Indiana Law Journal

Volume 10 | Issue 7 Article 10

4-1935

Public Service Commission-Prevention of Enforcement of Commission's Orders by Courts

Public Service Commission—Prevention of Enforcement of Commission's Orders by Courts. On December 27, 1929, upon petition of the appellant, the Public Service Commission of Indiana made an order fixing and increasing the rates to be charged the public for appellant's telephone service. Within thirty days thereafter, appellees instituted this action to enjoin the operation of the order. Issues were formed, there was a trial by the court, and a decree was entered enjoining the rates fixed by the order as unreasonable and unlawful. Appellants assigned as error on appeal the overruling of their motions to make more specific and their demurrers to the complaint, all based on the theory that the action of appellees constituted a collateral attack upon the commission's order, which could be made only if the order was wholly void. Held, that the court's power to enjoin unreasonable administrative or legislative orders or regulations is not derived from statute, but exists through and under the Constitution; and that in passing on orders of the Public Service Commission, court does not review for error, since commission acts ministerially and court, judicially.[1]

---

[13] David Lupton's Son Co. v. Automobile Club (1912), 225 U. S. 489, 56 L. Ed. 1177; Louis Ilfield Co. v. Union Pac. R. Co. (C. C. A. 1927), 23 F. (2nd) 65; Johnson v. New York, etc. (C. C. A. 1910), 178 F. 513; Ockenfels v. Boyd (C. C. A. 1927), 297 F. 614.

[14] Reliance Mut. Insurance Co. v. Sawyer (1897), 160 Mass. 413, 36 N. E. 59; Haverhill Insurance Co. v. Prescott (1861), 42 N. H. 547, 80 Am. D. 123.

[15] Thompson v. National Mut. Building and Loan Association (1905), 57 W. Va. 551, 50 S. E. 756.

[16] Fritts v. Palmer (1889), 132 U. S. 281, 33 L. Ed. 317.

[17] Neuchatel Asphalt Co. v. New York (1898), 155 N. Y. 373, 49 N. E. 1043; Ward Land, etc., Co. v. Mapes (1905), 147 Cal. 747, 82 P. 426; Brewing Co. v. Grimes (1899), 173 Mass. 252, 53 N. E. 855; Despres v. Zieleyn (1910), 163 Mich. 399, 128 N. W. 769.

[1] Public Service Commission v. City of LaPorte (1935), — Ind. —, 193 N. E. 668.

The power to make, amend and repeal laws has been granted to the legislature of the state by the Constitution.[2] When a business is "affected with a public interest", or is within the class commonly designated as "public utilities", it may be regulated in the interest of the public through the general police power of the state, and this includes the power of the state, through legislative enactment, to fix the prices or charges which may be made by those engaged in it, in such manner as to protect the public against unreasonable or extortionate prices for the service rendered.[3]

The function of the legislature, however, in making the law must be exercised by it alone and cannot be delegated to any other person or body.[4] But authority may be granted to administrative officers or boards to make rules and regulations for carrying a statute into effect; and when the legislature enacts a general law, complete in itself, it may confer on public officers or administrative boards or commissions the authority to make such rules and regulations and there is no unlawful delegation of legislative power, though the administrators of the law must deal in a quasi-legislative way with matters which are in a certain aspect legislative, though predominantly administrative in their nature.[5] So in pursuance of its power to regulate railroads, warehouses and other public utilities, the legislature may, by statute, prescribe general rules, and intrust their enforcement to a commission.[6]

The Public Service Commission in Indiana is created by statute,[7] and it is a state agent given only administrative and ministerial powers, having no purely legislative power,[8] though in reality exercising quasi-legislative and quasi-judicial power.[9] The commission, however, possesses only such powers as are conferred on it by the statute,[10] and if they are exercised contrary to principles of common law, the courts will declare them void;[11] for although the fixing of public utility rates is a legislative function, the determination of the reasonableness of such rates fixed by legislative authority is for the judiciary,[12] whose power to enjoin unreasonable adminis-

2 Constitution of the State of Indiana, Art. 4, sec. 1; Maize v. State (1853), 4 Ind. 342.

3 Milwaukee Electric Ry. Co. v. Wisconsin Railroad Com'n (1914), 238 U. S. 174, 59 L. Ed. 1254; City of Chicago v. O'Connell (1917), 278 Ill. 591, 116 N. E. 210; State v. Public Service Com'n (1925), 308 Mo. 328, 272 S. W. 971; City of Woodburn v. Public Service Com'n (1916), 82 Ore. 114, 161 Pac. 391; Southern Ind. R. Co. v. State R. Com'n (1909), 172 Ind. 113, 87 N. E. 966; State Public Utilities Com'n v. Springfield Gas and Electric Co. (1919), 291 Ill. 209, 125 N. E. 891.

4 St. Louis Merchants' Bridge Terminal R. Co. v. U. S. (1911), 188 Fed. 191, 110 C. C. A. 63; Grand Trunk Western R. Co. v. South Bend (1909), 174 Ind. 203, 89 N. E. 885; Groesch v. State (1873), 42 Ind. 547; Maize v. State (1853), 4 Ind. 342.

5 Zuber v. Southern Ry. Co. (1911), 9 Ga. App. 539, 71 S. E. 937; State v. Howard (1914), 96 Neb. 278, 147 N. W. 689; Milstead v. Boone (1921), 301 Ill. 213, 133 N. E. 679; State v. Duval County (1918), 76 Fla. 180, 79 So. 692; Bailey v. VanPelt (1919), 78 Fla. 337, 82 So. 789.

6 Southern Ind. R. Co. v. State R. Com'n (1909), 172 Ind. 113, 87 N. E. 966; Southern R. Co. v. Hunt (1908), 42 Ind. App. 90, 83 N. E. 721.

7 Burns' Ind. Statutes (1933), secs. 54-101 to 55-130.

8 In re Northwestern Ind. Telephone Co. (1930), 201 Ind. 667, 171 N. E. 65; State v. Lewis (1918), 187 Ind. 564, 120 N. E. 129.

9 Chicago, I. & L. Ry. Co. v. Railroad Com'n (1906), 35 Ind. App. 439, 78 N. E. 338.

10 State v. Vandalia R. Co. (1915), 183 Ind. 49, 108 N. E. 97; American Foundry Co. v. Chicago, I. & L. Ry. Co. (1931), — Ind. App. —, 178 N. E. 295.

11 Terre Haute, I. & E. Traction Co. v. Puckett (1927), — Ind. App. —, 158 N. E. 639.

12 Portland R., etc., Co. v. Portland (1912), 200 Fed. 890; Missouri, etc., R. Co. v. Interstate Commerce Com'n (1908), 164 Fed. 645; In re Northwestern Ind. Telephone Co. (1930), 201 Ind. 667, 171 N. E. 65.

trative or legislative orders or regulations is not derived from the statute, but exists through and under the Constitution as a judicial function.[13]

An order of the Public Service Commission fixing rates is therefore not a judgment but an administrative order,[14] and the court on appeal therefrom hears the case de novo under the statute,[15] findings of fact by the commission not being conclusive upon the court.[16] Findings of fact by the commission, however, are said to be conclusive upon the court in a collateral attack.[17] It has been held that the phrase "trial de novo" does not necessarily mean that the court hears and determines the case on its merits, but that the presumption is in favor of the findings of the commission; for if there is any substantial evidence to support the findings, the court must uphold it, as the ultimate question for determination is whether the order is reasonable or within the commission's power to make;[18] and as long as the commission keeps within the field of regulative powers over the persons or entities over which it has jurisdiction, its orders and action with reference to such matters must be respected by the court.[19] The United States Supreme Court, however, has said that in all such cases, if the owner or utility claims confiscation of property will result, the state must provide a fair opportunity for submitting that issue to a judicial tribunal for determination upon its own independent judgment as to both law and facts; otherwise, the order is void because in conflict with the due process clause of the Fourteenth Amendment.[20] This decision has apparently been affirmed and strengthened by a more recent one, Crowell v. Benson.[21] Therefore, it is submitted that the decision of the Indiana Supreme Court in the Singleton case[22] as regards the meaning of a trial de novo upon appeal from a commission's order is of doubtful constitutionality under the due process clause, unless it can be said that the late case of Florida v. United States[23] shows a tendency of the Supreme Court to restrict and delimit the doctrine asserted in the earlier cases.

R. S. O.

---

[13] Chicago, I. & L. Ry. Co. v. Railroad Com'n (1906), 35 Ind. App. 439, 78 N. E. 338.

[14] Valparaiso Lighting Co. v. Public Service Com'n of Indiana (1920), 190 Ind. 253, 129 N. E. 13.

[15] Public Service Com'n of Indiana v. Cleveland, C., C. & St. L. Ry. Co. (1918), 188 Ind. 197, 121 N. E. 116; In re Northwestern Ind. Telephone Co. (1930), 201 Ind. 667, 171 N. E. 65; Public Service Com'n of Indiana v. Lake Erie & W. R. Co. (1921), 191 Ind. 436, 133 N. E. 492.

[16] Public Service Commission of Indiana v. Lake Erie & W. R. Co. (1921), 191 Ind. 436, 133 N. E. 492.

[17] Public Service Commission of Indiana v. City of Indianapolis (1922), 193 Ind. 37, 137 N. E. 705.

[18] New York, C. & St. L. R. Co. v. Singleton (1934), — Ind. —, 190 N. E. 761.

[19] In re Northwestern Ind. Telephone Co. (1930), 201 Ind. 667, 171 N. E. 65.

[20] Ohio Valley Water Co. v. Ben Avon Borough (1920), 253 U. S. 285, 40 Sup. Ct. 527.

[21] (1932), 52 Sup. Ct. 285.

[22] New York, C. & St. L. R. Co. v. Singleton (1934), — Ind. —, 190 N. E. 761.

[23] (1933), 54 Sup. Ct. 603.

University of Indianapolis
Department of Law

The Indiana Law School

ESTABLISHED 1894

Three Year Course leading to Bachelor of Laws degree. A full-time day school.

+ + +

BOARD OF TRUSTEES

Dr. Matthias L. Haines, President
Hilton U. Brown — Louis B. Ewbank
James M. Ogden

EXECUTIVE COMMITTEE

Henry M. Dowling — Louis B. Ewbank
James M. Ogden

Joseph G. Wood,
Sec'y and Acting Dean

Addison M. Dowling,
Registrar

FACULTY

Henry M. Dowling
Louis B. Ewbank
James M. Ogden
Thomas A. Daily
Addison C. Dowling
Samuel E. Garrison
Ralph B. Gregg
James W. Ingles
John W. Kern
Floyd J. Mattice
Hugh D. Merrifield
F. E. Schortemeier
William G. White
Joseph G. Wood
L. Roy Zapf

SPECIAL LECTURERS

Wilmer T. Fox — Charles F. Remy

The Insurance Building
6th Floor

Monument Circle and Market St., Indianapolis, Ind.