It is ordered, That the respondents' request, made in their motion of July 30, 1958, for modification of the order to cease and desist be, and it hereby is, denied.

SIMPSON TIMBER COMPANY ET AL.

Docket 7713. Order and Opinion, Apr. 20, 1960

Interlocutory order upholding denial of respondent's motion to quash subpoena duces tecum requesting trade data submitted by members to redwood association.

OPINION OF THE COMMISSION

By KERN, *Commissioner:*

This matter is before the Commission upon appeal of Philip T. Farnsworth, executive vice president and general manager, California Redwood Association, from a ruling by the hearing examiner denying a motion to quash a subpoena duces tecum issued at the request of counsel supporting the complaint. The requested data include, for a specified period of time, documents identifying members, subscribers and other companies which have submitted data to the Association relating to the production and shipment of redwood; originals or true copies of all reports submitted to the Association by said companies relating to the production or shipment of redwood; all worksheets and tabulations used by the Association in the preparation of statistical reports to its members which relate to the production or shipment of redwood; and all additional documents used by the Association in computing aggregate annual production and annual aggregate shipment of redwood by all companies.

The principal argument advanced by appellant is that the subpoena calls for data obtained by the Association on a confidential basis; that disclosure of that data in response to a subpoena will cause irreparable harm to the Association and impair its operations; and that the data sought is readily available directly from the companies involved. In support of this argument, appellant relies on the Commission's action in quashing a subpoena duces tecum *In the Matter of Foremost Dairies, Inc.*, Docket No. 6495, 3 CCH Trade Reg. Rep. par. 27,844.

Appellant's reliance on that action is misplaced. In that matter, the Attorney General of the State of California, on behalf of the Director of Agriculture of that State, appealed from a ruling by the hearing examiner which denied a motion to quash or limit a subpoena duces tecum issued by the hearing examiner at the instance of respondent Foremost Dairies, Inc. In addition to other grounds, the State Attorney General argued that the material required to be produced was privileged and confidential under the laws of the State of California and that the data was available from other sources. The Commission's action was not based on either of these two grounds. It was our view that the production of the requested data would seriously impair the operations of the State Department of Agriculture. We concluded that the public interest that would be served by not impairing the operation of the state agency outweighed the public interest that would be served by the production of the requested material. While the fact that the data may have been available from other sources was a consideration in balancing the public interest to be served, it was not the basis for our holding as contended by appellant. In this connection, it is well established that "* * * there is no lawful restraint upon the use of the subpoena duces tecum which limits its use to cases where the subpoenaed property is the sole source of the information." *Fleming* v. *Montgomery Ward & Co.*, 114 F. 2d 384 (C.A. 7, 1940), *cert. denied*, 311 U.S. 690 (1940). Thus, our ruling in the *Foremost* case does not impose a restriction on the power of the Commission to obtain information by subpoena but resulted from an exercise of our discretion on the basis of the particular facts of that case.

The facts in this case are more closely analogous to those in *Federal Trade Commission* v. *W. W. Tuttle*, 244 F. 2d 605 (C.A. 9, 1957), *cert. denied*, 354 U.S. 925 (1957). Appellant in that case similarly argued that the data requested was confidential and that the production thereof would be injurious to the business of his accounting firm. The court rejected both of these contentions and we agree with the hearing examiner that the court's ruling in that matter is controlling here.

Appellant also contends that the Commission alone has the power to issue a subpoena duces tecum against third parties and since this subpoena was issued by the hearing examiner, it is invalid. This argument is rejected for the reasons set forth in our opinion in *Foremost Dairies, Inc., supra.*

No question has been raised on this appeal as to the relevancy of the documents requested in the subpoena duces tecum and we find no reason to overrule the hearing examiner's holding that the documents are relevant to the issues in this proceeding.

Accordingly, the interlocutory appeal of Philip T. Farnsworth is denied.

ORDER

This matter having come on to be heard upon the interlocutory appeal of Philip T. Farnsworth, Executive Vice-President and General Manager, California Redwood Association, from the ruling of the hearing examiner denying a motion to quash a subpoena duces tecum issued by the examiner at the instance of counsel supporting the complaint; and

The Commission having determined, for the reasons appearing in the accompanying opinion, that the appeal should be denied:

It is ordered, That the interlocutory appeal of Philip T. Farnsworth, Executive Vice-President and General Manager, California Redwood Association, be, and it hereby is, denied.

BROWNING KING & COMPANY, INC., ET AL.

Docket 7060. Order, May 4, 1960