

ORIGINAL

Decision No. 83298

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of PENINSULA RADIO
SECRETARIAL SERVICE, INC.,

Complainant,

v.

SAN MATEO COUNTY MEDICAL SOCIETY,
aka SAN MATEO MEDICAL SOCIETY,
DOE I, DOE II, DOE III, DOE IV,

Defendants.

Case No. 9651
(Filed July 16, 1974)

John Paul Fischer, Attorney at Law, for
Peninsula Radio Secretarial Service,
Inc., complainant.

George M. Malti, Attorney at Law, for
San Mateo County Medical Society,
defendant.

Lionel B. Wilson, Attorney at Law, and
Roger Johnson, for the Commission
staff.

CONTEMPT PROCEEDING

O P I N I O N

On January 15, 1974, Peninsula Radio Secretarial Service, Inc. (Peninsula) filed the above-entitled complaint against the San Mateo County Medical Society (Medical Society). The complaint alleged in part that Medical Society was "engaged in or is about to engage in construction work which will interfere with the public utility system of Complainant, all without having secured from this Commission a certificate of public convenience and necessity as is required." The complaint and a contemporaneously filed motion sought an order requiring Medical Society to cease and desist constructing radio paging facilities pending disposition of the complaint or further order of the Commission.

On January 22, 1974, the Commission entered Decision No. 82386, an Order Granting Interim Relief and Requiring Immediate Answer to Complaint. Decision No. 82386 ordered that:

- "1. Defendants shall cease and desist from completing construction of a telephone line, as that term is defined in Public Utilities Code, Section 233, until further order of this Commission removing this restriction or authorizing completion of construction."

On July 16, 1974, Peninsula filed a Declaration and Request for Order to Show Cause, which alleged that Medical Society was violating the temporary cease and desist order contained in Decision No. 82386. An Order To Show Cause was duly issued on July 16, 1974. A hearing on the Order To Show Cause was held before Examiner Donald B. Jarvis in San Francisco on July 25, 1974, and the matter was submitted.

The material issues presented in this proceeding are:

- (1) Was the temporary cease and desist order in Decision No. 82386 void? (2) If the temporary cease and desist order is valid, are defendants in contempt of the Commission for failing to obey such order?

The record is uncontroverted that Medical Society commenced operating a radio paging service on or about July 16, 1974. Defendants contend that they are not in contempt of the Commission because the temporary cease and desist order contained in Decision No. 82386 is void. There is no merit in this contention.

Public Utilities Code Section 1006^{1/} provides that:

^{1/} All code section references herein are to the Public Utilities Code unless otherwise stated.

"When a complaint has been filed with the commission alleging that a public utility of the class specified in Section 1001 is engaged or is about to engage in construction work without having secured from the commission a certificate of public convenience and necessity as required by this article, the commission may, with or without notice, make its order requiring the public utility complained of to cease and desist from such construction until the commission makes and files its decision on the complaint or until the further order of the commission."^{2/}

In addition, the Commission has inherent power to issue injunctive orders. (In re Marriott (1933) 218 Cal 179, 181; Motor Transit Co. v Railroad Commission (1922) 189 Cal 573, 577).

Medical Society claims that Decision No. 82386 is void because it is a cooperative organization over which the Commission has no jurisdiction. This is not correct. The Commission has, in the first instance, authority to determine its jurisdiction in the matter. (Ligda v PG&E (1963) 61 CPUC 1, 2.) Furthermore, even if it be assumed, for the sake of discussion only, that cooperative radio paging organizations are not subject to regulation by the Commission, it is a question of fact whether or not a particular entity is a true cooperative. (Yucapia Water Co. No. 1 v Public Utilities Com. (1960) 54 C 2d 823; Corona City Water Co. v Public Utilities Com. (1960) 54 C 2d 834; Coml. Communications v Public Utilities Com. (1958) 50 C 2d 512; In re Marriott, supra.)

It is abundantly clear that the cease and desist order in Decision No. 82386 is valid and that Medical Society and its executive director are in contempt of the Commission for violating that order.

^{2/} Section 1001 includes telephone corporations.

(Southern Pacific Co. (1968) 68 CPUC 245; Air California v Pacific Southwest Airlines (1969) 70 CPUC 213; Frederick R. Schumacher (1966) 66 CPUC 54.) Each day defendants fail to comply with Decision No. 82386 constitutes a separate contempt. (H. J. Heinz Co. v Superior Court (1954) 42 C 2d 164, 175; In re Stafford (1958) 160 CA 2d 110, 113-14; In re Joor (1955) 131 CA 2d 75, 76; Southern Pacific Co., supra.)

In assessing the penalty to be adjudged we have taken into consideration the fact that Medical Society and its executive director were acting with the advice of counsel. Under the authorities heretofore cited this advice was clearly erroneous. In the circumstances, punishment for one contempt will be sufficient. However, if defendants do not immediately comply with Decision No. 82386, the Commission will give consideration to punishing every act of subsequent contempt and institute proceedings under Sections 2104, 2105, 2106, 2107, 2108, 2109, and 2111.

No other points require discussion. The Commission makes the following findings and conclusions.

Findings of Fact

1. On January 22, 1974, the Commission entered Decision No. 82386. Ordering Paragraph 1 of Decision No. 82386 provides that:

"1. Defendants shall cease and desist from completing construction of a telephone line, as that term is defined in Public Utilities Code, Section 233, until further order of this Commission removing this restriction or authorizing completion of construction."

2. On January 23, 1974, a copy of Decision No. 82386 was personally served upon Medical Society by service upon its executive director, Gene C. Taylor.

3. At all times from January 23, 1974 to date Medical Society and its executive director Gene C. Taylor have had knowledge of Decision No. 82386.

4. At all times from January 23, 1974 to date, Medical Society and its executive director Gene C. Taylor have had the ability to comply with the terms of Ordering Paragraph 1 of Decision No. 82386, by ceasing and desisting the completion of construction of a telephone line as defined in Section 233.

5. Radio telephone facilities are included within the definition of a telephone line within the meaning of Section 233.

6. The Commission's Order To Show Cause was issued on July 16, 1974 and was personally served on Gene C. Taylor on behalf of and as executive director of the San Mateo County Medical Society on July 19, 1974.

7. On July 16, 1974, Medical Society willfully completed the construction of a telephone line as defined in Section 233 and willfully commenced radio telephone operations over said line. The completion of said telephone line and commencement of radio telephone operations over that line was done with the knowledge of Gene C. Taylor, the executive director of Medical Society, who had the authority and ability to prevent the completion of the telephone line and the commencement of said radio telephone operations over that line.

8. On each and every day from July 16, 1974 to July 25, 1974 Medical Society willfully continued in operation and maintained said telephone line and willfully conducted radio telephone operations over that line. Gene C. Taylor had the ability and authority to prevent the operation and maintenance of said telephone line and the radio telephone operations conducted over that line during the afore-said period.

9. Medical Society willfully committed separate contempts of the Commission on each and every day from July 16, 1974 to July 25, 1974.

10. Gene C. Taylor willfully committed separate contempts of the Commission on each and every day from July 16, 1974 to July 25, 1974.

11. Medical Society should be fined the sum of \$500 for its aforesaid contempt.

12. Gene C. Taylor should be fined the sum of \$500 for the aforesaid contempt.

Conclusions of Law

1. Decision No. 82386, including Ordering Paragraph 1 thereof, is not void.

2. Medical Society and Gene C. Taylor should be punished for contempt for willfully disobeying the terms of Ordering Paragraph 1 of Decision No. 82386.

3. Medical Society should be fined \$500 for the aforesaid contempt.

4. Gene C. Taylor should be fined \$500 for the aforesaid contempt.

O R D E R

IT IS ORDERED that:

1. The San Mateo County Medical Society is guilty of contempt of the Commission and that for its contempt it shall be punished by the payment of a fine in the sum of \$500 payable to the Secretary of the Commission on or before August 30, 1974.

2. Gene C. Taylor is guilty of contempt of the Commission and that for his contempt he shall be punished by the payment of a fine in the sum of \$500 payable to the Secretary of the Commission on or before August 30, 1974 and, in default thereof, shall be ordered committed to the County Jail of the county of San Mateo until such fine shall have been paid at the rate of one day's imprisonment for each \$100 of said fine that remains unpaid.

The Secretary is directed to cause personal service of this order on the San Mateo County Medical Society and Gene C. Taylor.

The effective date of this order is the date hereof.

Dated at San Francisco, California, this 12th day of AUGUST, 1974.

Vernon L. Stinson
President
William J. ...

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Commissioners

Commissioner J. P. Vukasin, Jr., being necessarily absent, did not participate in the disposition of this proceeding.