

In re APPLICATION OF THE WISCASSET WATER COMPANY FOR
APPROVAL OF ITS CONTRACT WITH THE TOWN OF
WISCASSET.

C.—No. 10.

Decided June 6, 1916.

**Approval of Contract between Utility and Town Providing for Free
Service, Refused.**

Held: That if a utility renders its service to a certain group free or at less than cost, it must charge its other customers an amount greater than would be the case if all contributed equally;

That gifts by public utilities are unlawful, against public policy and wrong in principle because they involve discrimination, and should not be permitted except in demonstrable cases of charity and benevolence; and they surely have no legitimate place in a contract.

OPINION AND ORDER.

The Wiscasset Water Company, a corporation organized under the general law on April 11, 1916, to supply the inhabitants of Wiscasset with water for domestic and fire protection purposes, makes application for approval of a contract between it and the town of Wiscasset, such approval being necessary under the provisions of Section 32, Chapter 129, Public Laws of Maine for the year 1913, as amended.

A copy of the contract, marked "Exhibit A," is annexed to the application. Aside from Article 5 of the "agreements of the company," the contract seems fair in all its terms and reflects the practices regarded as proper between towns and water companies in the matter of fire-protection contracts.

Article 5, above referred to, is as follows:

"5. That it (the company) will furnish the Old Academy (so-called) and the Federal Street School with water free to the aggregate amount of 91,000 gallons of water per year, after which, payment shall be made to the company in accordance with the regular schedule rates."

As a matter of law and of principle, there are three main objections to permitting the company to execute a contract containing the foregoing; and the fact that, in

C. L. 55]

the instant case, the effect, in dollars, of leaving it in, will be very small, cannot, and does not, affect the principle.

These are the objections:

(a) Section 32 of the Utilities Act provides that "it shall be unlawful for any person, firm or corporation knowingly to solicit, accept or receive any rebate, discount or discrimination in respect to any service rendered or to be rendered by any public utility, or for any service in connection therewith, whereby any such service shall in any manner, or by any device whatsoever, be rendered free or at a rate less than named in the schedules in force" (unless such service is for charitable and benevolent purposes, in which case, on application therefor, and approval thereof by this Commission, such services may be rendered free or at a reduced rate). It is therefore clear that free service by contract would be unlawful; and that, if the company desires to furnish free service under the broad definition of "charitable and benevolent purposes," application therefor should be made and this Commission given full opportunity to examine and pass upon the facts.

(b) To approve the contract with Article 5 in, would result in a gift to the town by the company. Many people think that if a water company can be induced or forced to make a low price to a town for water to be used for fire protection, or give water for other municipal purposes, the town and its citizens have been financially benefited. This is now regarded as a proven fallacy. Each water company must receive for its aggregate service to the whole public an amount sufficient to pay all its fixed charges and expenses, and something more as a fair return on capital invested. If it renders its service to a certain group free or at less than cost, it must charge its remaining customers an amount greater than would be the case if all contributed equally. Gifts by public utilities are wrong in principle, because they involve discrimination; they should not be permitted except in demonstrable cases of charity and benevolence; and they surely have no legitimate place in a contract.

(c) A contract which contained Article 5 would very probably be held void on account of its being against public policy. By "public policy" is meant that principle of the law which holds that no subject can lawfully do that which has a tendency to be injurious to the public or against the public good. As was said in *Beasley v. Texas & Pacific Railway Company*, 191 U. S. 492:

"But the very meaning of public policy is the interest of others than the parties, and that interest is not to be at the mercy of the defendant."

In the present case, the town (in its corporate capacity) and the company are not the only interested parties; each customer is interested and has a right to insist that the company and the town be not permitted to contract to disobey the law.

As before stated, the importance of this matter, in dollars and cents, is very small. But the principles involved are far reaching and basic. We cannot approve the contract in its present form. If Article 5 is omitted, we will approve. We suggest that the company and the town enter into a new contract, eliminating entirely the matter contained in the objectionable article, and submit the same with a new application for approval.

The pending application is dismissed for the reasons herein set forth.

Given under the hand and seal of the Public Utilities Commission, at Augusta, this sixth day of June, 1916.