



DEPARTMENT OF LAW
OFFICE OF THE
Attorney General
STATE CAPITOL
Phoenix, Arizona 85007
April 1, 1976

R75231

BRUCE E. BABBITT
ATTORNEY GENERAL

76-104

Mr. Donald E. Vance
Executive Secretary
Arizona Corporation Commission
2222 West Encanto Boulevard
Phoenix, Arizona 85009

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Dear Mr. Vance:

George M. Dempsey, your predecessor as Executive Secretary, in a letter dated April 4, 1975 requested our opinion as to:

Whether the reversal of a Commission decision revoking a certificate of convenience and necessity has the effect of automatically reinstating the certificate.

This question has arisen as a result of correspondence from the firm of Shimmel, Hill & Bishop, by Phil B. Hammond, counsel for Purolator Security, Inc. ("Purolator Security"), advising the Commission that the Superior Court in and for Maricopa County had reversed a Commission decision revoking two certificates held by Purolator Security and requesting that the Commission advise him that if the highest court to which the matter is appealed affirms the reversal of the Commission's decision, the Commission will automatically reinstate the two certificates previously held by his client. Copies of that correspondence are attached.

In short, what the firm is requesting is a legal opinion for its client as to the effect of a final reversal of an order of the Commission.

We recognize and appreciate that Mr. Hammond has a duty to act with competence and proper care in representing his client; and we have every confidence that the firm is capable of researching the legal question he has posed, and advising his client accordingly.

We must, however, decline to answer this question



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for the following reason: As you are aware, A.R.S. § 40-106 mandates that the Attorney General shall be attorney for the Commission. The Attorney General is prohibited from representing anyone other than his clients; the State or state agencies.

The fact of the matter is that there is nothing before the Commission calling for the exercise of any mandatory or discretionary powers as to the Purolator Security matter. Once judgment was entered in the Superior Court and an appeal was taken to the Court of Appeals, the Commission lost any jurisdiction it might otherwise have had to modify its earlier opinion. Whitfield Transp., Inc. v. Brooks, 81 Ariz. 136, 302 P.2d 526 (1956). After an appeal has been filed, the Commission can only await a mandate of the appropriate court before it acts further in the matter.

Inasmuch as the Commission lacks jurisdiction in this matter, an answer to the question posed can only be considered legal advice to a private individual and, therefore, not properly a matter for our opinion.

In the event that the reversal of the Commission's decision does become final, the Commission will regain jurisdiction and a real (not a hypothetical) legal issue will be presented. At that time, we would be most happy to address ourselves to the issue.

Sincerely,

BRUCE E. BABBITT
Attorney General


CHARLES S. PIERSON
Assistant Attorney General

CSP:gs
Attachments