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ARIZONA ATTORNEY GENERAL

October 5, 1949

Mr. William T. Brooks
Corporation Commissioner
Arizona Corporation Commission
Capitol Annex
Phoenix, Arizona

Dear Mr. Brooks:

We have your letter of some time ago requesting an opinion on the following question:

"If the electrical workers, who are working for one of the utilities in the State of Arizona (which come under the supervision of the Arizona Corporation Commission), should go out on strike, what action, if any, could the Corporation Commission take in regard to compelling the utilities to continue service to the public?"

A public utility, both under the common law and by statute, is required to render adequate service to the public at all times; inability to serve due to unavoidable circumstances beyond the control of the utility is, however, a valid excuse for failure to perform its statutory and common-law duty.

Specifically, whether or not a strike by the employees of a utility is an unavoidable cause beyond the control of the utility would depend on the facts of each case. The decisions of other corporation commissions throughout the United States and courts of the various states are in conflict on this point. A corporation commission should not be put in the position of having to decide the merits in a labor dispute; however, this has been the exact result of many of the recorded decisions.

The New York Corporation Commission in Re Long

Island Lighting Company, Case #12258, December 28, 1945,
said:

" * * * the utility commission should not be compelled to carry the burden of resolving labor difficulties for others. However, under the statute the utility must furnish the service and nothing can relieve it of that duty except legislative action. The burden is placed upon the utility by the laws of this state, not by any determination made here.

* * * * *

By not furnishing service the company is violating the laws of this state and is laying itself open to penalties. It has the duty of making every effort to resolve its difficulties." (62 PUR (NS) 1)

The New York Commission in this particular case was concerned however with a secondary boycott and a refusal of the company's union employees to cross the picket lines of another company involved in a labor dispute.

In an earlier case, before the Washington Public Service Commission, Public Service Commission v. Seattle Lighting Co., December 27, 1919, the Commission said:

"We are not prepared to hold that a strike will in every instance excuse a utility for defective service. Neither are we inclined to establish a precedent under which dissatisfied employees may cripple public service and simultaneously use the Commission as a club on the back of the utility already staggering from a blow which they themselves have dealt.
* * * " (PUR 1920B 488)

The Commission held that a public utility should not be punished by a general reparation order where defective service arises by reason of a strike where no negligence is shown and where the utility has put forth every reasonable effort to overcome the conditions caused thereby.

In most of the reported cases involving inability to serve due to labor trouble and strikes the strike was against a third party and the utility was concerned only in the secondary boycott. In most of these cases the commissions have required the utility to cross picket lines to install necessary service. However, in other cases the commissions have refused to order the public utility company to install service when, in doing so, their employees would be forced to cross picket lines. A representative statement by the Supreme Court of South Carolina in this connection from the case of State ex rel. Daniel v. Broad River Power Co., 153 S.E. 567, as follows:

"A state railroad company is not in position to plead an employees' strike as the cause for failure of its business in justification of its discontinuing of service where it is not shown that the utility has made any reasonable effort to conciliate the workmen or to maintain general good will."

It appears from reading a great number of reported cases involving labor difficulties that the corporation commissions of the various states have actually made their decisions on the basis of the facts involved in the particular strike, and where they have found that the company has made reasonable efforts to settle the difficulty, they have refused to order continued service. Where, however, the commission finds that the company has not been reasonable they have ordered the company to give service.

As stated in Public Service Commission v. Seattle Lighting Co., supra, the commission should not be used as a

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"club" by either the utility or the labor group to influence the outcome of a strike.

Therefore, it is our opinion that the Commission must, in a given case, use its best discretion to decide whether the strike is an unavoidable cause or an avoidable cause. If you determine that the company strike is in fact an unavoidable cause, then properly you may refuse to require the company to continue rendering service. If, however, you determine it to be an avoidable cause, then you may take any action you desire under Chapter 69, Article 2, ACA 1939. You may properly enjoin a violation of the law by the company under Section 69-256; you may assess a penalty of \$100.00 to \$5,000.00 under Section 69-257; you may bring a mandamus action to require the company to continue service; you may punish the company for contempt for failure to comply with your order under Section 69-261; or, in extreme cases, you may revoke the charter or certificate of the utility.

However, since it would be extremely difficult to determine whether an avoidable or unavoidable cause exists in any labor dispute, it would therefore seem advisable not to attempt to make such a determination.

Yours very truly,

FRED O. WILSON
Attorney General

JOSEPH PYLE RALSTON
Assistant Attorney General

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