

809

PUBLIC UTILITIES COMMISSION—ATTORNEY GENERAL OF OHIO, ANY ONE OR MORE ASSISTANT ATTORNEYS GENERAL, DESIGNATED BY ATTORNEY GENERAL AND APPROVED BY GOVERNOR TO PERFORM SERVICES AND DISCHARGE DUTIES OF ATTORNEY TO PUBLIC UTILITIES COMMISSION, ENTITLED TO RAILROAD AND BUS PASSES WHILE IN PERFORMANCE OF DUTIES—SECTION 499-1 G. C.

## SYLLABUS:

Pursuant to Section 499-1 of the General Code of Ohio, the Attorney General of the State of Ohio and any one or more assistant attorneys general, designated by the Attorney General and approved by the Governor, to perform the services and discharge the duties of attorney to the Public Utilities Commission, are entitled to railroad and bus passes while in the performance of their duties.

Columbus, Ohio, August 4, 1949

Hon. Harry M. Miller, Chairman  
The Public Utilities Commission of Ohio  
Columbus, Ohio

Dear Sir:

This will acknowledge receipt of your request for my opinion, which reads as follows:

“The question has arisen as to whether, under Section 499-1 of the General Code of Ohio, railroad and bus passes should be issued to the Attorney General of Ohio as well as to the Assistant Attorney General assigned to The Public Utilities Commission of Ohio.

“Will you kindly give us an official opinion on this point?”

Section 499-1 of the General Code, to which you refer in your letter, reads as follows:

“The commissioners, their attorney, secretary or other officers and employes of the commission shall, when in the performance of their official duties, have the right to pass, free of charge, on all railroads, cars, vessels and other vehicles of every common carrier, as said term is defined in this chapter, subject, in whole or in part, to the control or regulation by the commission, between

points within this state, and such persons shall not be denied the right to travel upon any railroad, car, vessel or other vehicle of such common carrier, or any part thereof, whether such railroad, car, vessel or other vehicle be used for the transportation of passengers or freight, and regardless of its class."

The question presented involves the determination of what is meant by the term "their attorney" in the above quoted section of the General Code.

Section 333 of the General Code of Ohio provides that the Attorney General shall be the chief law officer of the state and all its departments and reads as follows :

"The attorney-general shall be the chief law officer for the state and all its departments. No state officer, board or the head of a department or institution of the state shall employ, or be represented by, other counsel or attorneys-at-law. The attorney-general shall appear for the state in the trial and argument of all civil and criminal causes in the supreme court in which the state may be directly or indirectly interested. When required by the governor or the general assembly, he shall appear for the state in any court or tribunal in a cause in which the state is a party, or in which the state is directly interested. Upon the written request of the governor, he shall prosecute any person indicted for a crime."

By virtue of Section 333 of the General Code, it appears reasonably clear that the Attorney General is the attorney for the Public Utilities Commission of Ohio and is charged with representing it as its attorney to the exclusion of all other attorneys and counsellors at law. By virtue of Section 334 of the General Code the Attorney General is authorized to appoint assistant attorneys general to perform such duties as may be assigned them by the Attorney General. In their capacities as assistant attorneys general, they would be the agents of the Attorney General in the performance of such duties and their duties as so performed would be the acts of their principal.

Section 497, General Code, provides for the designation by the Attorney General, subject to the approval of the Governor, of one or more assistant attorneys general to perform the services and discharge the duties of attorney to the Public Utilities Commission. Said section also provides that the Attorney General shall be the legal adviser of the Commission.

It is my opinion that Section 497 of the General Code is intended to assure the Commission adequate representation and legal services by the Attorney General's Office. Such assistant attorney general is in no other position with reference to his capacity as representative of the Attorney General than any other assistant attorney general, except that his duties are limited to the performance of the services in the discharge of the legal duties of the Commission.

In support of this position, I wish to call to your attention Opinion No. 785, Opinions of the Attorney General for 1927, page 1375, wherein the then Attorney General ruled as disclosed by the second branch of the syllabus as follows:

“The special counsel appointed by the Attorney General and by him designated under the provisions of Section 497, General Code, ‘to perform the services and discharge the duties of attorney’ to the Public Utilities Commission is an employe of the Attorney General and not an employe in the Department of Commerce.”

In view of the foregoing, it is, therefore, my opinion that the Attorney General of the State of Ohio is the attorney for the Public Utilities Commission and any assistant attorneys general who may be assigned duties, subject to the approval of the Governor, to said Commission are likewise attorneys for said Commission.

In conclusion and in direct answer to your question, you are advised and it is my opinion that pursuant to Section 499-1 of the General Code of Ohio the Attorney General of the State of Ohio and any one or more assistant attorneys general designated by the Attorney General, approved by the Governor, to perform the services and discharge the duties of attorney to the Commission are entitled to railroad and bus passes while in the performance of their duties.

Respectfully,

HERBERT S. DUFFY,  
Attorney General.