

Municipal Corporations, Water Rates. Public Service Commission, Authority of Over Municipal Water Works. Ordinances, Validity of.

The legislature may impose the same restriction upon the manner of carrying on the business of a municipal water works or the rates charged for the services rendered, as fully as it may in the case of purely private corporations engaged in public services. An ordinance passed and adopted without the concurrence of the commission as provided by Chapter 52 of the Session Laws of the Thirteenth Legislative Assembly is void.

February 9th, 1914.

Honorable Railroad and Public Service Commission,
Helena, Montana.

Gentlemen:

I am in receipt of your communication under date of the 31st ultimo, together with the enclosure, in which you ask for my opinion upon the validity of a city ordinance providing for a discount of 25 per cent on all monthly and quarterly bills for water, passed without any concurrence of or consultation with your commission. I am of the opinion that such an ordinance is not valid, in view of the provisions of Secs. 11 and 12 of Chap. 52 of the Session Laws of 1913.

A distinction is made in law between those functions of a municipal corporation which are purely governmental in their nature, such as the control of city streets, police power, etc., and those that take more of the nature of private enterprise, to which latter

class belong municipal water systems or gas and lighting systems. The power the legislature has over the municipality is different in regard to each of these functions. Over such matters that come under the head of purely government functions, the power of the legislature is inherent, plenary and exclusive, subject to certain constitutional limitations. But it is held that as to matters which are not essentially governmental in character, but more in the nature of private enterprise, a municipal corporation stands in the same position as any other corporation engaged in similar enterprises.

"When engaged in an enterprise of a private nature, a municipal corporation is subject to all of the liabilities and restrictions and is entitled to all of the immunities that belong to ordinary corporations."

Higginson v. Slattery, 99 N. E. 524.

"The business of furnishing the inhabitants of a city with water * * * is undoubtedly a business which is public in its nature and belongs to that class of occupations or enterprises upon which a public interest is impressed. The business carried on by common carriers, telegraph companies and gas companies, are examples of the same class."

Wagner v. Rock Island, 136 Ill. 129.

21 L. R. A. 519.

The result of these theories then is that the legislature may not destroy the property or authorize its agents to take from the municipal corporation, without due process of law, any property used in this private sort of enterprise, any more than it could do so with a strictly private corporation. The legislature may, however, impose the same restrictions upon the manner of carrying on the business of this private enterprise or the rates charged for the services rendered, just as fully in the case of a municipal as it could in the case of a purely private corporation engaged in public service. By the terms of Chap. 52, Session Laws of the Thirteenth Legislative Assembly, municipal corporations are intended to be included among those over which your commission should have control. This is shown by Sec. 3 of the act. Subdiv. C of Sec. 11 of the act prohibits the making of any changes in the schedule of rates charged for the various public services without twenty days previous notice to the commission, and further,

"That no advance or reduction of said schedules shall be made without a concurrence of the commission."

Sec. 12 of this law further makes it

"Unlawful for any public utility to charge, demand, collect or receive a greater or less compensation for any services performed by it within the state, or for any services in connection therewith, than is specified in such printed schedules. * * * It shall likewise be unlawful for any public utility to grant any rebate, concession or special privilege to any consumer or user, which, directly or indirectly, shall or may have the effect of changing the rates, tolls, charges or payments."

For the foregoing reasons, I am of the opinion that the ordi-

nance submitted by you is invalid, and one which is beyond the power of a city council to pass, without the concurrence of the commission, since the passage and approval of Chap. 52 of the Session Laws of the Thirteenth Legislative Assembly.

Yours very truly,

D. M. KELLY,
Attorney General.