

Opinion No. 127**Public Service Commission, Duty and Authority of — Public Utilities Sewer Facilities — Rates, Filing of Rules and Regulations**

Held: The Public Service Commission does not have any duty or authority to approve rates, rules or regulations relating to sewer service where such charges are made in accordance with the provisions of Chapter 149, Laws of 1943, as amended.

July 22, 1948

Board of Railroad Commissioners
Ex-Officio Public Service Commission
Capitol Building
Helena, Montana

Attention: Mr. Horace Casey,
Chairman

Gentlemen:

You have requested an opinion from this office on the following:

"Does the Public Service Commission have any authority to require the filing of rates and to control the service of sewer facilities constructed by cities and town under the provisions of Chapter 149, Laws of 1943, as amended by Chapter 100, Laws of 1947?"

Section 3881, Revised Codes of Montana, 1935, defines the meaning of the term "public utilities" for the purposes of the Public Service Act. This section reads as follows:

"The term 'public utility,' within the meaning of this act, shall embrace every corporation, both public and private, company, individual, association of individuals, their lessees, trustees or receivers appointed by any court whatsoever, that now or hereafter may own, operate, or control any plant or equipment, or any part of a plant or equipment, within the state, for the production, delivery or furnishing for or to other persons, firms, associations, or corporations, private or municipal, heat, street-railway service, light, power in any form or by any agency, water for business, manufacturing, household use, or sewerage service, whether within the limits of the municipalities, towns and villages, or elsewhere, telegraph or telephone service; and the public service commission is hereby invested with full power of supervision, regulations, and control of such utilities, subject to the provisions of this act, and to the exclusion of the jurisdiction, regulations, and control of such utilities by any municipality, town or village."

It will be noted that the "water" utilities are limited to those furnishing water for business, manufacturing, household use or sewerage service. There is no inclusion of "sewage service" as a utility in the foregoing section. The qualification on water utilities was required because of the fact that there were water services which might be utilities in nature, and which the legislature did not intend to include within the authority of the Public Service Commission. In *State v. Boyle*, 62 Mont. 97, 204 Pac. 378, the Montana Supreme Court said:

"It is idle to cite authorities defining the terms 'public utilities,' as those terms are generally understood in common parlance. For the purpose of indicating the extent to which the state should then go in exercising its regulatory powers over public utilities it was competent for the Montana legislature to adopt such a restricted definition of those terms as it saw fit, and it saw

fit to adopt the definition contained in section 3, above and to limit the jurisdiction of the Public Service Commission to the specific subjects therein enumerated. There is not any mention in section 3 of a corporation, company, association or individual engaged in furnishing water for irrigation purposes, and the only contention made, or that could be made, is that the expression "water for business" comprehends water for irrigation. . . . It is perfectly manifest from the use of these words and from the last sentence in the section that the legislature had reference to corporations, associations, and individuals engaged in furnishing water to municipalities for sewerage purposes and to business houses, manufacturing establishments, and to the citizens for household use, and that irrigation projects were never in contemplation." (Emphasis supplied).

The Public Service Commission has only such powers as are conferred upon it by statute, either expressly or by necessary implication. *Chicago-Milwaukee and St. Paul Railway Company v. Board of Railroad Commissioners*, 76 Mont. 305, 247 Pac. 162.

Sewer service not being included within the term of "public utilities," as contained in Section 3881, it does not appear that the Public Service Commission now has or ever has had jurisdiction over private companies or municipal corporations relative to the furnishing of sewer service.

Chapter 149, Laws of 1943, authorizes the issuance of revenue bonds by cities and towns for certain specified uses in connection with sewers and sewerages. Section 3 of this Act reads as follows:

"The governing body of such municipality shall have full power and authority and it is hereby made its duty to fix and establish, on the basis of water consumed or any other equitable basis, by ordinance or resolution, and collect rates and charges for the services and facilities afforded by the system.

"The rates and charges established for the services and facilities afforded by this system shall be suf-

ficient in each year to provide income and revenues adequate for the payment of the reasonable expense and operation, repair and maintenance and for the payment of the sums required to be paid into the sinking fund and for the ten per cent (10%) depreciation charge.

"The governing body shall have the right to change and readjust from time to time the rates and charges so fixed and established provided the aggregate of such rates and charges shall always be sufficient to meet the requirements mentioned in preceding paragraph."

There is nothing in Chapter 149, Laws of 1943, or in Chapter 100, Laws of 1947, which requires any action on the part of the Public Service Commission and the Act, by its specific terms grants the governing body of such municipalities, full power and authority over rates to be charged for such sewerage services. Even assuming that sewerage service might be within the meaning of utilities and under the authority of the Public Service Commission, it is clear that Chapter 149 removes such municipalities from any control or regulation as to rates, and there would be no purpose in the Public Service Commission exercising jurisdiction or performing any functions or acts in connection with such sewer rates or service, when, in fact, such acts could only be a useless and idle approval of the rates and regulations fixed by the cities under full authority of legislative action. Approval of rates by the Public Service Commission would be an act without any effect and would not be binding on the city. The fact that the Public Service Commission does not have jurisdiction over such service, in nowise changes or alters the liability or obligation of the city.

For the foregoing reasons, it is my opinion that the Public Service Commission does not have any duty or authority to approve rates, rules or regulations relating to sewer service where such charges are made in accordance with the provisions of Chapter 149, Laws of 1943, as amended.

Sincerely yours,
R. V. BOTTOMLY,
Attorney General