

**State Efficiency and Trade Commission, Counsel For—  
Claim For Services.**

The claim for services by counsel employed by the State Efficiency and Trade Commission does not constitute valid charges against the state.

January 31st, 1920.

State Board of Examiners,  
Helena, Montana  
Gentlemen:

You have requested my opinion regarding two claims filed with the State Board of Examiners, one of said claims being that of Hon. W. T. Pigott for services performed as an attorney for the State Efficiency and Trade Commission, the other claim being that of Hon. C. E. Pew for similar services rendered to such commission, the amount of each claim being \$1000, and both of said claims being approved by the Hon. Frank Eliel, chairman of such commission.

The State Efficiency and Trade Commission was created by Chapter 184, Session Laws 1919. The duties of said commission are enumerated and specified in Section 3 of said Act, being generally to investigate the financial and business policies of the state and its various officers, bureaus, boards, departments and institutions, to devise ways and means for the correction of any abuses, inefficiency and undue and unnecessary expenditures of money found to exist; to investigate the subject of wholesale and retail prices of articles of merchandise, foodstuffs, produce and commodities, the cost of production, manufacture, transportation and sale thereof, and the trade and commercial conditions in relation thereto; and to investigate the trade relations between manufacturers, producers, wholesalers, jobbers, retailers, and consumers; and to investigate cases of unfair trade practices, and of combinations or agreements in restraint or restriction of free and fair competition. To carry out such purposes and perform such duties Section 2 of said Act authorizes the commission to employ such "expert accountants, persons especially skilled in the science of state and municipal government, stenographers and other assistants as shall be necessary."

Section 1, Article 7 of the Constitution creates the office of Attorney General, and requires him to perform such duties as are prescribed in the Constitution and by the laws of the state. Section 193 of the Revised Codes 1907, prescribes generally the duties of the Attorney General, subdivision 6 thereof requiring him to give his opinion in writing without

fee "to any state officer, board or commission \* \* \* when required upon any question of law relating to their respective offices."

In the case of State ex rel. Nolan v. District Court, 22 oMnt. 25, 55 Pac. 916, the Court said:

"The policy of the law is easily discerned. The Attorney General is the principal law officer of the state. His duties are general; his authority is co-extensive with public legal affairs of the whole community. His advice often affects the rights of all persons within the state, and, excepting judgments and orders of courts, his opinions control public interests more largely than do the acts of any other official of the state."

In the case of State ex rel. Ford v. Young et al., 54 Mont. 401, 170 Pac. 947, it was said:

"The office of Attorney General is of ancient origin. The powers and duties appertaining to it were recognized by the common law, and the common law has been a part of our system of jurisprudence from the organization of Montana territory to the present day. Bannack Statutes, p. 356; Compiled Statutes, p. 647; Revised Codes, Sec. 3552. In this state the office of Attorney General is created by our State Constitution (Section 1, Article 7), which also provides that the incumbent of the office 'shall perform such duties as are prescribed in this Constitution and by the laws of the state.' The Constitution enumerates certain duties, and Section 193, Revised Codes, certain others, and then concludes by imposing upon the Attorney General 'other duties prescribed by law.' It is the general consensus of opinion that in practically every state of this Union whose basis of jurisdiction is the common law, the office of Attorney General, as it existed in England, was adopted as a part of the governmental machinery, and that in the absence of express restrictions, the common-law duties attach themselves to the office as far as they are applicable and in harmony with our system of government."

The State Efficiency and Trade Commission, having been created by the legislature, and being required to perform certain duties for the benefit of the State and the inhabitants thereof, such commission was a public commission, not a private commission, in other words purely a state commission or board, a department of the state.

The Efficiency and Trade Commission being a state commission or board, and the Attorney General being the principal law officer of the state, and being required by subdivision 6 of Section 193, Revised Codes, to give his opinion in writing to such commission upon any question of law when requested so to do by such commission, there can be no question but what the Attorney General was the legal adviser of such commission. The question then resolves itself into this: "The Attorney General being the legal adviser of such commission, did the commission have any power or authority to employ other attorneys to advise the commission or to perform any legal services for it?" I believe that it will be readily conceded that no state officer, board or commission has any authority to employ any attorney, other than the Attorney General, to advise such officer, board or commission or to perform any legal services for such officer, board or commission, unless the Act creating the same, or some subsequent Act, expressly authorizes the officer, board or commission so to do, or by language used fairly implies that such authority is intended to be granted.

There is no express provision in the Act creating the commission authorizing the commission to employ any attorney to advise the commission or to render it any legal services, and if such authority is to be implied it must be from the language used in Section 3 of the Act: "The commission is authorized \* \* \* to employ such expert accountants, persons especially skilled in the science of state and municipal government, stenographers and other assistants as shall be necessary to carry out the purpose for which said commission is created." Neither Mr. Pigott nor Mr. Pew claim to be, and their services were not rendered as "expert accountants," or "persons especially skilled in the science of state and municipal government" or "stenographers," but they are attorneys at law and their claims have been filed for legal services rendered as such attorneys at law. If, therefore, the commission had implied authority to employ attorneys to advise the commission and to perform any legal services for it, it must have been by virtue of the word "assistants," and unless the word "assistants" is sufficiently comprehensive to include attorneys then the commission had no such authority.

In Oregon a statute (Gen. Laws 1913, p. 670) created a Corporation Department of the State of Oregon, and a Corporation Commissioner, prescribing his powers and duties. Section 6 of the Act authorized the Corporation Commissioner to "appoint such clerks, stenographers and assistants as may be actually necessary from time to time to properly discharge the duties of his office."

In the case of *Gibson v. Key*, State Treasurer, 137 Pac. 864, the Court held that such provision did not authorize the Corporation Commissioner to employ as an assistant an attorney to ascertain facts and means of proving them, or to give legal counsel or advice. After reviewing the duties of the Attorney General, the Court said, with reference to the employment of an attorney by the Corporation Commissioner:

"So far as the appointment involved counsel and legal advice to the commissioner, it may be said that if that officer was not well enough versed in the law governing his position to perform its requirements, he cannot expect the state to incur the expense of educating him thereto further than may be implied from the functions of its regular law officers. If he desires independent legal advice, he may, at his own cost, secure it. He cannot supersede the regular law officers of the state. The terms 'clerks, stenographers and assistants' are not comprehensive enough to include attorneys, or to work a repeal or amendment by implication of the laws providing legal advisers for the state and in its interest."

During the life of the State Efficiency and Trade Commission, and while such commission was discharging the duties imposed on it, the Attorney General, and his assistants, were at all times ready and willing to advise the commission and to render it, and its members, any and every assistance possible, and the commission, and its members, not only were aware of such fact, but did in fact on many occasions call upon the Attorney General, and his assistants, for advice and counsel, and for assistance in preparing proposed legislation necessary to carry into effect the recommendations of the commission, and such advice, counsel and assistance was always cheerfully and promptly rendered and given to the commission and its members.

I am, therefore, compelled to advise you that the State Efficiency and Trade Commission had no authority to employ any attorney to advise, counsel or assist them in any manner whatever, or to incur any liability for such purpose, and that the claims of Mr. Pigott and Mr. Pew are not proper charges against the state.

Respectfully,

S. C. FORD,

Attorney General.