

April 28, 1965



The Honorable E. J. Cantrell
State Representative
6th District, St. Louis Co.
Room 301A, Capitol Building
Jefferson City, Missouri

RE: House Bill No. 48

Dear Representative Cantrell:

As you will recall, on or about February 15, 1965, you requested an official opinion from this office regarding the constitutionality of pending House Bill No. 48 of the 73rd General Assembly.

After a complete review of the matter, I would have the following comments in regard to your request:

The General Assembly of Missouri as a coordinate branch of the state government has all the legislative powers of the state except that denied it by express limitations of the Constitution. Preisler v. Doherty et al, 365 Mo. 460, 284 SW 2d 427 (banc, 1955). A state constitution is not a grant of power as is the Constitution of the United States, but rather a limitation on that power and therefore, the power of the state legislature is unlimited and practically absolute except for those limitations. Kansas City v. Fishman, 362 Mo. 352, 241 SW 2d 377 (1951).

The power of the General Assembly to enact proposed House Bill No. 48 is unquestionable in light of the above cases unless the state constitution contains an applicable limitation, or a prohibition expressed by the federal constitution is evident. In order to examine possible state and federal constitutional questions, it is first necessary to determine and categorize the function of the Bill.

The subject of the Bill relates to public utilities within the meaning of Chapter 393, RSMo. Chapter 393, RSMo is one of a number of Chapters which in part was enacted under the Public

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Service Commission Law. The purpose of the Public Service Commission Law is to provide a system for regulation of public service corporations. State v. Missouri Southern R. Co., 279 Mo. 455, 214 SW 381 (1919). Such regulation by the state under the Public Service Commission Laws is an exercise of the state's police power. State v. Public Service Commission, 327 Mo. 93, 34 SW 2d 37 (1931). The right of a state to regulate and control public utilities operating within its borders is inherent and is referable to the police power. State v. Local No. 8-6, Oil, Chemical and Atomic Workers Intern Union, AFL-CIO, Mo. (banc, 1958), 317 SW 2d 309. Police power is the exercise of the sovereign right of a government to promote order, safety, health, morals and general welfare within constitutional limits and is an essential attribute of government. Marshall v. Kansas City, Mo. (banc, 1962), 355 SW 2d 877.

In an all conclusive discussion concerning the exercise of police power, the Missouri Supreme Court has clearly defined the state constitutional foundation thereof. In State v. Mo. Pac. R. Co., (banc, 1912), 242 Mo. 339, 147 SW 118, the Court was faced with the contention that a statute requiring payment of employees semi-monthly was unconstitutional. After examining, at length, the defendant's case, the Court concluded that such legislation was a proper exercise of police power within the meaning of the Missouri Constitution of 1875, Article II, Section 3, (now Article I, Section 3) and Article XII, Section 5 (now substantially Article XI, Section 3).

The holding of the Court in the Mo. Pac. Case, supra, has been cited with approval as recently as 1947, in Graff v. Priest, 356 Mo. 401, 201 SW 2d 945.

The exercise of police power by the state is subject also to constitutional limitations as discussed previously. The criteria by which statutory enactments grounded on police power should be examined was stated by Judge Graves in a concurring opinion in the Mo. Pac. Case, supra (l.c 129):

"Is this a fair, reasonable, and appropriate exercise of the police power of the state, or is it an unreasonable, unnecessary, and arbitrary interference"

Whether or not a statute of this nature meets the test of reasonableness is to be decided in the light of liberal construction. The language of Section 386.610, RSMo 1959, declares the construction to be given. That section in part states:

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" The provisions of this chapter shall be liberally construed with a view to the public welfare, efficient facilities and substantial justice between patrons and public utilities."

Laws enacted in the interest of public welfare or convenience should be liberally construed with a view to promote the object in the mind of the legislature. State v. Public Service Commission, supra.

However, this office would call to your attention individual problems that may arise from the application of the proposed Statute which might affect a determination of its constitutionality. Such individual problems do not appear from the face of the proposed Statute and we do not know from our own knowledge particular facts under which any one of the utilities affected might attack the constitutionality of the proposed Statute. Another possible contention for alleged unconstitutionality could be based on Article I, Section 13, of the Constitution of Missouri that no "law impairing the obligation of contracts, or retrospective in its operation," can be made. It is the understanding of this office that some utilities have contracts with their customers: and hence, the contention that this Law might impair the obligation of contract could conceivably be upheld by the courts. Likewise, some fact situation could exist on which the contention of a retrospective Law could be made. In conclusion, this office does not find the Bill under consideration to be unconstitutional on its face.

Yours truly,

NORMAN H. ANDERSON
Attorney General

NHA/hw