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PUBLIC UTILITIES COMMISSION — NO POWER TO EXAMINE CLAIMS AGAINST MOTOR TRANSPORTATION COMPANIES — LOSS OR DAMAGE TO PROPERTY OR UNREASONABLE DELAY IN TRANSPORTATION AND DELIVERY OR OVERCHARGES UPON SHIPMENT — CLAIMS AGAINST RAILROADS — SECTION 579 G.C.

SYLLABUS:

The Public Utilities Commission of Ohio is without power to examine and determine the existence and validity of claims against motor transportation companies for the loss of or damage to property while in their custody, for unreasonable delay in transportation and delivery, or overcharges upon a shipment in the manner provided by Section 579, General Code, with respect to such claims against railroads.

Columbus, Ohio, July 11, 1941.

Hon. George McConnaughey, Public Utilities Commission of Ohio,
Columbus, Ohio.

Dear Sir:

I acknowledge receipt of your request for my opinion which reads as follows:

“Under Section 579 of the General Code our Commission is vested with the power to determine, in the first instance, the validity of claims against a railroad for loss of, or damage to property occurring while in the custody of such railroad and unreasonable delay in transportation and delivery, or for overcharges upon a shipment. It is our understanding that such claims may be prosecuted direct in any court of competent jurisdiction and that Section 579 is merely an alternative method.

We find nothing in the Motor Carrier Act (Gen. Code, Sections 614-84 to 614-102) vesting this Commission with the power to determine the validity of such claims against a Motor Transportation Company save, possibly, Section 614-93a, which provides as follows:

'After a certificate of public convenience and necessity has been granted to a motor transportation company, and time, service, and rate schedules have been filed with the public utilities commission in accordance with law and the rules and regulations of the commission, such rate schedules, including schedules of joint rates, and any changes therein, shall be governed by the laws of Ohio applicable to such schedules by railroads; likewise, changes in such time or service schedules and in classifications shall be made by filing new time or service schedules or classifications in the manner provided for the filing of rate schedules by railroads.'

You are requested to furnish us your written opinion as to whether or not our Commission is empowered to determine the validity of claims for loss, damage, or overcharge against a motor transportation company in the same manner as provided in Section 579 with respect to such claims against a railroad company."

I also acknowledge receipt of your request for my opinion whether the three-year period of limitations for filing overcharge claims applies also to motor carriers as well as to the rail lines. Your attention is called to the fact that since the date of your request, the legislature has reduced this period from three to two years.

In considering your first inquiry, it is necessary to bear in mind that the Supreme Court of Ohio has repeatedly held that the Public Utilities Commission of Ohio, being a creature of statute, has only such powers and authority as are conferred on it by statute. Section 579, General Code, authorizes the submission by formal complaint to your commission of claims against railroads for loss of or damage to property while in the custody of the railroad, for unreasonable delay in transportation and delivery, and for overcharges. The first sentence therein states that:

"All claims, charges or demands against a railroad for loss of, or damage to property occurring while in the custody of such railroad and unreasonable delay in transportation and delivery, or for overcharges upon a shipment, or for any other service in violation of this chapter, if not paid within sixty days from the date of the filing thereof with such railroad, may be submitted

to the commission by a formal complaint to be made upon blank forms which it is hereby made the duty of the commission to provide upon demand of the claimant.”

The remainder of the section deals with procedure thereafter.

At this point, it should be noted that this statute refers definitely and solely to the submission of claims against *railroads* only and is found in that division of the public utilities commission law dealing only with railroads. It was originally enacted in 1908 (99 Ohio Laws 130, Section 31) and was last amended in 1910 (101 Ohio Laws 173, 174). The jurisdiction which it confers upon your Commission is supplemental to that conferred upon our courts of common pleas by Section 11215 and (when the sum involved is below a given amount) upon our tribunals of inferior jurisdiction by Section 10223 et seq., General Code, which statutes incidentally are general in nature and include actions against motor transportation companies based on similar claims.

Your inquiry raises the question whether Section 614-93a extends the provisions of Section 579 so as to be applicable to motor transportation companies also. This latter section was enacted in 1929 (113 Ohio Laws 482, 489) and provides:

“After a certificate of public convenience and necessity has been granted to a motor transportation company, and time, service, and rate schedules have been filed with the public utilities commission in accordance with law and the rules and regulations of the commission, such rate schedules, including schedules of joint rates, and any changes therein, shall be governed by the laws of Ohio applicable to such schedules by railroads; likewise, changes in such time or service schedules and in classifications shall be made by filing new time or service schedules or classifications in the manner provided for the filing of rate schedules by railroads.”

Quite obviously, this statute deals exclusively with the filing of time, service and rate schedules and any changes therein with your Commission providing only that such schedules and changes therein shall be governed by the laws of Ohio applicable to railroad schedules. Section 579 on the other hand specifically treats with the presentation, consideration and determination of claims against railroads based allegedly on non-compliance by the railroads with schedules theretofore filed by them. The former is substantive, the latter remedial; the former creates rights and

duties with regard to one type of public carrier, the latter provides how alleged abuses may be submitted and determined with regard to another type of carrier.

Section 614-93a creates no remedies and contains no reference whatever to individual claims or the submission thereof, while Section 579 creates no substantive rights or duties but does deal entirely with individual claims and the submission thereof. It follows of necessity that the remedy provided by Section 579, which is entirely separate and apart from the Motor Transportation Act, cannot be enlarged or extended to cover the examination and determination by your Commission of the existence and validity of claims against motor transportation companies for the loss of or damage to property while in their custody, for unreasonable delay in transportation and delivery, or for overcharges upon a shipment and that Section 614-93a gives your Commission no power to so examine and determine.

In view of the foregoing your second inquiry whether the same period of limitations for filing overcharge claims applies to motor carriers as well as to the rail lines becomes moot insofar as your Commission is involved and therefore requires no answer.

Specifically answering your questions it is my opinion that the Public Utilities Commission of Ohio is without power to examine and determine the existence and validity of claims against motor transportation companies for the loss of or damage to property while in their custody, for unreasonable delay in transportation and delivery, or for overcharges upon a shipment in the manner provided by Section 579, General Code, with respect to such claims against railroads.

Respectfully,

THOMAS J. HERBERT,

Attorney General.