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ORIGINAL

Decision No. 78427

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

RALPH T. WELCH,

Complainant,

vs.

PACIFIC TELEPHONE AND TELEGRAPH  
COMPANY and  
PACIFIC GAS AND ELECTRIC COMPANY,

Defendants.

Case No. 9142  
(Filed October 30, 1970;  
Amended November 23, 1970)

ORDER OF DISMISSAL

Complainant filed a letter on October 30, 1970, which was classified as a complaint because of its content. The complaint requests an order to restrain defendants from expending time, equipment and supplies collecting the "Utility Users Tax" for the City of San Leandro, California. The complaint alleges that Packard vs. Pacific Gas and Electric Co. (Case No. 8999, Decision No. 77800 dated October 6, 1970) has ruled that a utility cannot halt service to a customer because of a refusal to pay the utility users tax; and it therefore seems that the utility is not legally required to pay the tax. Complainant asserts that collection of the tax on a voluntary basis by defendants and other utilities is expensive and time consuming and increases the operating expenses of the utilities involved without benefit to their ratepayers. Complainant filed an Amendment to the Complaint on November 23, 1970. It argues that the San Leandro ordinance is illegal and requests the Commission to rule on the legality of the ordinance and to order the utilities involved not to collect the tax and to resist any effort to collect said tax on the part of the City of San Leandro.

The complaint was answered by the Pacific Gas and Electric Company on December 3, 1970 and by The Pacific Telephone and Telegraph Company on December 18, 1970. The defendants argue that the complaint should be dismissed since the legality of a city ordinance is normally determined by the Superior Court. It is noted that the "Utility Users Tax" Ordinance of the City of Vallejo has been challenged in the Superior Court of Solano County (Case No. 50117, Packard v. Ginochio, et al.) and that the Utility Users Tax imposed by the City of Fresno has been upheld by the Fresno County Superior Court in Rivera v. City of Fresno (1970), Case No. 142244. The City of Los Angeles filed a Petition to Intervene on January 12, 1971, which asserts that the original and primary jurisdiction to determine the legality of a tax is vested in the Superior Courts of California (California Constitution, Article 6, Section 5; Section 89, California Code of Civil Procedure).

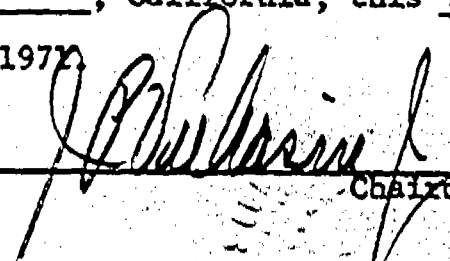
Complainant has misinterpreted the Packard decision. It merely affirms the rule that a paid up service cannot be arbitrarily discontinued by a utility. The failure to pay the tax is an issue between the city and the customer. The utilities bill the customer for the tax, but are not responsible if the customer refuses to pay it. The utilities are involved in collecting the tax because it seems most convenient and least expensive for the taxpayer to include the payment with his utility bill. There is no statement in the Packard decision which can be interpreted as an authorization to utilities to refuse to collect the tax. Complainants' pleadings cite only the Packard case and present no legal authorities which would warrant assumption of jurisdiction by the Commission.


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Defendants' legal authorities are persuasive and we find that the primary jurisdiction to determine the validity of a city ordinance is in the Superior Court. We further find that complainants' pleadings cite no rule or reason to justify a deviation from this rule and we conclude that the complaint in Case No. 9142 should be dismissed.

Therefore, IT IS ORDERED that the complaint in Case No. 9142 is hereby dismissed.

Dated at San Francisco, California, this 10th day of MARCH, 1977.

  
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Chairman

  
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Vernon L. Stinger

  
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Commissioners

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