

BEFORE THE  
OIL AND GAS BOARD OF REVIEW  
STATE OF OHIO

William I. Gorden  
Joy W. Gorden,

Appellants,

vs.

Appeal No. 29

Andrew G. Skalkos, Chief  
Division of Oil and Gas

Appellee.

ORDER GRANTING APPELLEE'S  
MOTION TO DISMISS

On March 27, 1981 counsel for the Appellee, Mr. Skalkos, filed a Motion to Dismiss with this Board to dismiss the Appeal filed in this matter for the reason that it was moot. Appellee's claim of mootness is based on the fact that on January 12, 1981 the Appellee rescinded Order No. 276, by issuing Order No. 278.

No memorandum opposing Appellee's Motion to Dismiss has been filed with the Board.

THEREFORE, the Board finds the Appellee's Motion To Dismiss to be well taken and Orders to Appeal No. 29 be dismissed. Dated this 17<sup>th</sup> day of June, 1981.

James J. Morgan / Gen  
James J. Morgan, Chairman

Robert H. Alexander / Gen  
Robert H. Alexander

Arie Janssens / Gen  
Arie Janssens

Lance W. Schneier / Gen  
Lance W. Schneier

George W. Hauswirth, Sec'y.  
George W. Hauswirth



of an adjoining village of the City of Cleveland. The court of common pleas denied relief and the circuit court affirmed. Shortly after an appeal was filed with the Supreme Court, annexation proceedings were completed and the entire village became a part of the city. Despite the admitted importance of the legal question involved in the case, the Court declined to express its opinion thereon since a decision could not be made effectual by a judgment. Quoting the United States Supreme Court, the Court held, at 238-239:

The duty of this court, as of every other judicial tribunal, is to decide actual controversies by a judgment which can be carried into effect, and not to give opinions upon moot questions or abstract propositions, or to declare principles or rules of law which cannot affect the matter in issue in the case before it. It necessarily follows that when, pending an appeal from the judgment of a lower court, and without any fault of the defendant, an event occurs which renders it impossible for this court, if it should decide the case in favor of the plaintiff, to grant him any effectual relief whatever, the court will not proceed to a formal judgment, but will dismiss the appeal. And such a fact, when not appearing on the record, may be proved by extrinsic evidence.

Many of the cases before the Supreme Court that have presented moot questions have involved the Public Utilities Commission: Commercial Motor Freight v. Public Utilities Commission of Ohio, 161 Ohio St. 58 (1954); Travis v. Public Utilities Commission of Ohio, 123 Ohio St. 356 (1931); Scheible v. Hogan, 113 Ohio St. 83 (1925). In Commercial Motor Freight, supra,

the Court dismissed as moot an appeal by a common carrier of the granting of a certificate of public convenience and necessity to a rival common carrier, Duff Truck Line, Inc., for the reason that while the appeal was pending before the Court, the Public Utilities Commission vacated the certificate pursuant to the withdrawal of the application therefor by Duff.

In Travis, supra, the Court refused to rule on the lawfulness of an order of the Public Utilities Commission allowing a carrier to abandon certain railway lines where the objecting parties neither sought nor obtained a stay of the Commission's order pending appeal and the property had been so far dismantled as to preclude the re-establishment and resumption of service. The Franklin County Court of Appeals has followed the principle set down in Travis on at least two occasions. In O'Neill v. Henney, 76 Ohio L.Abs. 358 (Franklin Co., 1957), and Wagner v. Boggess Coal and Supply Co., 57 Ohio L.Abs. 270 (Franklin Co., 1950), the Court dismissed appeals on grounds of mootness where the conduct sought to be prevented had been completed prior to the time that the Court could rule on the legal questions presented. See also Levin v. Pribanic, 110 Ohio App. 381 (Lorain Co., 1959).

Scheible v. Hogan, supra, involved an appeal of an injunction which restrained city officials from interfering with a certificate of public convenience and necessity that had been issued to a motor transportation company. Two days after the motion to certify was allowed, the Public Utilities Commission modified

the certificate in a manner that made it palatable to the city.

Citing Miner v. Witt, supra, the Court held in syllabus 4:

Where a judgment has been entered by a court of competent jurisdiction in favor of a motor transportation company, based upon the operative provisions of a certificate of convenience and necessity issued by the Public Utilities Commission, and thereafter and during the pendency of error proceedings such certificate is altered or amended by the Commission in such manner as to nullify those provisions upon which the judgment is founded, a reviewing court is not authorized to further proceed.

The principle that emerges from a review of these cases, particularly Commercial Motor Freight and Scheible v. Hogan, is that the discontinuation, completion or revocation of an allegedly unlawful order or action will cause an appellate court to decline jurisdiction.

The rescission of the order (No. 276) which the Appellant claimed was unlawful has obviated all objections that could have been lodged against it. The offending action has ceased to exist as a matter of law. There is nothing upon which the Board can conduct a hearing. There is no judgment which the Board could issue that could affect a nonexistent order. Therefore, this Board should dismiss this appeal because the matter presented is moot.

Respectfully submitted,

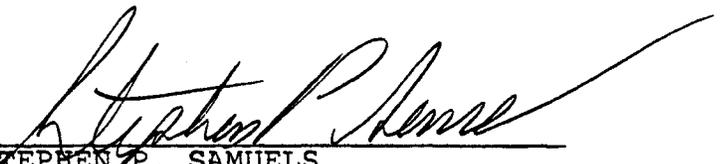
WILLIAM J. BROWN  
ATTORNEY GENERAL OF OHIO



STEPHEN P. SAMUELS  
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion to Dismiss has been sent by regular U.S. Mail to Darrell L. Seibert, 3724 Country Club Drive, Suite 300, New Philadelphia, Ohio 44224, and to William T. Gordon, 4468 Fishcreek Road, Stow, Ohio 44224, on this 26<sup>th</sup> day of March, 1981.



STEPHEN P. SAMUELS  
Assistant Attorney General