

811

MOTOR TRANSPORTATION—PUBLIC UTILITIES COMMISSION OF OHIO—DELEGATION OF POWER AND AUTHORITY TO ENACT RULES AND REGULATIONS, SECTIONS 614-84 TO 614-128 G. C., TO SUPERVISE AND CONTROL MOTOR TRANSPORTATION IN OHIO, DOES NOT EMPOWER COMMISSION TO IMPOSE FEE OR PENALTY UPON MOTOR CARRIER FOR REINSTATEMENT OF CERTIFICATE, PERMIT OR REGISTRATION THEREINBEFORE REVOKED OR CANCELED UNDER SECTIONS 614-99, 614-115 G. C.

SYLLABUS:

While the Public Utilities Commission of Ohio has been delegated the power and authority to enact rules and regulations under Sections 614-84 to 614-128, General Code, for the supervision and control of the motor transportation within the state of Ohio, such delegation of authority does not empower the Commission to impose a fee or penalty upon a motor carrier for the reinstatement of a certificate, permit or registration thereinbefore revoked or canceled under provisions of Sections 614-99 and 614-115, General Code.

Columbus, Ohio, March 18, 1946

Hon. H. L. Mason, Chairman, The Public Utilities Commission of Ohio
Columbus, Ohio

Dear Sir:

I have your recent request for my opinion which reads as follows:

“The Public Utilities Commission of Ohio has under consideration an amendment to their code of rules and regulations heretofore adopted under Administrative Order No. 123, to provide a fee to be charged and collected by the Commission upon issuing a reinstatement order on a certificate, permit or registration said authority having been revoked by the commission due to the operator’s failure to maintain the required insurance. Can the Commission legally adopt such rule as hereto attached?”

You inquire as to the legality of the following proposed amendment to the rules and regulations hereinbefore adopted by the Public Utilities Commission:

"SUPPLEMENT NO. 2 TO ADMINISTRATIVE
ORDER NO. 123

In the matter of rules and regulations governing the filing of an insurance certificate, policy, or bond as provided by Sections 614-99 and 614-103 of the Ohio General Code and the rules and regulations under Administrative Order No. 123.

The Commission having under consideration the code of rules and regulations heretofore adopted under Administrative Order 123, and it appearing such code of rules should be amended to provide a fee to be charged and collected by the Commission upon issuing a reinstatement order on a certificate, permit, or registration that has been revoked by the commission due to the operator's failure to maintain the required insurance on file with the Commission, it is hereby

ORDERED, That effective March 15, 1946, the code of rules and regulations heretofore adopted and prescribed by the Commission under Administrative Order No. 123, be and hereby the same is amended to provide that upon the revocation of a certificate, permit, or registration because of the holder's failure to maintain insurance, the Commission shall not consider the reinstatement of such certificate, permit, or registration until a satisfactory insurance certificate, policy, or bond shall have been filed and a five dollar (\$5.00) fee shall have been paid to the Commission accompanied by an affidavit by the motor carrier giving a satisfactory explanation why insurance was not submitted prior to the revocation of the certificate, permit, or registration, but will not prejudice the right of the Commission to require a hearing on any such reinstatement.

It is further

ORDERED, that a copy of this order be forthwith filed with the Secretary of State, State of Ohio."

I note that the effect of this order is to impose a fee or penalty of \$5.00 in connection with the reinstatement of a certificate, permit or registration that has been revoked or canceled because the holder thereof has failed to maintain proper insurance as required by Sections 614-99 and 614-103 of the General Code of Ohio.

Section 614-99, General Code, provides that before certificate of public convenience and necessity shall be issued and a transportation company can operate thereunder, certain insurance coverage must be maintained by said transportation company with the approval of the Commission, and further provides:

“If such certificate, policy or bond is cancelled during the term thereof or in event the same should lapse for any reason, the commission shall require such motor transportation company to replace such certificate, policy or bond with another fully complying with the requirements of this section, and in default thereof the certificate of public convenience and necessity shall be deemed revoked. The commission shall not reinstate such certificate until satisfactory bond, policy or certificate of insurance shall have been filed.”

Section 614-115, General Code, sets up the same provision with reference to contract carriers by motor vehicles and also contains identical language as to cancellation and reinstatement of revoked permits.

Although these sections provide for the necessity of insurance coverage and for cancellation or revocation for noncompliance, and for reinstatement of a certificate or permit, no mention is made of any fee or penalty to be assessed in connection therewith either in the first filing of the insurance coverage or for the certificate or permit, nor for the replacement of the insurance or reinstatement of the certificate or authority.

If any authority exists to assess fees or penalties, it must be determined from other statutory provisions under which the Commission functions.

The primary function of an administrative agency such as the Public Utilities Commission is to carry into effect the will of the state as expressed by the state legislative body. Whether the function of the agency is classified as executive, legislative, judicial or quasi-judicial, or a combination of such functions, the power and authority of any particular agency or commission is to be determined by the statute creating it. *New York Central R. R. Co. v. P. U. C. O.*, 123 O. S. 370, 175 N. E. 596. No common law powers are inherent to administrative boards, commissions or to the officers who head them.

In determining whether the Commission has a certain power, the authority should be liberally construed in the light of the purpose for which it was created and that which is incidentally necessary to a full exposition of the legislative intent. However, power should not be extended by implication beyond what is necessary for their just and reasonable execution.

Under the motor transportation section of the Public Utilities Commission Act, Sections 614-84 to 614-128 of the General Code, the Commission has been given certain broad authority by Section 614-86, which reads in part as follows:

“The public utilities commission of the state of Ohio is hereby vested with power and authority to supervise and regulate each such motor transportation company in this state; to fix, alter and regulate rates; to regulate the service and safety of operation of each such motor transportation company; to prescribe safety regulations, and designate stops for service and safety on established routes; to require the filing of annual and other reports and of other data by such motor transportation companies; to provide uniform accounting systems; and to supervise and regulate motor transportation companies in all other matters affecting the relationship between such companies and the public to the exclusion of all local authorities in this state, except as hereinafter otherwise provided. The commission, in the exercise of the jurisdiction conferred upon it by this chapter, shall have the power and authority to prescribe rules and regulations affecting such motor transportation companies, notwithstanding the provisions of any ordinance, resolution, license or permit enacted, adopted or granted by any incorporated city or village, city and county, or county, and in case of conflict between any such ordinance, resolution, license or permit, the order, rule or regulation of the public utilities commission shall, in each instance prevail; * * *”

Under this language—

“The public utilities commission of the state of Ohio is hereby vested with the power and authority to supervise and regulate each such motor transportation company in this state; * * * The commission, in the exercise of its jurisdiction conferred upon it by this chapter, shall have the power and authority to prescribe rules and regulations affecting such motor transportation companies, * * *”

it has been held by the courts that the Public Utilities Commission has broad general power and authority to promulgate rules and regulations for the supervision of motor transportation. *Matz v. J. L. Curtis Cartage Co.*, 132 O. S. 271, 7 N. E. (2d), 220. See also, *Coney Island Bus Co. v. Public Utilities Commission*, 115 O. S., 47, 152 N. E. 25.

Section 614-105, General Code, pertaining to private motor carriers, uses generally the same language as Section 614-86, General Code, and reads as follows:

“The public utilities commission of Ohio is hereby vested with power and authority to supervise and regulate each such private motor carrier in this state; to prescribe reasonable safety rules; to prescribe reasonable rules and regulations for the administration and enforcement of the provisions of this chapter applying to each such contract carrier by motor vehicle in this state; to require the filing of such annual and other reports as the commission may prescribe; and to supervise and regulate the operation of such private motor carriers to the exclusion of all local authorities in this state except as hereinafter otherwise provided.

In the exercise of the jurisdiction conferred upon it by this chapter, the commission shall have power and authority to prescribe rules and regulations affecting such private motor carriers, * * *.”

Under these sections the Public Utilities Commission is given no specific power or authority to designate any fees to be assessed upon the issuing or reinstatement of any certificate, permit or registration, nor is there any authority given to impose a penalty in this connection.

Since no statutory provision under the Motor Transportation Act gives specific authority for the Commission to assess a fee or a penalty, we must look to the legislative intent from the Act as a whole to determine whether such an action by the Public Utilities Commission was contemplated by the general provision pertaining to the exclusive regulations of motor transportation,

The functions and power of administrative officers may be classified generally according to the degree of subjective choice or decision involved in their exercise, such as discretionary, judgment-passing, fact-finding or ministerial, and the distinguishing factors of the powers of an administrative agency are the results of their exercise in the future.

In this inquiry we are interested in two types of such power:

- (1) Rule-making by reason of particular delegation of authority.
- (2) Rule-making by the construction and interpretation of the statute being administered.

Where the duty in a particular situation is plainly prescribed as to be free from doubt and equivalent to a positive command, it is regarded as ministerial (application of (1) above), but where the duty is not so plainly prescribed as to be free from doubt, and hence not equivalent to a positive demand, and to carry out the intent would depend upon the construction or application of the statute which is not free from doubt, it is regarded as involving the character of judgment or discretion (application of (2) above.)

In order to avoid a delegation of essential legislative power to the commission, a statute vesting such power must be complete in all its terms and provisions so that nothing in the matter of determining what the law may be is left to the judgment of the commission. However, as a general rule, to avoid unlawful delegation of power, the legislature must declare the policy or the purpose of the law and fix the legal principles which are to control in given cases by setting up standards or guides to indicate the extent and prescribe the limits of the discretion which may be exercised under the statutes by the commission.

The Ohio legislature, having declared its policy and purpose with regard to motor transportation in Section 614-83, et seq., General Code, and therein provided standards for the exercise of authority, may confer upon the Public Utilities Commission the power to enact rules and regulations to promote the spirit of the legislation and carry it into effect, and even though such rules and regulations are given the force and effect of law, there is no violation of the constitutional inhibition against the delegation of legislative function. The authority to make rules and regulations to carry out the policy of the state is administration and not legislation even though the legislature has provided that a violation of such rules and regulations may be punished as a public offense.

I find nothing in Section 614-83 or the Motor Transportation Act, Sections 614-84 to 614-128, General Code, either specifically or from general policy or intent that could be interpreted to mean that the legislative intent was to empower the Public Utilities Commission with power and authority under a general grant for the purpose of developing rules and regulations to enact a fee or penalty in connection with reinstatement of any certificate, permit or registration thereinbefore revoked under Sections 614-99 and 614-115, General Code.

Answering your question specifically, it is my opinion that while the Public Utilities Commission of Ohio has been delegated the power and authority to enact rules and regulations under Sections 614-84 to 614-128, General Code, for the supervision and control of the motor transportation within the state of Ohio, such delegation of authority does not empower the Commission to impose a fee or penalty upon a motor carrier for the reinstatement of a certificate, permit or registration thereinbefore revoked or canceled under provisions of Sections 614-99 and 614-155, General Code.

Respectfully,

HUGH S. JENKINS,
Attorney General.