

4-1930

Public Utility Service and Discrimination

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Recommended Citation

Hyneman, Charles S. (1930) "Public Utility Service and Discrimination," *Indiana Law Journal*: Vol. 5 : Iss. 7 , Article 3.

Available at: <https://www.repository.law.indiana.edu/ilj/vol5/iss7/3>

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REVIEWS

PUBLIC UTILITY SERVICE AND DISCRIMINATION*

The 1,000 pages of this volume are divided into 33 chapters. The first chapter, 26 pages, is introductory and purports to deal with the relations between nation and state in the regulation of utility service. Chapters II to V inclusive deal with the nature of the control exercised over utility service by the state public service commissions. Chapters VI to XXVI inclusive are concerned with such general matters of service as: obligation to serve, extensions of service and facilities, discontinuance of service, abandonment of plant and equipment, and the conditions under which service is offered and rendered. Chapters XXVII to XXXIII deal with discrimination in service and rates. The material is not so organized as to facilitate a search for law and practice in respect to matters of utility service which are of current importance or the subject of controversy, at the present time. One will not find, for example, a key to current practice in rural electrification, a summary of state law respecting sub-metering, or a discussion of the extent to which municipalities share control over the service of motor busses engaged in street transportation.

The table of cases cited covers 138 pages of fairly small print and includes approximately 4,900 entries. Allowing for entry under name of both plaintiff and defendant, one may estimate that not less than 2,700 different cases are cited. If the reviewer was accurate in his check, and he took especial pains to be, only 60 of these cases are United States supreme court decisions and only 57 are lower federal decisions. Perhaps 50 of the cases are English. Many of the remaining decisions are state courts but far more than one-half of the cases listed are opinions of state public service commissions. Most of these commission decisions are from the collection known as Public Utilities Reports and hence do not antedate 1915. There are, however, a number of commission cases taken from the less available collections issued by the different states.

The preface of this book gives one the impression that it is offered as "a treatise covering the details of public utility service and the regulatory problems arising in the relations between the utilities and their customers." An examination of the volume leaves the reader clear on perhaps only one point, viz., that Mr. Nichols has not produced a treatise. Just what sort of work he has brought forth is difficult to say. The volume defies classification.

* *Public Utility Service and Discrimination; Managerial Problems, Regulations and Practices.* By Ellsworth Nichols. Public Utilities Reports, Inc., Rochester, N. Y., 1928. Pages clii, 1087. Price \$10.

Apparently only one statute is cited in the foot-notes. The 117 United States supreme and inferior court decisions which are listed appear to be cited a total of about 160 times. It ought to be perfectly clear without further comment that a treatise cannot be written with so little attention to such important sources of the law. A chapter of 33 pages entitled "Limitations on Commission Powers and Powers of Other Bodies," purporting to deal, among other things, with judicial review of public service commission orders and the question of encroachment by the regulatory officials on proper managerial discretion, cites two United States supreme court and four inferior federal court decisions. One would expect to find in the opening chapter dealing with the relation between state and national regulation some reference to the leading cases on the commerce clause of the constitution. Very few of the more important cases are cited. The explanation seems to lie in the fact that these landmarks of the law are not printed in Public Utilities Reports. To illustrate: one page 2 of the book appears the following statement. "While Congress has exclusive power to regulate interstate commerce, and the state may not, when Congress has exerted that power, interfere therewith, even in the otherwise just exercise of its police power, the state may in such a case act until Congress does exert its authority, though interstate commerce may be incidentally affected." Without arguing whether the term "exclusive power" is properly used, one would doubtless presume that if authority is to be given for this statement it should properly be found in one or a number of United States Supreme Court decisions. The authority given is a decision of the Florida Supreme Court. Reference to the case in P. U. R., 1919 D, 692, reveals that the statement above quoted is an exact copy of the heading of the case save that Mr. Nichols omitted the word "even" which precedes the word "though" in the case heading.

A number of comparisons show that most of the work in constructing the volume under review consisted of clipping and pasting together the syllabi of cases which are collected in the Public Utilities Reports. Among these has been sprinkled a fair number of syllabi from commission decisions not included in this collection. The author, or compiler, has taken little pains to weld these relatively independent statements into a readable continuance. Over them one travels from bump to bump as over a corduroy road. The transitional words furnish too thin a filler to absorb the jar. And the trip leads nowhere. On page after page one reads that the Pennsylvania commission did this, the Missouri commission did that, and the Wyoming commission did neither. In vain one looks for a paragraph which will reconcile apparently inconsistent pronouncements, point to evidence of a rule of law in process of formation, or suggest a policy which might help the public service commission to achieve the objectives of regulation. The nearest approach to this is an

occasional section, prepared with the pen rather than the scissors, by which the author introduces a chapter.

The book is, of course, not necessarily valueless simply because it does not possess certain merits which one might hope to find. A perusal of the book will yield little satisfaction to attorney, public service commissioner, utility operator or consumer. But here one will find reference to a great number of cases which point to the law and practice of public utility service. The volume is a cumulative index of thirteen years of court and commission decisions in respect to one branch of public utility regulation. It is little more.

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