent amendments would disadvantage Loyalty (Helm v. Bollman, 176 Cal. App. 2d, 838).

It appears that the above amendments were enacted to make Sections 239(b) and 2508 consistent with Section 216 of the Public Utilities Code which uses the language, "public or any portion thereof." In addition, Section 207 defines the term "Public or any portion thereof" as meaning "the public generally, or any limited portion of the public . . ."

The order of investigation includes an investigation to determine whether or not Loyalty is a warehouseman as defined by Section 239(a) of the Public Utilities Code, *supra*.

We find that no services are involved which are within the purview of Section 239(a).



The facts which we have heretofore found to be true show that all shipments coming into the warehouse are destined for the warehouse and come to rest at that point. After they have come to rest, new shipments are made up and distributed from the warehouse. The storage is neither "in connection with or to facilitate the transportation of property by common carrier or vessel," nor is the storage in connection with "the loading or unloading of property." ✓

We call attention to the fact that we have held that a food warehouseman (Section 2501 et seq., Public Utilities Code) is a warehouseman, and, if it meets the criteria of Section 239(b), must secure a certificate of public convenience and necessity pursuant to Section 1051 prior to the commencement of operations (In re La Habra Cold Storage, Inc., et al., Decision No. 66065, dated September 24, 1963, in Case No. 6409; the California Supreme Court denied certiorari on March 10, 1964).

Loyalty contends it is not subject to the jurisdiction of this Commission because, it states, the uncontradicted evidence ✓ shows that it has, at all times, manifested an unequivocal intent not to dedicate its facilities to the public generally, has limited the types of products stored, and has carefully restricted its customers to those who are referred to it by friends and acquaintances of its president. In cities Pajaro Valley Cold Storage Company v. Public Utilities Commission, 54 Cal. 2d 256 (1960) and Commission Investigation of H. G. Walters, Decision No. 60846, dated October 4, 1960, in Case No. 6290, as authority for the proposition that the Commission has no jurisdiction over it.

In the Pajaro case the Supreme Court held that the company was neither a warehouseman nor a food warehouseman. The Court stated at page 262:

"The uncontradicted evidence discloses that the company had at all times manifested an unequivocal intent not to dedicate its facilities to the public generally, limited the types of products stored, and carefully restricted its customers to the few processors who were in some manner related to its members, either directly or indirectly through their farming operations or family connections."

The Court summarizes the evidence on which it based its opinion at pages 262 and 263 as follows:

"The prior property interest of the members in the available storage space was the central fact which determined the company's method of operation; that members have a vested right to an aliquot part of storage space and to storage services at cost; that members have vested rights to transfer their allocated space to other members or nonmembers and to receive compensation therefor; that the needs of members determine the allocation of cold and frozen storage space; that the company exercises no control whatever over the members' disposition of their space; that the company on occasion accepts apples from designated nonmembers as an accommodation to certain members and receives compensation therefor; that the company rents aisle space only to members or to transferees of members; that there is substantial stability in the customers of aisle space and the friends of members accommodated with the storage of small lots of apples; that during a part of the off-season the company rents all its cold storage space year after year to one designated customer, Libby, McNeill & Libby; that during the remainder of the off-season the space is unused; that the company has turned down offers to rent space to outsiders even though such business would have been profitable and could have been accommodated without interfering with other business of the company; that the company has refused to accept for cold storage any products except apples and pears; that the company has restricted the frozen products stored to those related to the members and their business; and that the company has at no time engaged in any solicitation or intended to dedicate its property to the public generally."

The above-stated facts demonstrate the differences between the operations of Loyalty and those of Pajaro. A few examples will suffice.

Loyalty is a stock corporation. Its existence depends on the charges it collects from its storers. It is in business to earn a profit for its stockholders. In the year 1967 the number of storers approximately doubled over the year 1966. No storer has the right to any reserved space or any amount of space. Agreements for space may be terminated on thirty days' notice by either Loyalty or the storer. Each storer pays only for the amount of goods actually stored. No storer is required to store any minimum amount of goods or to make any payment or incur any obligation if the goods stored fall below a minimum. Any storer may withdraw all goods from storage without losing any rights. Loyalty accepts new storers on the recommendation of friends or acquaintances of its president.

We hold that the Pajaro case is inapposite to the matters herein considered.

The Walters case purports to be based on the Pajaro case and at first blush would appear apposite to the matter here under consideration. If we could reconsider, we would hold that Walters is a public utility warehouse and require a certificate. Our present view is in accordance with the dissenting opinion of Commissioner Mitchell in which he concluded that the H. G. Walters warehouse was affected with a public interest and had unequivocally dedicated its property to the public generally. We reject the Walters case as authority for a holding that Loyalty is not a public utility warehouse.

The courts of this state have prescribed rules for determining whether or not a business has public utility status. The definitions of public utilities contained in the Public Utilities Code must be construed as applying only to such properties as have in fact been devoted to a public use, and not as an effort to impress with a public use properties which have not been devoted thereto (Allen v. Railroad Commission, 179 Cal. 68 at 89). Such devotion to public use will not be presumed without evidence of unequivocal intention (Allen v. Railroad Commission, supra, p. 85). The test to be applied in determining whether property has been devoted to public use is whether or not the owner holds himself out, expressly or impliedly, as furnishing service to the public as a class or a limited portion of it as contradistinguished from his holding himself out as serving or ready to serve only particular individuals (Van Hoosear v. Railroad Commission, 184 Cal. 553 at 554, Cal. Water & Tel. Co. v. Public Utilities Commission, 51 Cal. 2d 478 at 499). The intention to dedicate the property to the public use can be shown by evidence that the service is available to the public or any portion of it (Souza v. Public Utilities Commission, 37 Cal. 2d 539 at 543). Whether or not Loyalty is a public utility warehouse under the law is a question of fact (Western Canal Company v. Railroad Commission, 216 Cal. 639).

From the statutes and the court decisions, it appears that any determination of Loyalty's status as a public utility requires an examination of all of the facts relative to operation with a view to ascertaining whether Loyalty has held itself out to serve the public or any portion thereof or just selected individuals.

An examination of the facts hereinabove found indicates an intent by Loyalty to dedicate its property to the public use and to serve a portion of the public. Only a few facts indicate a contrary intent. From an examination of all of the facts, the Commission finds that Loyalty stores commodities for the public, or a portion thereof, for compensation and that it stores food commodities received from the public, or a portion thereof, for compensation.

Additional Findings of Fact

1. During the years 1965, 1966 and 1967, Loyalty stored merchandise, other than secondhand household goods or effects, and other than liquid petroleum commodities in bulk, and other than merchandise sold but retained in the custody of the vendor, for compensation for the public or a portion thereof.

Loyalty is not a nonprofit cooperative association or corporation.

The said conduct by Loyalty constituted a holding out to the public or a portion thereof that Loyalty was a warehouseman.

Loyalty has conducted the business of a warehouseman without having secured from this Commission a certificate declaring that public convenience and necessity require the transaction of such business.

2. During the years 1965, 1966 and 1967, Loyalty stored for compensation food commodities received from the public or a portion thereof.

Loyalty is not a private home, hotel, restaurant or exclusively retail establishment. Said conduct by Loyalty constituted a holding out to the public or a portion thereof that Loyalty was a food warehouseman.

3. Public convenience and necessity do not require that Loyalty be authorized to render service as a warehouseman or as a food warehouseman.

Conclusions of Law

1. Loyalty Warehouse Corporation should be ordered to cease and desist from conducting the business of a warehouseman.
2. Loyalty Warehouse Corporation should be ordered to cease and desist from conducting the business of a food warehouseman.
3. The application of Loyalty Warehouse Corporation for authority to operate a warehouse or a food warehouse should be denied.

O R D E R

IT IS ORDERED that:

1. Loyalty Warehouse Corporation cease and desist from conducting the business of a warehouseman as defined in Section 239(b) of the Public Utilities Code.
2. Loyalty Warehouse Corporation cease and desist from conducting the business of a food warehouseman as defined in Section 2508 of the Public Utilities Code.
3. The application of Loyalty Warehouse Corporation for authority to operate a warehouse or food warehouse is denied.

The Secretary of the Commission is directed to cause service of the order to be made upon Loyalty Warehouse Corporation and the effective date of this decision shall be twenty days after such service.

Dated at San Francisco, California, this  
27<sup>th</sup> day of FEBRUARY, 1968.

Commissioner A. W. GATOV  
present but not voting.

Commissioner Fred P. Morrissey  
present but not voting.

William L. Bernard President  
William L. Bernard  
William L. Bernard  
Commissioners