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February 20, 1951

Op. No. 51-54

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ARIZONA ATTORNEY GENERAL

Honorable David G. Watkins
Member, House of Representatives
Twentieth Legislature
Capitol Building
Phoenix, Arizona

My dear Mr. Watkins:

This acknowledges receipt of your letter of February 7, in which you ask for the opinion of this office on the following questions:

"1. Without constitutional amendment, specifically what powers can be taken from the Corporation Commission by the Legislature?

(a) Can the Legislature reduce the Commissioner's salary to \$3,000.00? (Paragraph 18 Constitution)

(b) Constitution Article 15, Paragraph 6 'Until such rules and regulations are provided by law, the Commission may make rules and regulations to govern such proceedings.'

Would this clause negative any effort by the legislature to withdraw the enlargement of powers it has heretofore granted?

2. Regarding the Motor Carrier Department of the Corporation Commission - can the duties of collection and enforcement now vested in the Motor Carrier Department of the Corporation Commission be transferred to the Motor Vehicle Division of the Highway Commission by the Legislature and without constitutional amendment?"

The Legislature can take away from the Corporation Commission only such powers as it has granted to it under the authority of the Constitution of Arizona. It cannot take away more, since the Commission is a creature of the Constitution and derives its authority from that source.

Except for the provisions of Article 4, part 2, Section 17 of the Constitution of Arizona, which prohibits the Legislature from increasing or diminishing the compensation of any public officer during his term of office, the Legislature could reduce the salaries of the Commissioners to \$3,000.00. This it could do, provided that any such decrease of compensation, which becomes effective as to any one member of the Commission upon the expiration of his term and the beginning of a new one, would be effective from that date as to each of the members of the Commission even though it might decrease the compensation during his term.

The authority for the foregoing is to be found in Article 15, Section 18, of the Constitution, which provides that "until otherwise provided by law" each commissioner shall receive a salary of \$3,000.00 a year and his necessary actual expenses when away from home in the discharge of the duties of his office. The Legislature has fixed the salary of the commissioners in pursuance of the authority contained in the Constitution. (See Boyce v. Hunt, 20 Ariz. 412, 181 Pac. 184; Crawford v. Hunt, 41 Ariz. 229, 17 Pac. 2d 802; Moore v. Frohmiller, 46 Ariz. 36, 46 Pac. 2d 652)

While the Legislature can more or less deplete the powers of the Corporation Commission by failing to appropriate sums sufficient for its effective operation, it cannot so fail in such manner as to completely destroy the functioning of the constitutionally created agency.

Should the Legislature attempt to diminish the power of the Commission by repealing the laws providing rules and regulations governing proceedings of the Commission, the Commission would then, of course, have the authority and power to make such rules and regulations as would enable it to carry out its functions under the Constitution and to perform such duties as are incidentally conferred upon it by reason of its very constitutional existence.

It also follows that since the Constitution makes common motor carriers for hire public service corporations and vests in the Corporation Commission the duty and responsibility of regulating them, such duties could not be transferred by the

Legislature from the Commission to the Motor Vehicle division of the Highway Commission or to any other agency.

As you suggest, Article 15, Section 6, of the Constitution of Arizona authorizes the Legislature to enlarge the powers and extend the duties of the Corporation Commission and to prescribe rules and regulations to govern the proceedings of the Commission, and the courts have held that this power of the Legislature does not permit the decrease of the powers of the Commission below those conferred upon it by the Constitution.

In the case of Van Dyke v. Geary, 244 U.S. 39, 61 L.ed. 973, the Supreme Court of the United States defined the powers of the Corporation Commission under the Constitution:

" * * * Furthermore, the powers of the Arizona Corporation Commission are not limited to those expressly granted by the Constitution. Section 6 of article 15 authorizes the legislature to 'enlarge the powers and extend the duties of the Corporation Commission;' * * *

This construction of the Arizona Constitution by the district court is in harmony with the contemporaneous construction evidenced by the Public Service Corporation Act (supra) enacted at the first session of its legislature. In the absence of an authoritative decision of the Arizona Supreme court to the contrary, this legislative construction, reasonable in itself and designed to accomplish the obvious purpose of the constitutional provision ought not to be set aside by this court. Louisville & N.R. Co. v. Garrett, 231 U.S. 298, 305, 58 L.ed. 229, 239, 34 Sup. Ct. Rep. 48."

The Supreme Court of Arizona has reiterated the rule laid down in the Van Dyke case in several decisions and has also defined the limitations placed upon the Legislature in any attempt to decrease the powers of the Commission below those granted by the Constitution and by necessary implication conferred upon it. Notable among these cases are: Menderson v. Phoenix, 51 Ariz. 280, 76 Pac. 2d 321; North-east Rapid Transit Co. v. Phoenix, 41 Ariz. 71, 15 Pac. 2d 951; Garvey v. Trew, 64 Ariz. 342, 170 Pac. 2d 845.

This last case, Garvey v. Trew, supra, is perhaps the clearest exposition of the problems you present:

" * * * It will be observed from the foregoing constitutional powers that the legislature, by Chapter 11, conferred no new rights on the commission that it did not already possess. Nor are the powers of the commission limited to those expressly granted. We have held that the powers conferred by the article are merely the minimum, and that under the constitution, the commission may exercise all powers which may be necessary or essential in connection with the performance of its duties. Menderson v. Phoenix, 51 Ariz. 280, 76 P. 2d 321; Van Dyke v. Geary, 244 U.S. 39, 37 S.Ct. 483, 61 L.ed. 973.

* * * * *

The legislature may enlarge its powers and extend its duties but may not decrease its powers. Van Dyke v. Geary, supra; Menderson v. Phoenix, supra; Corporation Commission of Arizona v. Pacific Greyhound Lines, 54 Ariz. 159, 94 P. 2d 443; State v. Tucson Gas, etc. Co., supra. Only through the granting or withholding of appropriations does the legislature have control over the commission in so far as the exercise of its constitutional duties are concerned. (Emphasis supplied)

That the Legislature could not transfer the duties of the Commission in the supervision, regulation and control of motor carriers for hire is apparent from a closer scrutiny of the Menderson case, supra, and the Pacific Greyhound Lines case, supra.

The Pacific Greyhound Lines case, supra, clearly brings within the authority of the Corporation Commission the supervision, regulation and control of common carriers for hire by defining them as public service corporations falling within the provisions of the Constitution of Arizona.

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Article 14, Section 1, defines the term "corporation"; Article 15, Section 2, makes common carriers for hire public service corporations and Section 3 of the said article subjects them to the supervision, regulation and control of the Commission.

To summarize briefly, it would appear from a study of the Constitution of Arizona and the decisions of the Supreme Court that the Legislature cannot, without constitutional amendment, take from the Corporation Commission such powers as are conferred upon it by the Constitution by specific grant or by necessary implication. So long as the provisions of Article 4, part 2, Section 17, of the Constitution are complied with, the Legislature may reduce the salaries of the commissioners to \$3,000.00. The Legislature could withdraw from the Commission the enlargement of the powers which it has heretofore granted it by eliminating provisions for rules and regulations governing the proceedings of the Commission, but such action would not destroy the power to the Commission granted it under the Constitution to make such rules and regulations as it might deem necessary for the carrying out of its functions. The Legislature cannot transfer from the Commission to the Highway Department or any other agency of the State the duties imposed upon it by the Constitution of regulating and controlling public service corporations, including motor carriers for hire.

Please feel free to call upon us at any time for any assistance which you believe we may be able to offer you.

Sincerely yours,

FRED O. WILSON
Attorney General

PHIL J. MUNCH
Assistant Attorney General

PJM:mw