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Public Utilities

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PUBLIC UTILITIES

Motor Carriers—The legislature made few important changes or additions to public utility law. Chapter 299 permits a certificate of public convenience and necessity held by a common carrier operating motor vehicles on the public highways to be sold, assigned, leased, bequeathed or transferred, upon approval by the Public Service Commission, *in part* as well as in the entirety. The prior act made no provision for partial disposal.

Rate Bases—Chapter 307 provides that the Public Service Commission in determining a rate base shall evaluate public utility property according to its “fair value” instead of its “current, fair cash value.”² This change in word formula should make no difference in the Commission’s technique. The Commission is to give such consideration as it considers appropriate to all bases of valuation which may be presented or which the Commission has already been authorized to consider. It is settled that a rate making commission is not bound to any one or combination of rate formula.³

22. Thus one of the big questions in regard to the new act is whether enough time is given in which to file notice to preserve claims. The Michigan act of 1945, No. 200, from which this act was modeled in part, allowed one year in which to file notice to save claims, and the validity of the provision was questioned in 44 Mich. L.R. 45, and prophesy made that it would be held constitutional. No cases are on record testing the constitutionality of that act. It was also suggested with regard to the Michigan act that abstractors might continue to trace titles back farther than the forty years provided by the statute, but the new act would simplify the job of advising clients as prospective purchasers.

1. Ind. Stat. Ann. (Burns, 1933) § 47-1219.
2. Ind. Stat. Ann. (Burns, 1933) § 54-203.
3. F.P.C. v. Hope Natural Gas Co., 319 U.S. 735 (1942).

Warehouses—Chapter 318 limits the definition of “utility” by excluding warehouse businesses for the storage of used household furniture. Previously any warehouse service to the public was included.⁴ The act, however, does not specifically define a warehouse business for the storage of used furniture. Warehouses may be used to store both used furniture and other articles. In such case it may be necessary to decide whether the storage of used furniture is severable from the storage of the other articles, or if not, what proportion of the business must be devoted to the storage of used furniture before the entire business will be excluded from the general definition of “utility.”

Telephone Companies—Chapter 270 provides an additional remedy for the violation by any telephone company of any law, or rule, regulation, or order of the Public Service Commission. Any circuit court, upon a showing by the Commission of a violation, and the interest of the public therein, may appoint a receiver to operate the telephone company until such time as the court finds that the company will comply with all rules, regulations and orders in the future. This remedy is in addition to existing remedies—revocation of permits⁵ or a money penalty.⁶ Similar relief has been provided in the field of insurance,⁷ financial institutions,⁸ and railroads.⁹

In the absence of this special statute, it is doubtful whether a receiver would be appointed at the instigation of the Commission as a remedy for the violation of a law or Commission order, either under the general receivership stat-

4. Ind. Stat. Ann. (Burns, 1933) § 54-105.

5. Ind. Stat. Ann. (Burns, 1933) § 54-604. A permit may be revoked by the Commission for cause.

6. Ind. Stat. Ann. (Burns, 1933) § 55-4203. For a violation of this act (§§ 55-4201, 55-4202) the telephone company shall be liable to an aggrieved party to appeal to a court of equity to prevent such violations or discriminations by injunction or otherwise.”

7. Ind. Stat. Ann. (Burns, 1933) § 39-3401. The department of insurance, upon judicial order, may take possession of a business and its property for the purpose of rehabilitation.

8. Ind. Stat. Ann. (Burns, Supp. 1943) § 18-301. The department of financial institutions may take possession of a business and property of financial institutions whenever among other things there is a violation of law, articles of incorporation, or rules and regulations of the department.

9. Ind. Stat. Ann. (Burns, 1933) § 55-716. The railroad commission may apply to the court for the appointment of a receiver in case a railroad does not comply with commission orders.

ute or under the inherent power of a court of equity.¹⁰ The act does not specify what damage to the public will authorize the appointment of a receiver. The appointment remains discretionary with the court.¹¹ Clearly a continued noncompliance of an unimportant or technical nature will not cause sufficient damage or injury to the public.¹² In view of the policy section: "no part of which (nationwide telephone system) may be suspended without seriously and adversely affecting the whole" and "the continuous operation of such communications system is essential to the operation of the economic life of the country and is necessary to prevent extreme hardship" it is probable that the court will not appoint a receiver unless the violation is of such a nature that continued telephone service will be interrupted or threatened.

The statute provides that the receivership will continue until it is found by the court that the telephone company will "in all reasonable probability" comply with all regulations in the future.¹³ Perhaps a change of public utility officers or "good conduct" for a period under the receiver will satisfy the court. The period of the receivership may depend on the inertia of the court.

10. The general receivership statute, Ind. Stat. Ann. (Burns, 1933) § 3-2601, provides that a receiver may be appointed in various cases at the instigation of a person interested in property to protect that property from loss: "(7) And in such other cases as may be provided by law; or where the discretion of the court, or the judge thereof in vacation, it may be necessary to secure ample justice to the parties." *Steinbrenner Rubber Co. v. Duncan*, 86 Ind. App. 213, 155 N.E. 625 (1926), interpreting this subsection said it is merely confirmatory of the jurisdiction exercised by courts of equity. In the absence of statutory authority, a receiver can only be appointed in aid of an equitable proceeding. Clark, "Receivers" (2nd ed., 1929) p. 58, § 51, also sets out that an appointment is generally ancillary to a main action. See, *Farmers Grain Co. v. Toledo, Peoria, & Western R.R.*, 158 F. (2d) 109 (C.C.A. 7th, 1946), where the circuit court of appeals disapproved of the appointment of a receiver to operate a railroad having crippling labor difficulties because there was no limitation as to time and because it was not ancillary to other relief. But see, *The Columbian Athletic Club v. State*, 143 Ind. 98, 103 (1895) which suggests that a suit may be brought in the interest of the public when any corporation is doing acts detrimental to the public welfare. No instance in which a receiver has been so appointed in Indiana has been found.

11. See Clark, "Receivers" (2nd ed. 1929) § 53.

12. See, *Dept. of Insurance of Ind. v. Ind. Travelers Assurance Co.* 115 Ind. App. 285, 58 N.E. (2d) 761 (1944). The court refused to appoint a conservator to take possession of an insurance company as provided by Ind. Stat. Ann. (Burns, 1933) § 39-3401, supra n. 7. It is not every irregular practice that will justify granting of the application.

13. Ind. Acts 1947, c. 270, §2.