MUNICIPALITIES: Public Service Commission: Public Service Commission cannot fix, regulate or control the rate of a municipally owned water plant.

September 11, 1934. #30

Messrs. H. C. Fries, Elmer
Mintchel, Roy Minkres
Water Committee of the City of
Mound City, Missouri

Gentlemen:

This department is in receipt of your letter of August 31st, wherein you state as follows:

> "You have visited our city and gotten a glimpse of it. We are asking you for some legal information in regard to our water plant which is owned by the City and operated by our city council.
>
> "The city council needed a little more revenue than the old rate which they were charging, provided to make the running expenses of the plant and cost of operation. When they did this, a protest was made by a user and patron of the plant.
>
> "He holds in his protest that the city council must file an application with the Public Service Commission of the State of Missouri in order to grant them a permit to change the rates of the City water to its customers.
>
> "We always were told by legal authority that the Missouri Public

> Service Commission had no jurisdiction over municipal water and light plant, so we are coming to you for your legal opinion on this question."

The title to the Public Service Commission Act as found on page 556, of the Laws of Missouri, 1913, reads as follows:

> "AN ACT to create and establish a public service commission, prescribing its powers and duties, and to provide for the regulation and control of public service corporations, persons and public utilities and to provide penalties for offenses by public service corporations, persons and public utilities, their officers, agents and employees, and by other persons and corporations, and repealing all acts and parts of acts inconsistent with the provisions of this act, with an emergency clause."

Article IV., Section 5188, R. S. Mo. 1929, provides as follows:

> "This article shall apply to the manufacture and furnishing of gas for light, heat or power and the furnishing of natural gas for light, heat or power, and the generation, furnishing and transmission of electricity for light, heat or power, <u>and the supplying and distributing of water for any purpose whatsoever</u>."

Article IV., Section 5190, R. S. Mo. 1929, subsection 5, page 1445, dealing with the general powers of the Public Service Commission in respect to gas, water and electricity, reads as follows:

"5. Examine all persons, corporations and municipalities under its supervision and keep informed as to the methods, practices, regulations and property employed by them in the transaction of their business. Whenever the commission shall be of the opinion, after a hearing had upon its own motion or upon complaint, that the rates or charges or the acts or regulations of any such persons, corporations or municipalities are unjust, unreasonable, unjustly discriminatory or unduly preferential or in anywise in violation of any provision of law, the commission shall determine and prescribe the just and reasonable rates and charges thereafter to be in force for the service to be furnished, notwithstanding that a higher rate or charge has heretofore been authorized by statute, and the just and reasonable acts and regulations to be done and observed; and whenever the commission shall be of the opinion, after a hearing had upon its own motion or upon complaint, that the property, equipment or appliances of any such person, corporation or municipality are unsafe, insufficient or inadequate, the commission shall determine and prescribe the safe, efficient and adequate property, equipment and appliances thereafter to be used, maintained and operated for the security and accommodation of the public and in compliance with the provisions of law and of their franchises and charters."

The foregoing section contains an express direction to the Commission in the circumstances indicated to "determine and prescribe the just and reasonable rates and charges" of municipalities; and Section 5188, supra, recites among other things that "This article shall apply to ***** the supplying and distributing of water for any purpose whatsoever."

In the case of City of Columbia v. State Public Service Commission, 43 SW(2d) 813, 329 Mo. 38, the sole

issue made by the pleadings in the case was," Does the Public Service Commission of the State of Missouri have jurisdiction to determine and fix the rates to be charged by a municipally owned electric light plant?" Respondent, the City of Columbia, denied the jurisdiction of the Public Service Commission to fix the rates to be charged and in its petition pleaded among other things, that

> "Fifth, if it be said that the Public Service Commission Act contemplates the supervision of municipally owned electric light plants, then such provision of the Act is unconstitutional in that it is in violation of section 28, Article 4 of the Constitution of Missouri, providing that no bill shall contain more than one subject which shall be clearly expressed in its title."

Respondent's particular objection to the Title of the Public Service Commission Act, as is found on page 556 of Laws of Missouri, 1913, supra, was that it did not clearly express the subject of regulation and control of municipalities. Counsel for appellant replied to this objection by stating that the title to the Act, "An Act to create and establish a public service commission, prescribing its powers and duties," was broad enough to include all the duties and the powers given to the Commission by the Public Service Commission Law.

The Court, in holding that the power to fix rates to be charged by municipalities which own and operate an electric light and power plant was not conferred by a valid law upon the Public Service Commission, said:

> ***** Under the foregoing rule, this suggestion can have no application because the title is not confined to any such general statement. It immediately descends to particulars by limiting the objects of 'regulation and control' to 'public service corporations, persons and public utilities,' without mentioning municipalities. Counsel for appellant say that the word 'corporations' includes 'municipalities,' but it seems obvious that

'municipalities' are not 'public service corporations.' Moreover, the act itself (Laws of 1913, p. 556, Section 2) separately defines a corporation, a person, a municipality, and a public utility, without any overlapping, as follows:

" 'The term "corporation," when used in this act, includes a corporation, company, association and joint stock association or company.

" 'The term "person," when used in this act, includes an individual, and a firm or copartnership.

" 'The term "municipality," when used in this act, includes a city, village or town.

" 'The term "public utility," when used in this act, includes every common carrier, pipe line corporation, gas corporation, electrical corporation, telephone corporation, telegraphicorporation, water corporation and heat or refrigerating corporation, as these terms are defined in this section, and each thereof is hereby declared to be a public utility and to be subject to the jurisdiction, control and regulation of the commission and to the provisions of this act.'

"If the legislative intent was to provide for the 'regulation and control' of all four of the subjects thus separately defined and distinguished in the act itself, it is fair to assume that the title would have expressly named all four subjects. Certainly, in the light of these definitions, a title that omitted one subject would not be a 'fair forecast of the contents of the bill,' if any of such contents undertook to regulate and control the omitted subject, and such is the status of the act now under con-

sideration. Such a title is obviously misleading and violative of the constitutional provision here invoked. *****.

"The fixing of rates to be charged by a municipality owning and operating an electric plant is an exceedingly positive and vital form of regulation and control. For the reasons above stated, we are constrained to hold that the power to fix such rates has not been validly conferred upon the Public Service Commission, and the judgment is affirmed."

CONCLUSION.

In view of the foregoing case and sections, we are of the opinion that any attempt of the Public Service Commission to fix, regulate or control the rate of a municipally owned water plant is invalid and without legal force.

Respectfully submitted,

WM. ORR SAWYERS
Assistant Attorney-General.

APPROVED:

(Acting)
Attorney-General.

MW/WOS:afj