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BRUCE E. BABBITT, ATTORNEY GENERAL
STATE CAPITOL
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August 20, 1976

DEPARTMENT OF LAW OPINION NO. 76-5 (R-5) (R76-236)

REQUESTED BY: DONALD E. VANCE
Executive Secretary
Arizona Corporation Commission

QUESTION: Can the Corporation Commission adjudicate contractual agreements between a railroad and a private shipper, as alluded to under Article 15, Section 3 of the Constitution of Arizona?

ANSWER: No.

This opinion request arises from a contractual dispute between a public service corporation (railroad) and a private, industrial shipper over the operation of a car-pulling device used in connection with loading and unloading operations performed by the shipper. In order to construct the car puller, the shipper had to obtain a variance from the Commission's regulation governing construction clearances. This variance was granted. However, in the course of reaching an agreement governing the operation and maintenance of the car puller, the shipper and the railroad reached an impasse over a release and indemnity provision.

It is this type of contractual provision to which the opinion request is directed. It should be distinguished from the contractual provision which incidentally contains matters otherwise and expressly within the jurisdiction of the Commission. Examples of the latter are rates charged by a motor carrier pursuant to a lawfully filed tariff or specifications set forth in a Commission regulation defining safety or construction standards, or regulations establishing terms, conditions and charges to be contained in line extension, or construction advance, contracts entered into by utilities.

Article 15, Section 3 of the Arizona Constitution reads as follows:

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§ 3. Power of commission as to
classifications, rates and
charges, rules, contracts,
and accounts; local regulation

Section 3. The Corporation Commission shall have full power to, and shall, prescribe just and reasonable classifications to be used and just and reasonable rates and charges to be made and collected, by public service corporations within the State for service rendered therein, and make reasonable rules, regulations, and orders, by which such corporations shall be governed in the transaction of business within the State, and may prescribe the forms of contracts and the systems of keeping accounts to be used by such corporations in transacting such business, and make and enforce reasonable rules, regulations, and orders for the convenience, comfort, and safety, and the preservation of the health, of the employees and patrons of such corporations; Provided, that incorporated cities and towns may be authorized by law to exercise supervision over public service corporations doing business therein, including the regulation of rates and charges to be made and collected by such corporations; Provided further, that classifications, rates, charges, rules, regulations, orders, and forms or systems prescribed or made by said Corporation Commission may from time to time be amended or repealed by such Commission.
(Emphasis added.)

Two Arizona Supreme Court cases construing this provision as it pertains to the Corporation Commission's role vis-a-vis contracts involving public service corporations are Trico Electric Coop., Inc. v. Ralston, 67 Ariz. 358, 196 P.2d 470 (1948); and Trico Electric Coop., Inc. v. Senner, 92 Ariz. 373, 377 P.2d 309 (1962).

The Ralston case involved an option agreement for the purchase of transmission and distribution lines and facilities entered into between a public service corporation and

a non-profit electric cooperative. Customers of the public service corporation sought declaratory relief in the form of a court determination that the option agreement was illegal. On appeal of the summary judgment, granted in favor of the customers, the electric cooperative raised the question whether the courts or the Corporation Commission have the jurisdiction and power to determine the validity of the option agreement. The court held the following:

Clearly the construction of a contract is a judicial function and the courts, not the corporation commission, have the jurisdiction to determine the validity of said option agreement, although eventually the contract of sale, if valid, must have the sanction and approval of the latter before it becomes effective.

67 Ariz. 358, 365, 196 P.2d 470, 474 (1948).

The court in Ralston reached this result by construing powers conferred on the Commission in light of the overall constitutional treatment of the judicial power. Since Article 3, Section 1 of the Arizona Constitution confers all judicial power in the courts, except as provided elsewhere in the Constitution, the court was led to the following result:

No judicial power is vested in or can be exercised by the commission unless that power is expressly granted by the Constitution. None of the constitutional provisions set forth above confer upon the commission the jurisdiction to pass upon the construction and validity of contracts.

67 Ariz. 358, 363, 196 P.2d 470, 473 (1948). As a final note, the court dismissed any argument that the Commission had any implied powers or that the Legislature could enlarge the Commission's existing express powers in this regard.

The Senner case sheds light more specifically on the meaning of the word "forms" as used in Article 15, Section 3, which provides that the Commission "may prescribe the forms of contracts to be used"

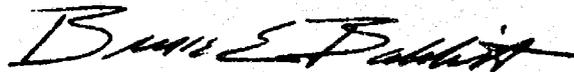
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"Form", as used in the Constitutional provision, means "arrangement, especially an orderly arrangement; the way that something is put together; pattern; style; distinguished from content." (See Webster's New 20th Cent. Dictionary, 2nd ed.) Under this provision, the Corporation Commission may determine the outline, designate the arrangement of topics to be incorporated therein, specify their style or pattern, but no authority is therein delegated to prescribe the content, that is, the specific contractual provisions to be agreed upon. (Original emphasis.)

92 Ariz. 373, 387, 377 P.2d 309, 319 (1962).

This construction by the court in Senner is wholly consistent with the result reached in Ralston. The two cases combine to foreclose adjudication by the Corporation Commission of contractual agreements between a railroad and private shipper. A dispute arising from such contractual agreements is of a private nature between the parties to the contract and relief, if any, must be sought in the courts.

Respectfully submitted,



BRUCE E. BABBITT
Attorney General

BEB:RPB:lc