

BEFORE THE PUBLIC SERVICE COMMISSION OF KENTUCKY

A meeting of the Public Service Commission was held on this date; present; Chairman Charles E. Whittle and Commissioners Cass R. Walden and Jesse K. Lewis.

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IN THE MATTER OF THE PUBLIC SERVICE COMMISSION OF KENTUCKY ISSUING A GENERAL ORDER TO ALL TELEPHONE AND TELEGRAPH COMPANIES DOING BUSINESS IN THIS STATE ORDERING AND DIRECTING THEM TO DISCONTINUE THEIR SERVICE TO ALL HANDBOOK OPERATORS, AND ORDERING AND DIRECTING SAID TELEPHONE AND TELEGRAPH COMPANIES TO DISCONTINUE THE TRANSMISSION OF RACING INFORMATION OVER THEIR WIRES TO HANDBOOK OPERATORS.

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ORDER

Commissioner Lewis has filed a motion for the Commission to require all telephone and telegraph companies in Kentucky to show cause why they should not be required to discontinue the furnishing of racing information over their facilities to handbook operators and to remove all telephones from places where bets are made and received on horse races.

There are upwards of 200 telephone companies in Kentucky. Most of them are small ones. Many of them have less than 100 subscribers, are in the more remote communities, and have no long distance facilities or connections. For them to disseminate racing information is inconceivable, if not impossible. Indeed, the Commission has no evidence before it that any of them are doing so.

To require each of these companies to appear before this Commission charged with such an offense and to prove its innocence would be unwarranted; and yet, that is what such an order would require each of them to do.

The Commission declines to impute any such stigma or impose any such burden upon these companies.

The motion, therefore, is overruled.

Done at Frankfort, Kentucky, this 30th day of April, 1947.

PUBLIC SERVICE COMMISSION OF KENTUCKY

*Charles E. Whittle*  
Chairman

*C. R. Walden*  
Commissioner

Attest;

Secretary

Administrative  
Order # 56

BEFORE THE PUBLIC SERVICE COMMISSION OF KENTUCKY

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RECEIVED AND FILED  
*May 1 1947*  
*P. H. Byrd*  
Secretary

IN THE MATTER OF THE PUBLIC SERVICE COMMISSION  
OF KENTUCKY ISSUING A GENERAL ORDER TO ALL  
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THE TRANSMISSION OF RACING INFORMATION OVER THEIR  
WIRES TO HANDBOOK OPERATORS.

DISSENTING OPINION

On April 24, 1947, by written Motion, I called to the attention of this Commission the fact that in the case of Paul D. Wilbur, et al versus Ulie J. Howard, recently tried in the United States Court for the Eastern District of Kentucky at Covington, Kentucky, it was established in evidence that the facilities of the Citizens Telephone Company "were used over long periods to disseminate racing results." By reason of the authority vested in this Commission under the provisions of Section 278.040, K. R. S., my motion was to the effect that an order be entered directing all telephone and telegraph companies in this Commonwealth to show cause why they should not be required to discontinue the furnishing of racing information over their facilities to all handbook operators in this Commonwealth, and why they should not be required to remove all telephones from places where bets are made and received on horse races.

This matter came on for hearing and discussion on April 30, 1947, and it was pointed out by me and not disputed by the other members of the Commission that not over three or four telephone companies operating in

this State, and one telegraph company, would be affected by this proposed order. Our whole discussion related to the question of policy involved, and as to whether or not this Commission if it had the authority to make such an order should do so.

I have before me a copy of the order entered in this case overruling my motion, and it appears that the majority members of the Commission have gone off on a tangent and injected matters not discussed when the majority reached their decision. The reason offered for overruling the Motion is that there are numerous small telephone companies in remote communities in this Commonwealth which have no long distance facilities or connections and that it would be inconceivable that such companies could disseminate racing information. The foregoing statement in the face of my positive statement to the Commission that there were but three or four telephone companies in this State would be affected by the proposed order is a lame excuse for not making an order based upon the facts as I stated them.

By the provisions of Section 278.040, K. R. S., the jurisdiction of this Commission extends to all utilities in this State, and it has exclusive jurisdiction over the regulation of the services of such utilities. It is specifically provided by this section of the statute that the Commission may investigate the methods and practices of utilities to require them to conform to the laws of this State. I had positive knowledge and information and it was so found by Judge Mac Swinford of the Federal District Court that the Citizens Telephone Company of Covington, Kentucky, was violating the laws of this Commonwealth in knowingly permitting its facilities to be used for illegal purposes, to-wit: The furnishing of racing information to handbook operators. It was

testified to by officials of the Company in the Wilbur versus Howard case that the Federal Bureau of Investigation furnished the Company with the names of handbook operators with the suggestion that they discontinue service to such persons in order that their phones might be made available to persons in need of them during the war emergency.

This Commission would have to shut its eyes to not know that the facilities of the Southern Bell Telephone Company were furnished to the numerous handbook operators in Louisville, Kentucky, and other large cities in this Commonwealth. It is a known fact that handbooks operate on a big scale in the City of Lexington, and that it is necessary for such illegal operations to have the facilities of the Lexington Telephone Company.

The majority members of the Commission appear to take the position that they would have to call in all of the little telephone companies in this State, for which reason my Motion appears to have been overruled. Why does not the majority call in the companies that I have specifically named to them as furnishing their facilities for illegal purposes?

In the discussion of this matter by the members of the Commission, the question was raised as to our authority. The foregoing provisions of the statute answers this question. It is inconceivable that this Commission should not adopt a policy of requiring the telephone and telegraph companies doing business in this Commonwealth to use their facilities only in a lawful and legal manner.

The Kentucky Court of Appeals in the famous case of Smith, etc. versus Western Union Telegraph Company, 84 Ky. 664, had a similar matter before it,

and the Court said, with respect to the reports which were transmitted over the telegraph company's line for illegal use:

"It is for the sake of the law and the best interest of society that we release the appellee from continuing to furnish to appellant the reports."

The foregoing case of the Court of Appeals is a leading case and has been cited by practically every court and public service commission in the United States where the subject-matter has been the use of the facilities of telephone and telegraph companies for illegal purposes.

In the year of 1938 the Public Utility Commission of Pennsylvania instituted an inquiry upon its own motion just as I sought this Commission to do in the instant case to determine whether or not the least wire service of the Bell Telephone Company of Pennsylvania was rendered in a manner as preferential and discriminatory, and whether the Bell Company knowingly released its facilities for the purpose of permitting individuals to operate unlawfully and illegally its facilities as public utilities in violation of the public utility law, and whether or not the Bell Company knowingly used its facilities in the unlawful and illegal dissemination of horse race information in violation of the gambling law of Pennsylvania, and in violation of the public utility law. In that case the whole setup of the American Telephone and Telegraph Company was described and it was shown how this Company rendered a nationwide service through its leased wire facilities from various race tracks to other points throughout the United States, including 223 cities located in 39 states emanating from some 29 race tracks throughout this country. (25 P.U.R. (NS) 452)

In making its final order after an extensive investigation, the Public Utility Commission of Pennsylvania said, in part: "In the interest of the public, and for the protection of respondent company, we hereby direct the Bell Telephone Company of Pennsylvania to cease and desist" from rendering service for the illegal purposes of gambling on horse races. In making its cease and desist order the Pennsylvania Commission pointed out:

"Certainly it is within the power and the duty of this Commission and of the utilities of Pennsylvania to face the realities of this situation. The cease and desist order \* \* \* is reasonable and justified by the facts and circumstances of record, and is one with which the respondent company can comply without difficulty."

One of the members of this Commission suggested that the Commission should not go into this matter because the companies which are aiding and assisting in the violation of the gambling laws by furnishing racing information to handbook operators are subject to be proceeded against in criminal proceedings instituted by officials charged with enforcement of the criminal laws. It is admitted that all the authorities hold that any person or company that knowingly assists in a scheme to violate the law is subject to prosecution. However, the fact that local officials do not enforce the criminal laws is no reason for this Commission to shirk its responsibility or seek to evade the issue.

It is our positive duty to see that the practices of the public utilities in this Commonwealth conform to the laws thereof. We are given exclusive jurisdiction over these matters and should exercise our powers when

proper attention is called to the fact that utilities are engaging in practices inimicable to the public welfare and contrary to law.

For the reasons indicated, I dissent from the order entered herein by the majority members of the Commission.

This May 1, 1947.

  
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Jesse K. Lewis, Commissioner