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PUBLIC UTILITIES COMMISSION OF OHIO — HOUSE BILL 239,
94 GENERAL ASSEMBLY — REQUIRES FILING, RULES AND
REGULATIONS, WHICH HAVE GENERAL AND UNIFORM
OPERATION.

SYLLABUS:

House Bill No. 239 requires only the filing by the Public Utilities Commission of Ohio of its rules and regulations which have a general and uniform operation and not the filing by it of such other orders, findings and determinations as have no such operation.

Columbus, Ohio, August 7, 1941.

Mr. John Robert Jones, Secretary,
The Public Utilities Commission of Ohio,
Columbus, Ohio.

Dear Sir:

I acknowledge receipt of your letter which reads as follows:

“House Bill No. 239, passed by the recent legislature, provides that no rule or regulation of any state board, commission, department, etc., shall be effective after October 15, 1941, until the 10th day after it shall have been promulgated by the filing

of a certified copy thereof in the office of the secretary of the state of Ohio. Certain exceptions are then made and the last paragraph of the law then states:

‘Provided, however, that the provisions of this section shall not apply to any orders respecting the duties of employees, or to any finding, or to any determination of a question of law or fact in a matter presented to such board, commission, department, division or bureau.’

The Public Utilities Commission of Ohio has promulgated, and has outstanding and effective, orders which may be described as falling into two classes of rules and regulations. Into the first class fall such matters as our rules of practice, general administrative orders, safety rules, tariff circulars, rules of lateral clearance and rules relating to rural electric service. These orders, rules and regulations, and all such similar to them, were made in the execution of some general or specific statutory power or duty placed in the Commission and are of a general and uniform operation and effect on all of the individuals, railroads and public utilities subject to our jurisdiction to which they apply.

The second class consists of orders, rules and regulations affecting only one or a few individuals, railroads or public utilities subject to our jurisdiction, and are made only with the consent of those affected or after proper hearing. Moreover, this class will affect only a single operating entity out of many and will affect it in only one instance and not necessarily in any other. Into this class fall such matters as special permission to file or amend a particular tariff schedule, special requirement of flasher lights at a particular crossing, restrictions on the issuance of securities by a public utility company and orders specifying the use of clearance gates at certain designated places.

Will you kindly furnish us with your opinion whether both of these classes of rules and regulations must be certified and filed as required by House Bill No. 239?”

Passed April 24, 1941, by the legislature, House Bill No. 239, to which you refer, was approved by the governor seven days later. It provides that:

“No rule or regulation heretofore or hereafter adopted by any board, commission, department, division or bureau of the government of the state of Ohio shall be effective until the tenth day after it shall have been promulgated by the filing of a certified copy thereof in the office of the secretary of state of the state of Ohio, except a rule or regulation of an emergency nature necessary for the immediate preservation of the public peace,

health or safety, which rule or regulation shall state the reason for such necessity and shall become effective immediately upon being promulgated as herein provided; provided, however, that the rules, regulations and amendments thereto, adopted by any board, commission, department, division or bureau of the government of the state of Ohio prior to the effective date of this act shall continue in full force and effect for a period of thirty days after the effective date of this act unless previously repealed.

No rule or regulation of any board, commission, department, division or bureau of the government of the state of Ohio shall be effective on and after the fifteenth day of October, 1941, unless expressly promulgated as provided herein.

All rules and regulations filed in the office of the secretary of state pursuant to the provisions of this section shall be recorded by the secretary of state under the title of the board, commission, department, division or bureau adopting such rule or regulation and shall be numbered consecutively under such title. Such rules and regulations shall be public records open to public inspection.

No rule or regulation filed in the office of the secretary of state, pursuant to the provisions of this section, shall be amended except by a new rule, which new rule shall contain the entire rule as amended and shall repeal the rule amended. Such amendatory rules and regulations shall be adopted and promulgated in the same manner as herein provided for the adoption and promulgation of the rules and regulations which are thereby amended.

No repeal of any rule or regulation shall be effective until the tenth day after the filing with the secretary of state of a certified copy of the order of repeal of such rule or regulation.

Provided, however, that the provisions of this section shall not apply to any orders respecting the duties of employees, or to any finding, or to any determination of a question of law or fact in a matter presented to such board, commission, department, division or bureau."

The portions of this law relevant to your inquiry are paragraphs one and six.

The obvious purpose of this law is to provide, in a central place, a complete and duly classified set of all of the rules and regulations of every board, commission, department, division and bureau of the government of the State of Ohio for the use of anyone who may have occasion or need to examine them. Because of the increasing need for the legislature to delegate administrative duties and functions to specialized state

boards and commissions, these rules and regulations have become as important as statutory law to those appearing before such bodies.

Many of these boards and commissions are in different parts of the state, or have branches in different cities; they have procedural and administrative rules and regulations which are not only fitted only to their own particular functions but which are also, consequently, unlike those of any other agency. Yet these rules and regulations are not found in any code of laws nor, up to the present time, have they been grouped together, for ready reference in any one place. To meet this situation, and to provide a bridge between the codified statutes of Ohio, which are readily available to all, and the rules and regulations of our various state administrative agencies, which are not readily accessible to many, House Bill No. 239 was enacted.

You will note that the legislature in drafting this bill drew a distinction between rules and regulations as used in the first paragraph and findings and determinations as used in the sixth paragraph; if there was no difference between the phrases there would be no point or purpose to this last paragraph. Moreover, in drawing this distinction the legislature was amply borne out by both courts and lexicographers. Let us first consider the phrase "rules and regulations."

In *State Racing Commission vs. Latonia Ag. Ass'n.*, 136 Ky. 173, 187, a Kentucky statute gave appellant commission authority to license those who race horses subject to the rules, regulations and conditions from time to time prescribed by the Commission. In defining the phrase "rules and regulations," the Kentucky Court held:

"Rules and regulations as the term is employed in the statute implies uniformity, publicity and the establishment of standards by which applicants or licensees may know in advance upon what conditions the license may be granted or will be withheld or revoked. The outline suggested is not because of the discretion vested in the Board but because the statute requires that there be rules and regulations. A rule must necessarily be of general application. The regulation must apply impartially."

Also in point is *Morris vs. Board of Pilot Commissioners*, 7 Del. Ch. 136, 137, which dealt with the statutory power of a Board of Pilot Commissioners to make rules for the government of pilots. Syllabus 6 of that case is as follows:

“The words ‘rule’ and ‘order’ when used in a statute have a definite significance. They are different in their nature and extent. A rule to be valid must be general in its scope and undiscriminating in its application; an order is specific and limited in its application. The function of an order relates more particularly to the execution or enforcement of a rule previously made.”

See also *Indianapolis Union R. Co. vs. Dohn*, 153 Indiana 10, 12, *Borough of Belmar vs. Prior*, 81 N. J. Law 254, 258, and *South Florida, R.R. Co. vs. Rhodes*, 25 Fla. 40, 46, all to the effect that rules and regulations imply uniformity of operation.

Let us now consider the phrase “findings and determinations.” In Webster’s New International Dictionary, a finding is defined as

“Law. The result of a judicial examination or inquiry, esp. into some matter of fact, as embodied in a jury’s verdict or a court’s decision or a referee’s report.”

A determination is there defined as a

“State of Decision; a judicial decision, settling and ending of a controversy; a conclusion.”

By judicial definition, a finding may be said to be the ascertainment of an ultimate fact in a given proceeding. See *State, ex rel. Landis vs. Board of Commissioners, etc.*, 6 Ohio App. 440, 445; *Baker*, 218 Mass. 339, 346, *Maeder Steel Products Co. vs. Zanello*, 109 Ore. 562, syll. 4, and *Shannahan vs. United States*, 20 Fed. Supp. 1002, syll. 3. In any event, the finding is relevant and conclusive only with regard to the proceeding in which it is made.

A determination may be said to be the termination of a proceeding by final order or decision after weighing all pertinent facts in the light of the law involved. Again, the result is relevant and conclusive only with regard to the proceeding in which it is made. See *State ex rel. Flowers vs. Board of Education*, 35 O.S. 368, 385; *Mullen vs. Mullen*, 11 N.P.N.S. 353, 358; *Pobst vs. Industrial Accident Com’n.*, 48 Cal. App. 597, 599; *Hanchett Bond Co. vs. Glore*, 208 Mo. App. 169, 172 and *Appeal of Hoskins Mfg. Co.*, 270 Mich., 592, 598.

By definition and construction, rules and regulations carry the idea

of uniformity of operation; and entirely consistent therewith is the purpose of House Bill No. 239, recounted above, to set aside in a central place the standards by which applicants and licensees may ascertain in advance upon what conditions the license, rights or privileges which they seek, may be obtained, or may be withheld, or later revoked. But findings and determinations, relating as they do to particular cases and proceedings, lack the quality of uniformity of operation and fall into a different category.

As you point out in your inquiry, the orders, rules, regulations, findings and determinations of your Commission do not all have the same operation and effect. Through the fact that some operate generally and uniformly while others do not, particularly because they relate only to one proceeding or to a few parties, they lend themselves to division into two different types or classes based on the presence or absence of that characteristic. That class or type of order issued by your Commission, such as rules of practice, general administrative orders, safety rules, tariff circulars, rules of lateral clearance and rules relating to rural electric service, constitute rules and regulations which are all of a general and uniform operation and are of equal and like effect on all individuals, railroads and public utilities to which they apply. Such rules and regulations and all similar to them are clearly within the intent and purpose of House Bill No. 239, and should be prepared and filed by your Commission as that law requires.

On the other hand that type of orders issued by your Commission, which affects only one or a few, is not of uniform operation and is of interest only to the individual or concern directly affected. This type includes such matters as special permission to file or to amend a particular tariff schedule, special requirement of flasher lights at certain designated crossings, restrictions on the issuance of securities by a public utility, orders directing the use of clearance gates at certain points and orders directed to particular parties or groups. As a matter of fact, orders of your Commission falling within this category are not always properly designated as rules or regulations. In many instances they may be more properly designated as exceptions to a rule or regulation; but in any event they are findings or determinations as distinguished from either rules or regulations.

In view of the facts that orders of this latter type are not general

or uniform in operation and are made only with the consent of those affected, or after due hearing or investigation, I am of the opinion that the last paragraph of House Bill No. 239 controls them, and they need not be filed as rules or regulations referred to in paragraph one of that law. Any other conclusion would violate not only the intention of the legislature but also the decisions from various courts.

It is consequently my opinion that House Bill No. 239 requires only the filing by the Public Utilities Commission of Ohio of its rules and regulations which have a general and uniform operation and not the filing by it of such other orders, findings and determinations as have no such operation.

Respectfully,

THOMAS J. HERBERT,

Attorney General.