

**Public Service Commission, Powers of. Public Utilities,
Duty of to Furnish Meters. Meters, Authority Public Serv-
ice Commission to Order Furnished.**

The public service commission has power to determine the reasonableness of any rule of a water company requiring service or meter charges in addition to the regular water rate charged consumers, unless specific authority for such charge is given to such utilities by express provision of law or franchise.

March 31, 1915.

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

Gentlemen:

I am in receipt of your communication under date the 22nd instant, in which you state that it is the practice of some of the public utilities of this State to require their consumers to furnish meters at their own expense, and also the practice of other utilities to require the patron to construct and maintain at his own expense service pipes connecting with the mains in the public streets. You state further that in your opinion it is within your jurisdiction to make an order requiring water utilities, whether municipally owned or not, to furnish meters and service connections without cost to the consumer, in cases where you find after proper investigation that the expense of furnishing these accessories is an unreasonable charge against the consumer.

The first question which is raised by your inquiry is the extent of your commission's jurisdiction over such matters. In other words,

whether the regulation of such matters as the furnishing of meters and service pipes are within the powers delegated to the commission by the legislature. The furnishing of water to the inhabitants of cities and towns is a business charge with a public interest, and one that is properly classed as a public calling, or a public utility. In fact, it is so made by Section 3 of Chapter 52 of the Session Laws of the Thirteenth Legislative Assembly. Since it is expressly made a public utility, it is, therefore, subject to such power as the state may have over this class of business. This question was recently before the Supreme Court of California in the case of TITLE GUARANTEE AND TRUST CO. v. RAILROAD COMMISSION, 142 Pac, 878. The clause in the California law was that:

"All corporations formed to supply all waters to cities or towns, must furnish pure, fresh water to the inhabitants thereof for family uses, so long as the supply permits, at reasonable rates and without distinction of persons, upon proper demand therefor. * * * * The Board of Supervisors, or the particular city or town authorities, may prescribe proper rules relating to the delivery of water, not inconsistent with the laws of the state."

This definition of a water company's duty is perhaps a little more specific than any found in our law. Nevertheless, the declaration by the legislature that water companies are public utilities would impose upon them the duty expressed in the California statute. Speaking of this duty, the California court said:

"While it continued to enjoy the franchise, it could not escape the duty by showing that its articles of incorporation did not give it the authority to engage in the service. It follows that the regulation was one which could lawfully be imposed upon the plaintiffs by the public agency to which the regulating power may be delegated by law."

The regulation spoken of in this case was an order of the Railroad Commission requiring water companies to make service connection to the property lines of owners, and install meters free of charge for persons living in the city. It is well to observe before leaving this case that the court in the end held that such an order was beyond the authority of the Railroad Commission, in that state, for the reason that it was optional with cities of the class of that involved in the case whether they should reserve to themselves the control of public utilities, or whether they should delegate that control to the Railroad Commission. It was found that the city never had relinquished its control. In this state, by the direct terms of Section 3 of Chapter 52, the public service commission is invested with full power, supervision, regulation and control of such utilities

"to the exclusion of the jurisdiction, regulation and control of such utilities by any municipality, town or village."

The proposition laid down in that case, that such utilities were subject to the control of the regulating power, would apply in this state, and your commission would have power, in a proper case, to regulate these matters.

The next question to consider is that of whether public utility corporations or municipalities operating such utilities may make service connections and meter charges a burden upon the consumer. An examination of the decided cases upon this question shows a very respectable authority upon both sides of it.

"If the meter be supplied by the municipality or corporation, it has the right in the absence of statute provisions to the contrary, ordinarily to charge reasonable rental for the meter; or it may in proper cases require that consumers shall at their own expense provide meters and keep them in repair."

Dillon Municipal Corporations, 5th Ed. Sec. 1320.

The two leading cases in this country holding to this view are:

State vs. Gosnell, 116 Wis. 606; 61 L. R. A. 33, and

Shaw-Stocking Co. vs. Lowell, 199 Mass. 118.

In the Wisconsin case, the court laid down this rule:

"A municipal corporation may require consumers of water in certain cases to use meters and keep them in repair at their own expense, under charter authority to legislate as to means for ascertaining amounts to be paid as water rates by consumers, and to make regulations for the protection of the works and the use thereof."

The Massachusetts case practically followed the Wisconsin case, and adopted the same rule. Both of these cases have approved and adopted the rule of an early English case, which laid down the rule above stated.

Sheffield Water Works Co. vs. Bingham, L. R. 25 Ch. Div. 443.

An examination of the English case, however, shows that a controversy over the furnishing of water for what was at that time a special sort of service, that is, a supply of water for the bath. Likewise, in the Massachusetts case a controversy arose over a requirement that the consumer furnish a meter to measure water used in a private fire protection system, and all of these cases are decided largely upon the point that it is optional with the consumer whether he use the water in the method under question or not. It appears also, in the English case that the consumer made his own connection with the water main, and the water main was treated more as a common supply, such as a reservoir or town pump would be, where each man served himself. The whole conception of the duties of water companies was different in that country and at the time the English case was decided, than it is in present day America. The best known case adopting the opposite view is that of the RED STAR STEAMSHIP COMPANY vs. JERSEY CITY, 45 N. J. L. 246, where the rule was laid down as follows:

"When the only duty imposed upon the citizens of a city by an ordinance establishing a water system, was the payment of the water rentals, the city could not thereafter make the cost of measuring the water a charge against the consumer by an ordinance requiring consumers to pay for a meter."

This case has been followed by the Supreme Court of Idaho, California, Alabama and others. Citations of these are sufficient. They are:

Bothwell vs. Consumers Co. 92 Pac. 583;
Consumers Co. vs. Hatch, 104 Pac. 670;
Pocatello Water Co. v. Standley, 61 Pac. 518;
Spring V. W. Co. vs. San Francisco, 22 Pac. 817;
Title Guarantee and Trust Co. v. Ry. Com. 142 Pac. 878.

This last case is perhaps the latest expression of any court upon the subject. The court in this case laid down the rule:

"A franchise giving the right to furnish water to the inhabitants of a city at rates to be fixed, and to use the streets as a place in which to lay the necessary pipes does not authorize the holder to charge consumers for the expense of laying service pipes from the main to consumers along the street, unless such right is conferred by some clause of the franchise, or by some provision of law, applicable to such service. A franchise to furnish water to the inhabitants includes the duty of conveying water to the consumer. The inhabitants have been given no right to use the streets at all for the laying of pipes therein."

This answers the question as to service pipes. After pointing out that cities in California were given rate fixing powers for water service, the Court said:

"In order to fix rates according to the exact quantity of water supplied, a meter is necessary. The power to fix rates in that manner must include the power to say who shall provide and pay for the meter to be used to determine the amount consumer shall pay."

Having seen that the business of supplying water to municipalities is a public utility, and that Chapter 52 of the Session Laws of the Thirteenth Legislative Assembly makes it the duty of all public utilities to furnish reasonably adequate service, and facilities, and further, that your commission is given power to supervise, regulate and control such utilities, I am of the opinion that your commission has the power to determine the reasonableness of any rule in any case where any public utility furnishing water, requires or makes a service or meter charge to the consumer in addition to the regular water rate, unless specific authority for such charge is given to such utility by express provision of law or franchise.

Yours very truly,
D. M. KELLY,
Attorney General.