

**Public Utility, What Is—Irrigation Company As Public Utility—Irrigation Rates, Application For Increase.**

An irrigation company may come under the jurisdiction of the Public Utilities Commissioners for the purpose of filing an application for an increase in rates.

May 25, 1920.

Public Service Commission,  
Helena, Montana.

Gentlemen:

I have your letter of April 2, 1920, with which you attach a petition of the Ravalli Water Company, asking that they be considered as a public utility and permitted to operate under Chapter 52 of the Laws of 1913, and not as an irrigation company under Chapter 13, Laws of the Extraordinary Session of 1919. Their petition asks for an increase in rates.

The proposition which you submit to me for a ruling is whether the Ravalli Water Company comes under the jurisdiction of the Public Service Commission as provided by Chapter 52, Laws of 1913, or under the jurisdiction of the Montana Irrigation Commission as provided by Chapter 13, Laws of the Extraordinary Session of 1919.

No dispute can be made upon the proposition that the State has a right to regulate irrigation companies, and, within the constitutional limitation of allowing reasonable profits, may determine and fix the schedule of charges for the water and service rendered in connection therewith. (Kinney on Irrigation and Water Rights, Vol. 3, Chap. 69.) Neither can there be any doubt—should Chapter 52, Laws of 1913, be found broad enough—but that an irrigation company could be classed as a public utility.

I cannot agree with the conclusions which the Ravalli Water Company sets forth in its brief in support of the petition to the effect that it is not an irrigation company, but strictly a water company furnishing water for business and domestic uses. The declarations and protestations of a particular concern are not determinative of the fact as to its classification as a public utility. The nature of its business determines its particular classification. The company was incorporated on November 12th, 1918, and among the powers conferred upon it by its articles of incorporation we find the following:

“To purchase, locate, or in any manner acquire water, and rights to use of water, for agricultural, irrigating and all other purposes, to own, hold and use the same and to sell, mortgage, lease, grant rights in respect to, or in any manner dispose of such water and water rights. \* \* \* To construct bridges, dams, reservoirs, water works, sluices, pipe lines, ditches, canals and flumes \* \* \* and to engage generally in the business of irrigating agricultural and other lands or the selling or otherwise disposing of water or water rights therefore.”

If the company owns extensive water rights, in view of the fact that water is such an important element of our agriculture, I am of the opinion that the State has the power to compel the distribution of this water for irrigation purposes. That seems to be the prime object of the articles of incorporation, and a State has the power to compel compliance on the part of a corporation, with the purposes for which it was created. This would be particularly true in the State of Montana in view of its constitutional provision (Article 3, Section 15,) declaring that the use of all water appropriated or to be appropriated "shall be held to be a public use."

It further appears by the copy of the petition filed with the Public Service Commission by the Ravalli Water Company that it is actually furnishing water for irrigation purposes under contracts entered into by its predecessors and judicially determined to be binding upon the original contracting parties and their successors in interest in perpetuity. No doubt the Ravalli Water Company may be furnishing water for manufacturing or purely domestic purposes, but it clearly appears from the facts in this case that it is at the same time acting as an irrigation company.

Statutes creating public service commissions such as we find the Montana Trade Commission and the Montana Irrigation Commission to be as strictly construed. Nothing will be taken as a provision of such statute by implication unless it be as incidental to provisions as expressly made. (Public Service Companies, Collier, Chapter 34.) As to what term "public utility" means at this time is not difficult of definition. In general terms it may be said to be an industry impressed with a public interest. (Public Service Companies, Collier, Chapter 33.) When, however, a statute limits the kind of public utilities which are to be included in its regulation, specifying them by the nature of their business, it would necessarily be limited to such as clearly come within the specification.

I am of the opinion that Chapter 52, Laws of 1913, is broad enough in language to include an irrigation company such as the Ravalli Water Company. Section 3 of said defines what particular public utilities are affected by said act and provides that a company, individual, association, etc., delivering or furnishing to other persons, etc., "water for business, manufacturing, household use, or sewerage service, whether within the limits of municipalities, towns, villages, or elsewhere." I believe that the phrase "water for business" includes the furnishing of water for irrigating farms.

Webster defines the term "business" as that which ———, or that which occupies the time, attention or labor of one, as his principal concern, whether for a longer or a shorter time; employment, occupation; any particular occupation or employment for a livelihood or gain, as agriculture, trade, mechanic art, or profession, etc. In the case of *Territory vs. Harris*, 8 Mont. 140, the Supreme Court said: "The word 'business' is of large significance and denotes the employment or occupation in which a persons is engaged to procure a living." If, therefore, the public utility is furnishing water to the public for farming purposes, the water so furnished is used in the business in which the person

obtaining the same is engaged. I do not believe, therefore, that it can be denied that an irrigation company is included with the scope of Chapter 52, Laws of 1913.

In the year of 1919, the Legislature convened in extra-ordinary session, and one of the subjects of legislation was the matter of irrigation. At that session the Legislature enacted Chapters 13 and 14. Both of these chapters are concerned with this subject. Chapter 14 confines itself to the creating of irrigation districts. Chapter 13 creates the Montana Irrigation Commission and delegates to it certain authority. A reading of Chapter 13 indicates, I believe clearly, that it is the intent of the Legislature, as expressed through said chapter, that the Montana Irrigation Commission must first investigate an irrigation company to work. Reading Chapter 52 of the Laws of 1913, and Chapter 13 of the Extra Session Laws of 1919, I do not see anything inconsistent in the two acts. As a matter of fact, I believe that one supplements the other in so far as irrigation is concerned. An irrigation company property, therefore, comes under the jurisdiction of both the Montana Irrigation Commission and the Public Service Commission. The Montana Irrigation Commission was given the power to regulate the matter of irrigation strictly from an engineering standpoint rather than from any standpoint of fixing rates. A statute delegating authority to a public service commission, whereby it undertakes to fix rates, is strictly construed. This authority will not be held to vest by implication. I believe that under Chapter 13 the main duties of the Montana Irrigation Commission are those of seeing that any irrigation company who contracts to supply water actually has the source and supply upon which to ascertain whether they have a proper source of water supply, and investigate and approve or disapprove their contracts which they make with the public for the furnishing of water. After this is done then the Public Service Commission begins to operate in the matter of determining and fixing proper charges. Under the circumstances I am of the opinion that an irrigation company such as the Ravalli Water Company comes under the jurisdiction of both Commissions referred to.

Respectfully,

S. C. FORD,  
Attorney General.