

Public Service Commission, Authority of. Rates, Regulation of. Public Utility, Service by. Contract, With U. S. Government. U. S. Military Reservation, Rates for Service.

The public service commission has no authority to regulate rates charged by a domestic public utility corporation for service furnished to the United States Government on a military reservation.

Helena, Montana, April 13, 1916.

Hon. Railroad and Public Service Commission,
Helena, Montana.

Gentlemen:

We are in receipt of your communication under date the 10th ultimo stating that the Missoula Light and Water Company is supplying electricity for lighting and power purposes to Fort Missoula, under contract entered into after the creation of the Public Service Commission. The original contract was for a period of one year, with a reservation on the part of the government to renew it at its option from year to year over a period of nine years. The rates charged under this contract are exceedingly low. You suggest that they are perhaps lower than actual cost of production, and that because your commission will permit a utility to earn sufficient on the business of its plant and make a reasonable return on its investment, such a practice on the part of the utility reflects back upon the users of current in Missoula, and is, therefore, discriminatory as to them.

We deem it unnecessary to investigate the question of discrimination here because of other considerations. It is suggested, however, that a mere difference in rates is not always a test of discrimination, since the term "discrimination" is only properly applied to differences in charges of service rendered to the same class of persons.

We are of the opinion, however, that the authority of the Commission does not extend to the contract under consideration. The territory included in Fort Missoula reservation is entirely under the jurisdiction and control of the Federal Government. The Acts of Congress and regulations made pursuant thereto by the Federal officers vested with jurisdiction thereof, are supreme over any state law. The regulation of rates for power and electricity is an exercise of the police power of the state. That it does not apply to such institutions or territory as Fort Missoula, is well shown by a decision of the Supreme Court of the United States. A state law regulated the sale of oleomargarine, requiring among other things, that placards of a certain size be posted in any dining room where oleomargarine was sold, attesting to that fact. One Thomas, a defendant in the case, was the governor of a national home for disabled soldiers, in charge of the eating house at such home. Under the appropriation bill enacted by Congress for the support of the home, he served as food in the men's dining room, oleomargarine without posting a placard as required by

state law. The ground upon which the home stood had originally been ceded to the United States, but had subsequently been ceded back to the State of Ohio, which condition existed at the time the case arose. The defendant was arrested for a violation of the oleomargarine law and fined. An appeal to the Supreme Court of the United States was had. That tribunal held:

"In making provision for so feeding the inmates, the governor, under the direction of the board of managers, and with the assent and approval of Congress, is engaged in the internal administration of a Federal institution, and we think a state legislature has no constitutional power to interfere with such management as is provided by Congress.

Whatever jurisdiction the state may have over the place or ground where the institution is located, it can have none to interfere with the provisions made by Congress for furnishing food to the inmates of the home, nor has it power to prohibit or regulate the furnishings of any article of food which is approved by the officers of the home, by the board of managers, and by Congress. Under such circumstances the police power of the state has no application."

Ohio v. Thomas, 173 U. S. 276.

It will be seen from the facts stated above, that there was a somewhat weaker case than the one in hand, in as much as the territory on which the institution stood was under the jurisdiction of the state, and not of the federal government. This case has been followed in numerous instances, many of them being cases where the power of state courts to punish government officers for crime has been in question.

See 188 U. S. 236, 100 Fed. 157, 111 Fed. 254, 119 Fed. 234.

It might be urged in support of the Commission's power that while it had no jurisdiction over the federal officers in charge of Fort Missoula, it does have jurisdiction over the Missoula Light and Water Company, and could, therefore, prohibit them from entering into a contract. This position, however, is untenable, since a state commission has no more jurisdiction over what the Missoula Light and Water Company does on Fort Missoula, than it would have over what the same would do in Idaho or Canada. Fort Missoula is as distinctly a separate jurisdiction so far as the police power of the state of Montana is concerned, as any foreign state or territory. As has often been declared by the Supreme Court of the United States, the Acts of Congress, and regulations made thereunder, pursuant to the powers granted to the Congress by the Constitution, are the supreme law of the land.

I am of the opinion, therefore, that your commission has no jurisdiction over the contract in question.

Yours very truly,

J. B. POINDEXTER,
Attorney General.