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Public Utilities

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husband. These certificates with the attached assignment signed in blank were in a safe deposit box in the name of the wife at the death of the husband, but they had previously been in the name of the husband before he became incapacitated. The court based its decision upon the donor's failure to meet the statutory requirements for the transfer of title to stock certificates.[6]

There has been a sufficient number of fairly recent Ohio cases involving gifts and alleged gifts of personal property of considerable value to warrant consideration by the Ohio General Assembly of legislation which will require a certain formality, such as a written document signed by the donor and setting forth the gift, with respect to gifts of personal property with a value of a stated amount or more.

A husband and wife were co-owners of United States war savings bonds which were purchased from the husband's earnings. The husband died, survived by his wife who became the owner of them under the provisions of the bonds and the applicable Treasury Regulations. The wife died intestate leaving no heirs or next of kin. The husband's sister and nephew claimed one-half of the bonds at the death of the wife under the Ohio half-and-half statute.[7]

The Ohio Court of Appeals in *Lambert v. Lambert*[8] relied on *Berberick v. Courtade*[9] and held that since the wife took by contract and not by "deed of gift," the half-and-half statute was not applicable. In the *Berberick* case the Ohio Supreme Court had held that when husband and wife have a joint bank account with right of survivorship, the survivor takes by contract and therefore the half-and-half statute is not applicable.

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PUBLIC UTILITIES

Fixing Freight Rates on Single Commodities

In six cases decided together under the heading *Toledo Edison Co. v. P.U.C.O.*[1] the supreme court had before it the question whether, in fixing

[1] *In re* Case's Estate, 161 Ohio St. 288, 118 N.E.2d 836 (1954).
[2] OHIO REV. CODE § 4505.01 *et seq.*
[3] Peters Motors, Inc. v. Rodgers, 161 Ohio St. 480, 120 N.E. 2d 80 (1954).
[4] The various problems which have arisen under the Ohio Motor Vehicle Certificate of Title Act are discussed in Note, 5 WEST. RES. L. REV. 403 (1953).
[5] *In re* Davis' Estate, 95 Ohio App. 452, 120 N.E.2d 907 (1953).
[6] OHIO REV. CODE § 1705.04.
[7] OHIO REV. CODE § 2105.10.
[8] 95 Ohio App. 187, 118 N.E.2d 545 (1953).
[9] 137 Ohio St. 297, 28 N.E.2d 636 (1940).

railroad freight rates on only a single commodity (in this instance the intrastate transportation of bituminous coal) the Commission was required to base such rates upon the value of the utilities' equipment used in such transportation and upon the actual cost of such transportation. The court ruled that it lay in the Commission's discretion to establish such single commodity rates without itemized inventory valuations and at a figure at variance with the actual cost. (In this instance the Commission fixed the rates at what it found to be 92% of the cost incurred in transportation.)

The court distinguished *Lindsey v. P.U.C.O.*[2] in which it had been held that in fixing rate, fare, charge, toll or rental to yield a reasonable return upon the value of the property of a public utility used and useful for the convenience of the public, the Commission was required, under Sections 499-9[3] and 499-13[4] of the Ohio General Code to ascertain and report value classified as in the various alphabetical subdivisions. Distinction was made on the grounds that in the case now before the court there was involved only the freight rate on one commodity and that Section 4909.04 of the Ohio Revised Code,[5] having been amended to read "may" where it had formerly read "shall," confers upon the Commission a discretion in rate fixing, insofar as valuation of property of the utility or railroad is concerned.

Discrimination in Rates

While no startlingly new principles of public utility law were laid down in the case of *Buckeye Lake Chamber of Commerce v. P.U.C.O.*[6] it involved the reiteration and application of three recently decided important cases.

The Ohio Central Telephone Company furnished telephone service and operated exchanges in 46 villages and municipalities in northeastern Ohio. It applied to the Commission for authority to increase rates and was authorized to do so. The new rates had the result that inhabitants of the Village of Hebron, who were in the same service area and on the same "banded service rate" as the inhabitants of the nearby community of Buckeye Lake, received a favorable differential in monthly charges in the various types of services. Thus, although residents of Hebron and residents of Buckeye Lake could call each other without toll charges, or could call a distant point at the same toll charge, the monthly residential charge to a user in Buckeye Lake was greater than such charge to the user in Hebron.

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[1] 161 Ohio St. 221, 118 N.E.2d 531 (1954).
[2] 111 Ohio St. 6, 144 N.E. 729 (1924).
[3] Now OHIO REV. CODE § 4909.05.
[4] Now OHIO REV. CODE § 4901.21.
[5] Formerly OHIO GEN. CODE § 499-8.
[6] 161 Ohio St. 306, 119 N.E.2d 51 (1954).

Relying on *Building Industries Exhibit, Inc. v. P.U.C.O.*,[7] the court held that Sections 614-13 and 614-14, Ohio General Code,[8] while requiring charges to be just and reasonable and forbidding unlawful and unjust differentials in rates, nevertheless permitted classification of consumers on reasonable bases. Although Hebron and Buckeye Lake were in the same rate area, the exchange was in Hebron, and the limited number of telephones in rural Buckeye Lake necessitated that the company bear a heavy increased expense in the mileage of its lines to the sparsely settled areas of the district. The court held that "not all discrimination in rates is unjust," and that as there was a substantial difference in conditions as to service, the rate differential was proper.

It was also held, following *Commercial Motor Freight, Inc., v. P.U.C.O.*,[9] that while Section 614-46a of the Ohio General Code[10] requires the Commission, in all contested cases heard by it, to file written opinions setting forth a record of facts found by it and the reasons prompting its decisions, these requirements were met by its carrying into its opinion the secretary's report wherein the uncontested facts were contained, particularly since the protestants had submitted no testimony contrary to the applicant's engineering and accounting reports; and, following *Elyria Telephone Co. v. P.U.C.O.*,[11] that while the Commission found that service rendered by the applicant through certain of its exchanges was below standard, it could not make the increases which it granted in rates conditional upon improvement of services and facilities by the utility.

Discontinuance of Services or Facilities

Two interesting problems were presented to the supreme court in 1954 with respect to the authorization by the Commission of the discontinuance of services or facilities by a public utility, in both instances, railroads.

In the first case[12] the applicant railroad, almost exclusively a freight carrier, sought permission to abandon its two remaining daily, except Sunday, mixed freight and passenger trains which ran between two intermediate points on its line. The company made money on its overall freight traffic, and was paying dividends; maintenance of the passenger service[13] was

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[7] 150 Ohio St. 251, 80 N.E.2d 836 (1948).

[8] Now OHIO REV. CODE §§ 4905.22 and 4905.33.

[9] 156 Ohio St. 360, 102 N.E.2d 842 (1951).

[10] Now OHIO REV. CODE § 4903.09.

[11] 158 Ohio St. 441, 110 N.E.2d 59; see 5 WEST. RES. L. REV. 294 (1954).

[12] Detroit, Toledo & Ironton R.R. Co. v. P.U.C.O., 161 Ohio St. 317, 119 N.E.2d 73 (1954).

costing the road a large out-of-pocket expense. It was conceded that freight service had been and would continue to be adequate.

The supreme court, in reversing the Commission and permitting the railroad to discontinue all passenger service, held that under applicable statutes[14] "logic and reason dictate that the commission is bound to consider only the passenger revenues and expenses in arriving at the cost of the passenger service sought to be discontinued," and that the out-of-pocket loss to the railroad, without any regard to allocation of the system-wide cost of transportation being "unreasonably enormous," abandonment of passenger service should be permitted when it was also shown that 85% of the passengers using the train service would have bus service available to them. If the public demand for passenger service had been large enough and the loss because of it less disproportionate to its cost, the public welfare, said the court, might have dictated retention of the service.

In the other case[15] the court held that the diminution of passenger train service by applicant railroad by discontinuing a particular stop by one of its south bound trains at one station, there remaining still in operation three south bound and two northbound trains which made stops there, did not require a public hearing before the Commission, since such action by the railroad was not, within the meaning of the applicable statutes,[16] an abandonment, withdrawal or closure for service of all or any part of its tracks, depot or service. The court distinguished such cases as *Cincinnati N. R. Co. v. P.U.C.O.*,[17] in which the abandonment sought was of two trains out of a larger total operated by the utility, on the ground that since both applicant and the protestants in that case had not raised the question whether the Commission had power to approve or disapprove a *partial* abandonment of service, the decision and any statements therein which might have so indicated actually did not so determine.

Rate Bases

The case of *City of Cincinnati v. P.U.C.O.*[18] involved the propriety of the allowance by the Commission of the inclusion of certain items in the recurring expenses of the Cincinnati and Suburban Telephone Company as a basis of revenue required by it in order to determine a proper rate structure. Again, while announcing no new principles of the establishment of rate

[13] The area served was almost exclusively rural, and, in fact, the trains were known as the "Sassafras Specials."

[14] OHIO REV. CODE §§ 4905.20 and 4905.21.

[15] *In re* New York Central Train No. 421, 161 Ohio St. 332, 119 N.E.2d 77 (1954).

[16] OHIO REV. CODE §§ 4905.20 and 4905.21.

[17] 119 Ohio St. 568, 165 N.E. 38 (1929).

[18] 161 Ohio St. 395, 119 N.E.2d 619 (1954).

basis, the court either distinguished the situation before it from recently decided cases, or reiterated principles announced in other recent decisions.

The inclusion in a rate base structure of amounts of federal excess profits taxes which the utility could be expected to have to pay was upheld in a 1950 case.[19] In that case, however, there had been no objection at the hearing before the Commission to the inclusion of this item, while in the 1954 case the inclusion had been permitted by the Commission over such objections. Furthermore, the court pointed out, in the 1954 case at the time of the "day certain" involved in the hearings, the company's earnings under the rates then in effect did not require it to pay any excess profits tax, and while the increases in rates allowed by the Commission could be expected to bring about an obligation to pay some excess profits taxes, the expected expiration of the tax statute on June 30, 1953 (it was eventually extended to December 31, 1953) precluded the inclusion of this item in the rate base structure as a recurring expense. Rather, it should have been disallowed or amortized over a reasonable period.[20]

Likewise the utility had been, since 1945, amortizing over a 10-year period, an "unfunded actuarial reserve" deficiency in its employees' pension fund.[21] This deficiency was expected to be completely amortized by 1954, by which time the actuarial reserve would be completely funded. The inclusion by the Commission of the amounts remaining unpaid, in the rate bases was, therefore, said the court, not proper as a recurring expense. It permitted, of course, the *current* payments to such fund.

Finally, the court also reversed the Commission's decision that there need not be deducted from the rate base structure certain accruals, such as customers' deposits, advance billings and payments and accrued taxes payable by customers and collected by the company. The court held that these figures remained fairly constant monthly, that the company actually had a substantial use of them for working capital purposes after their collection and prior to their payment by the utility, and that they must therefore be used to offset the rate base allowance for working capital, including the investment in materials and supplies for normal operations and for plant maintenance and repair.

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[19] City of Cincinnati v. P.U.C.O., 153 Ohio St. 56, 90 N.E.2d 681 (1950).

[20] Citing Hardin-Wyandot Lighting Co. v. P.U.C.O., 108 Ohio St. 207, 215, 140 N.E. 779 (1923) and East Ohio Gas Co. v. P.U.C.O., 133 Ohio St. 212, 226, 12 N.E.2d 765, 773 (1938).

[21] The deficiency was caused by the fact that the utility had, from 1913 to 1927, paid pensions on a pay-as-you-go basis, and by the further fact that from 1927 until 1945 the rates adopted by the company for reserve fund payments had been actually insufficient.