

ei

Decision No. 87343

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

WALTER V. HAYS, )  
 )  
 Petitioner, )  
 )  
 vs. )  
 )  
 SAN JOSE WATER WORKS, )  
 a California Corporation, )  
 )  
 Respondent. )

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Case No. 10330  
(Filed May 12, 1977)

ORDER DENYING MANDATORY INJUNCTION

Petitioner is chairman of People Opposed to Water Waste (POWW), a political committee formed to oppose Measure H (a water supply measure) on the Santa Clara County ballot for May 31, 1977.

Defendant San Jose Water Works (Water Works) is a public utility, subject to the jurisdiction of this Commission, which supplies water to many thousands of residents and voters in Santa Clara County and in so doing submits to such customers monthly bills for its services.

On or about May 6, 1977 Water Works was in the process of distributing with its monthly bills for services literature designed to promote passage of Measure H.

On or about the same date, petitioner requested through a vice president of Water Works, Mr. Dunton, that the Water Works attempt to remedy the damage done by the aforesaid unlawful conduct by mailing, at its expense, to the people who had received the pro-Measure H literature, a comparable piece of literature giving the arguments against Measure H. On or about May 11, 1977, Mr. Dunton indicated that Water Works had declined petitioner's request.

Petitioner asserts that the aforesaid unlawful conduct by the Water Works will cause irreparable damage to petitioner and all other parties opposed to Measure H unless this Commission by mandatory injunction orders Water Works to mail opposing literature to the same people at its own expense.

Petitioner requests that the Commission order Water Works to immediately mail, at its own expense, to all parties who received pro-Measure H literature a comparable piece of literature giving the arguments of the opponents of Measure H.

Public Utilities Code Section 453(d) states:

"No public utility shall include with any bill for services or commodities furnished any customer or subscriber any advertising or literature designed or intended (1) to promote the passage or defeat of a measure appearing on the ballot at any election whether local, statewide, or national,..."

The Chief Examiner of the Public Utilities Commission spoke to Mr. Dunton regarding the mailout of May 6, 1977 and was informed by Mr. Dunton that the mailing had taken place and that Water Works declined to mail at its expense arguments favorable to petitioner.

The Commission is of the opinion that there is reasonable cause to believe, based upon the pleadings and the conversation as reported by its Chief Examiner, that Water Works's mailing was done in violation of Section 453(d)(1). Nevertheless, the Commission will not issue the mandatory injunction prayed for because the

Commission is uncertain whether it has such authority, and there is not sufficient time between now and the election to make that determination.

Therefore, IT IS ORDERED that petitioner's request is denied.

The effective date of this order is the date hereof.

Dated at San Francisco, California, this 17<sup>th</sup>  
day of MAY, 1977.

Robert Butera  
President  
William J. ...  
Thomas ...  
Richard P. ...  
Commissioners