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Decision No. 81827**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

John A. Rowe, Jr.,
6834 Oakmont Drive,
Santa Rosa, Calif. 95405,

Complainant,

vs.

Case No. 9585

The City of Santa Rosa, a
municipal corporation;
Total Television Corporation,
also known as Cable Television
of Santa Rosa, Inc., a corporation;
Pacific Gas & Electric Company, a
corporation;
and Pacific Telephone & Telegraph
Company, a corporation,

Defendants.

ORDER DISMISSING COMPLAINT

On July 11, 1973, complainant filed his complaint against the above-named defendants alleging that the collection by Pacific Gas and Electric Company (PG&E), by the Pacific Telephone and Telegraph Company (PT&T) and by Total Television Corporation, also known as Cable Television of Santa Rosa, Inc. (Cable TV) from their customers of a 5% utility users' tax imposed by the City of Santa Rosa is a violation of Section 453 of the Public Utilities Code.

Informal service of copies of the complaint was made upon each defendant and letters of defects were received by the Commission from PG&E, PT&T and Santa Rosa. Each of the three responding defendants asks that the complaint be dismissed.

By letter of August 1, 1973, complainant responded to the

three letters of defects and elected to stand on his complaint.

Section 453 of the Public Utilities Code states:

"No public utility shall, as to rates, charges, service, facilities, or in any other respect, make or grant any preference or advantage to any corporation or person or subject any corporation or person to any prejudice or disadvantage. No public utility shall establish or maintain any unreasonable difference as to rates, charges, service, facilities, or in any other respect, either as between localities or as between classes of service. The commission may determine any question of fact arising under this section."

It is not clear from the complaint in what manner the collection of the tax is a violation of this section. However, complainant's letter of August 1, 1973, states:

"Here the issue is whether the Public Utilities Code is being invaded by the City's tax on utility service users and by its compelling the utilities to grant preferences and advantages to this municipal corporation and to subject me and other utility service users to prejudice and disadvantages."

Complainant apparently feels that the 5% exaction is a disadvantage as to himself and other ratepayers and that the tax revenue collected and paid over to the city is a preference or advantage to the city.

Although we doubt that Section 453 should be interpreted in the manner suggested by complainant, we need not decide the issue. In Packard v. PT&T and Packard v. PG&E, we held that this Commission has no jurisdiction to determine whether or not a city is authorized to enact a utility users' tax under the general law of the state (71 CPUC 470, 472). The general law of the State includes Section 453 of the Public Utilities Code.

In a case challenging the utility users' tax of the City of San Leandro, the Commission held that the primary jurisdiction to determine the validity of a city ordinance is in the Superior Court (Welch v. PT&T, 72 CPUC 74, 76 (1971)). See also Code of Civil Procedure, Sections 89(a)(1), 112(a) and 117).

Finally, the California Supreme Court has stated:

"It has been suggested on behalf of plaintiffs that the Fresno utility users' tax invades the field of regulation of public utilities which has been clearly preempted by the state under applicable provisions of the California Constitution. (Cal. Const., Art. XII, §§22 and 23.) However, whether or not the state has occupied the field of regulation, cities may levy fees or taxes solely for revenue purposes, as was done by the Fresno utility users' tax. (Citation) Further, the requirement that the utility company supplying a particular utility service collect the utility users' tax and remit to the city does not constitute forbidden or conflicting regulation of the utility. (Citation)" Rivera v. City of Fresno, 6 C.3d 132, 139 (1971).

Unlike Mr. Packard in the cases reported at 71 CPUC 469, complainant herein has not alleged any matter, such as threatened discontinuance of service or improper billing, over which the Commission could assume jurisdiction. Rather he alleges only that the tax is in violation of Section 453 of the Public Utilities Code. Questions of the validity or legality of any tax are within the exclusive jurisdiction of the Superior Court.

In light of the foregoing the Commission concludes that:

1. Whether Santa Rosa's utility users' tax violates Section 453 of the Public Utilities Code is a matter within the exclusive jurisdiction of the Superior Court.
2. The complainant fails to state a cause of action within the Commission's jurisdiction.
3. The Commission may, without argument or hearing, dismiss a complaint for failure to state a cause of action. (Rule 12 of the Commission's Rules of Practice and Procedure.)

4. The complaint should be dismissed.

IT IS ORDERED that the complaint is dismissed.

Dated at San Francisco, California, this 5th day
of SEPTEMBER, 1973.

Vernon L. Sturgeon
President

William J. Quinn

William J. Quinn

John A. [Signature]

[Signature]
Commissioners