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THE WEST VIRGINIA PUBLIC SERVICE COMMISSION

C. A. Peairs, Jr.*

I. Historical Survey; Organization and Personnel.

1. Regulation of Public Utilities Prior to the Commission Era. A distinct lag is usually to be noticed in the development of new legal institutions. Whether the evolutionary trend run cyclically or whether the stream of history run ever forward, the development of any particular genre of governmental instrumentality will be found to have followed the need for it at a considerable, if variable, distance. A preliminary, empirical test as to the extent of this lag may be made by examining the rapidity of the spread of any such institution after its inception, or its popularity in its early stages. Unless the first attempts to establish such an institution are bitterly fought, and condemned by natural human conservatism as fostering dangerous innovations, it may be inferred that the need for such an institution has existed for so long that substantially all parties recognize it, and that there is a considerable lag of supply behind demand in this particular.

The need for governmental commissions regulating public utilities was not felt until very recently, and consequently the growth of such commissions has been even more recent. Until a few centuries ago, government served two functions: national defense and punishment of crime. Neither all of the activities we think of today as governmental, nor those carried on today by private individuals, affecting the whole community, were thought of then. Probably the earliest public utility in the broader sense was the church. Public water supplies and sanitation systems were developed by the Phoenicians and the Romans at a very early date (the Roman aqueducts are famous today not for their intrinsic worth, but for their early construction), following public road building and other similar construction, as well as church buildings, dating back to the Egyptians. During the course of the mediaeval period and later, there developed an unmarked boundary between the services the government rendered the public, in return for the public’s support of the government, and the services which private individuals, if they chose, offered for sale to the public. Litigation in connection with some of these services

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created common-law duties and obligations on the part of those rendering them; a fairly distinct body of law grew up concerning innkeepers and common carriers; but even at the beginning of the nineteenth century, although statutory regulations of public services were being passed one after another, there was no recognition of a body of law applicable alike to all agencies furnishing public service, even after Lord Hale’s famous remark, to which we customarily point as an early statement of modern public utility law.\(^2\) Even today, of course, the public utility concept is a limited one, although the present tendency is one of unbridled expansion of that concept.

At the beginning of the nineteenth century, then, special rules of law relating to innkeepers and common carriers were in force, but there was no thought of any need for a special governmental agency for the regulation of these diverse occupations. Various other activities were coming, individually, under statutory regulation in the United States; but the thought of a unified commission to enforce all such varied statutes was still far away. Among the services regulated by these early statutes were turnpike companies, bridges, ferries, and railroads. It will be noted that most of them affected transportation agencies, and that purveyors of fuel and light had not yet entered the sphere of public service.\(^8\)

An obvious reason, of course, for the discrepancies noticeable between the status in 1800 and that in 1900, is the great changes caused by economic and technical developments during the intervening century. During the nineteenth century—almost within the Victorian era—were developed for the first time great steam railroads such as we have today; gas, electric, telephone and telegraph, and other transportation and supply agencies were seen for the first time in this period; municipal water supplies had not for long been on a large business scale; other utilities of a type known before experienced unprecedented growth in this period; and lastly, with an incalculably great effect on his problem, Big Business flowered during this era, and left public service no less than any other item untouched in making the Victorian age its own. It will probably never be possible accurately to estimate the effect on our civilization and our legal system of the coincidence of these two great developments, quite apart from and beyond the tremen-

\(^2\) *De Portibus Maribus* ("A business affected by a public interest has ceased to be *jus privati* only"), quoted *ad nauseam* in modern treatises on the subject, three centuries later.

\(^8\) *Glaeser*, *loc. cit. supra* n. 1; *Hunter, The Early Regulation of Public Service Corporations* (1917) *AM. ECON. REV.* 569.
dous effect they would have had coming separately.\(^4\) Railroads date the history of their growth in America from around 1825, while the other principal utilities under present-day commission jurisdiction were not started until toward the end of the century, in anything comparable to the volume of business done by railroads.

Hence the forerunners of present-day commissions, as distinct from the early statutory inspecting boards, were confined in their scope to regulation and supervision of railroads. Railroads had become big business by about 1850, and many state railroad commissions were formed at about that time; although there were a few earlier ones, they may be grouped with early nineteenth century statutory utility regulation rather than with twentieth century commissions.

The first railroad commissions’ powers were largely of an investigatory and recommendatory nature, and it was not until about 1875 that they began to be authorized to control as well as advise the agencies under their jurisdiction. In the states in which this evolutionary process is found, the first period, from 1850 to 1875, is known as the era of “weak” commissions, and the post-1875 period as that of “strong” commissions.\(^5\)

Several factors contributed to the growth of the notion that other public utilities should be regulated by commissions. One of these was the unscrupulous practices of many utility operators. Another was the many disadvantages inherent in local control, under which the consumer was predestined to be the loser in any controversy between the utility and the municipality. Some states regulated utilities by direct legislation, while others left it to the municipalities to do so, either by contract or by ordinance. In any of these cases the results were unsatisfactory, due to the lack of training of municipal officials, and in many cases to their lack of regard for the welfare of the consumer, as well as to corruption in notable if scattered instances. The common law relating to innkeepers and carriers had not yet been extended to many of these businesses by some state courts, and a great many people regarded the resultant freedom of activity as unsatisfactory for this class

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\(^4\) See in connection with the kinetics of nineteenth century development, Roemer, Some Features of State Regulation of Public Utilities (1909).

\(^5\) Hunter, op. cit. supra n. 3; Sinsheimer, Commission Government: II. Public Utility Regulation in California (Sept. 1918) 114 Outlook 487; Kurtz, State Public Service Commissions (1923) 8 St. Louis L. Rev. 214.
of business. By 1900, then, the feeling that these businesses should be regulated by state commissions was fairly widespread; it was, however, in an embryonic form as yet, and the ultimate form of the present-day, standardized commission could not have been accurately predicted. The existence of railroad commissions suggested a convenient peg on which to hang this new job, and therefore it was either given to the railroad commission, or to a commission like the railroad commission, with similar powers and functions, or to a new commission with jurisdiction over both railroads and other utilities.7

The new commissions, seemed to spring from several sources; New York and Wisconsin passed statutes providing for them in 1907, and many other states followed their example within ten years, in an attempt to find administrative machinery to supplant the municipal charter system. The complications created by unwillingness to submit to regulation, by the diverse character of the concerns regulated, by superior federal authority over interstate railroads and over some other activities in the field of public utilities, and by political tinkering with the commissions, have not yet been entirely eliminated, but today the public utility commission, under one name or another, and usually as a single agency, functions in substantially all the states of the union.8

2. Peculiarities in West Virginia’s Legal History and Background. The state of West Virginia was formed of a part of Virginia, during the Civil War. This fact is of the utmost importance in the consideration of any problem in West Virginia’s legal history. The division was engineered during a time of war, and it was carried out by men actuated by political, rather than logical, motives, acting on a basis of opportunism, consisting of an existing logical argument for such a division. As a result the division was not along lines of political thought, loyal or rebellious; neither was it along natural geographical boundaries. Those who represented Virginia during the transaction were not in sympathy with the mother state, and connived at the inclusion within the new state of much rebellious territory; however, due to bungling at Washington, the proposed boundaries of the new state were changed, to leave within Virginia some territory whose people favored join-

7 Commons, How Wisconsin Regulates Her Public Utilities (Aug. 1910) 42 Review of Reviews 215.
8 Blanning, Public Utility Regulation in Pennsylvania (1924) 1-10; Young, The New Government Regulation of Business (1915) 59 Annals 212.
ing the new state. It is doubtful, however, whether those twelve counties in western Virginia ever caused as much dissension as the eastern and southern portions of the new state, because of the balance of power created in the smaller state, between the conflicting loyalties. The division could have been made along geographical lines very easily, and such a division would have obviated many of the political and governmental problems with which West Virginia has had to deal, but it would have robbed Virginia of practically all her mineral wealth, and the Federal Government, even in 1863, hesitated to do that. The result is the panhandle shape of the two states.

Another result has been the difficulty of integrating political and governmental ideas in the state during the following three-quarters of a century. The ablest men in public affairs have been a uniformly well-educated and naturally conservative group. This group, however, has not always been able to hold the votes of a majority in the state, especially in the mining districts. The existence of such a large group of voters easily swayed by campaign propaganda and labor union pressure has made it difficult to trace progress of government in the state on a straight curve. It has moved rather in a series of waves, and it was during one of the "reform" waves that the legislation which we are about to consider was fathered.

The relations of the courts of West Virginia with those of Virginia form another point to be carefully considered in connection with any problem of West Virginia's legal history. Theoretically, Virginia decisions prior to 1863 are binding on West Virginia courts in all respects, and later Virginia cases are of great persuasive effect. In practice, however, for one reason or another, the Virginia and West Virginia courts cite each other's decisions infrequently.

The last point in West Virginia history to be considered as an important factor in this study is the exploitation and waste of natural resources during the early days of their development, and the similar exploitation of utility franchises by those who had obtained them, usually through political means, and for political ends. The notable thing is that these practices were so bad that they overcame the conservatism of the lawyers of the state, and the disinclination of many of them to follow Virginia examples, to the extent that in 1912 all parties were committed in favor of the creation of a regulatory commission for public service companies, as the climax of the long history of public utility law in the state.
It will be necessary, however, in order to study intelligently the early regulation of West Virginia utilities, to survey the history of this regulation in Virginia, so that the similarities and dissimilarities of West Virginia law to it may be analyzed historically."

3. The Regulation of Public Utilities in Virginia. Virginia is distinguished in three respects in the field of public service regulation. Virginia had one of the first state regulatory commissions; the present commission is one of the oldest of the modern type; and Virginia is one of the few states providing for such a commission in her constitution.10

The early commission was created in 1816, as the Board of Public Works, to administer an appropriation for internal improvements.11 The original statute was much revised, and new statutes added to and modified the authority of the board, but its work proved satisfactory, so its existence was guaranteed by the constitution of 1869.12

The Railroad Commission was created in 1877, as one of the so-called "weak" commissions, as an advisory board. Administratively, it was made an adjunct of the Board of Public Works, although it remained autonomous until the constitutional convention of 1901-1902. The functioning of the Railroad Commission in the courts was through the Board of Public Works, to which the Railroad Commission reported any infractions of its rules by railways under its jurisdiction.

The constitution of 1902 created the present Corporation Commission, which succeeded to all the powers of the two previously existing agencies, and which possessed somewhat broader powers than most state public service commissions today, since in addition to the usual regulatory powers over public utilities, it is empowered to issue all corporate charters and licenses, and is the central office through which all Virginia corporations operate.13 In addition, by statute the administration of all laws relating to this general field is vested in this commission. Among the laws thus administered are the state securities regulations, corporate taxation, aviation, insurance, and other phases of business law.14

9 See Connolly, The Case of West Virginia (Dec. 21, 1912) 50 Colliers 12, for an interesting discussion of one phase of the abuses referred to here.
12 Va. Const. 1869, art. IV, § 17. Note that the so-called "Underwood Constitution," the reconstruction instrument, was adopted after the schism, and therefore had no direct effect in West Virginia.
13 Va. Const. 1902, §§ 155, 156 (a) ff.
This commission, if successfully operated, might very well be posed as the goal of the efforts of every state, since it handles matters which frequently require six or seven separate agencies to deal with successfully. The broad nature of its powers should be borne in mind for purposes of comparison with the independently developed, later established West Virginia commission.

4. Early Regulation of Public Utilities in West Virginia. In 1863 the statutory law existing in West Virginia was contained in the Virginia Code of 1849, as amended in 1860. This body of law was in large part re-enacted by the West Virginia legislature as the foundation for its subsequent enactments. Many provisions are still in the West Virginia code, unchanged, but the bulk of the provisions of the Virginia law have at some time during the ensuing three quarters of a century been repealed, replaced or substantially amended, by the many small changes made by the various legislatures during that period, or have died when the reason for their existence ceased.

The Virginia Railroad Commission had not been created in 1863, but the Board of Public Works was an active agency of long standing and wide jurisdiction, provided for in the Code of 1860, as well as in former Virginia codes. The new state created a similar board in its first year, and re-enacted the provisions of the Virginia law as to jurisdiction, but repealed the rest of this law and let the statutory provisions suffice for the regulation of all utilities except tollroads, which constituted the major portion of the board's business. The new board, then, had almost none of the public utilities jurisdiction of its Virginia counterpart. Its duties were not onerous, since there were few toll-charging turnpikes in the state, and the Cumberland Pike, which was its special charge, was largely taken care of by other road administrations. The board was composed entirely of members of the executive cabinet whose membership on the board was ex-officio in each case. The constitutional question raised by this fact was soon favorably

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16 W. Va. Acts 1863, c. 43, §§ 1, 2.

decided. Slight amendments were made to the enabling act from time to time, and several additions as to disposition of tolls, repairs, rates, county roads, and similar related matters were made in 1881, 1882, and 1903. The Board of Public Works survived the creation of the Public Service Commission, since its duties as developed by the West Virginia legislature did not conflict with the jurisdiction of the new agency. The board’s existence was continued by the code revisers in 1931, and it still exists, somewhat anachronistically, but all sections relating to its powers and duties, and to its regulation of turnpikes and their users, were repealed in 1931 as obsolete.

It is worthy of note that until 1872 there were no statutory provisions in West Virginia regulating railroads. Prior to the separation, railroads had been incorporated by special charter in Virginia, and the West Virginia legislature continued the practice during the post-war days, permitting all existing companies to continue operation. The constitution of 1872, still in effect, contains several provisions affecting railroads, and legislation on the subject commenced immediately after its adoption. This legislation probably owed its existence in no greater degree to the constitutional provisions on the subject than to the general sweep over the country toward such regulatory provisions, following the depression of 1873, and before the efficacy of direct statutory regulation had been seriously questioned. The constitutional sections providing for annual reports to the auditor of the state, subjecting all property of railroads to execution as personalty, insuring their status as common carriers, and the other sections on the subject, form the nucleus of all the railroad legislation since that time. The body of statutory law thus created was maintained apart from the organic law of the Public Service Commission, although railroads are subject to its jurisdiction, and the revised railroad law, applying to interstate carriers as well as to those regulated by the commission, exists separately today. Many legal problems have arisen in con-

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20 W. Va. Acts 1881, c. 71; id. 1882, c. 100; id. 1903, c. 36.
23 W. Va. Acts 1871, c. 70, contained a few regulatory provisions as to railroads. In 1881 the act which is the basis for the present railroad statute (id. 1881, c. 17) was passed. Amendatory and supplementary acts were id. 1882, c. 97; id. 1887, c. 40; id. 1890, c. 6; id. 1913, c. 37; id. 1907, c. 41. The present law as revised and condensed is found in W. VA. REV. CODE (1931) c. 31, art. 2.
nection with this phase of utility regulation, but their treatment lies beyond the scope of this study, and railroad law as such will be dealt with only incidentally here.  

Another group of utilities under special statutory regulations, is the water-power companies, which were subjected to this regulation in 1913, administered by the Public Service Commission. The transportation of oil was subjected to regulation in 1879, and pipe lines were made common carriers, subject to all regulations applicable to carriers, in the re-enactment of the oil laws in 1891. In 1891, also, the mining of oil, gas, and mineral and salt by-products, was brought under state control, and the mining provisions of the two 1891 statutes, as revised, are still the basis for the Public Service Commission’s regulation of these enterprises.

Other utility regulation prior to the creation of the commission was contained under two headings: insurance, telegraph and telephone, and express companies, and ferries, toll bridges, dams, and mills. In 1864 the law relating to insurance, telegraph and express companies was passed. Companies incorporated in Virginia prior to 1863 and resident in West Virginia were regarded as domestic corporations under this act, which related to annual reports, auditing and similar financial controls. Later acts expanded the scope of this one, and brought the later-invented telephone under its authority. The laws as to these diverse activities were not separated until 1907, and when the Public Service Commission law was passed, insurance companies were not brought within its scope, as they had been in Virginia. Insurance companies are not today classed as public utilities in West Virginia, any more than banks, but are subject to special regulation by a state officer, due to their peculiar financial status. They may be said to have entered a separate class in 1907, with the passage of a separate regulatory law.

The provisions in the West Virginia Code of 1868 relating to

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24 W. Va. Acts 1879, c. 27.
28 W. Va. Acts 1872-3, c. 51, c. 69; id. 1871, c. 107; id. 1881, c. 38; id. 1882, c. 85; id. 1891, c. 108; id. 1901, c. 107.
ferries, bridges, dams, and mills, were a re-enactment of the previously existing Virginia law.\textsuperscript{30} This law contained a few rate provisions, but related largely to service, and contained several regulations of a police nature, for public safety in respect to these activities, and for the purpose of maintaining the navigability of state streams. Separate rules were established for ferries and bridges on the Ohio river, from those relating to other streams of the state; in general, on the Ohio greater freedom was permitted to ferries, and more restrictions imposed on bridges. This law was later re-enacted and expanded, but the changes were not in the nature of substantial amendments of a general law, but rather private law enactments as to particular streams, and administrative rules of practice for the enforcement of the regulatory provisions.\textsuperscript{31} Ferries and wharves are today under the jurisdiction of the Public Service Commission, but the statutes regulating mills have been repealed as obsolete, and bridges have been placed under the jurisdiction of the State Road Commission.

It may be observed that the early regulations of public utilities in West Virginia did not differ radically from those of other states, and that such differences as there were may be traced largely to the peculiarities of West Virginia’s geographical and political position. The evils leading to the passage of the Public Service Commission act were not so much those of deficiencies of existing acts as those of business practices and economic needs; and the passage of the act was accelerated by the general rush to this type of legislation throughout the country at that time.

5. Considerations Leading to the Creation of the Commission.

The factors ultimately influencing the movement for the creation of the commission have already been treated. The more immediate causes were the publicity incidental to the installation of such agencies in other states, and political maneuverings in West Virginia in the election of 1912, and just before that time.

The popular revulsion in feeling against the commission as a regulatory agency had not commenced in 1913; the swing in sentiment away from such laws commenced during the World War period, and grew in intensity until the 1929 depression, but in 1913 the commission was criticized only by utility operators and politicians, for personal reasons. Comparatively few states had

\textsuperscript{31} The changes were chiefly in W. Va. Acts 1882, c. 159. Others are found in id. 1872-3, c. 58; id. 1883, c. 34; id. 1890, c. 1; id. 1893, c. 34; id. 1907, c. 73; id. 1909, c. 56; id. 1911, c. 46.
actually initiated their public utility commissions into active duty; the operators were still staging a running battle with the commission in Wisconsin, and Maryland and New Jersey had just succeeded in passing laws, in 1910 and 1911 respectively, creating such commissions, in both cases after bitter and spirited legislative battles. The issues being argued were whether the evils in municipal control — long-term, inflexible charters, with resultant strife as conditions changed, and petty political maneuvering between utility and city council at consumers’ expense, — would be sufficiently exorcised by the new, untried mechanism, without explicit rules to guide it. The discussions over these issues, and that of qualifications for commissioners, made news, however, and the commissions and their critics were definitely in the public eye and conscience at the time. The modern reform period, which metamorphosed many of the old railroad commissions into public service commissions of general jurisdiction, began about 1905, and New York, Wisconsin, Indiana and Washington set the example for the rest of the nation in this field, so that the stage was set for the wholesale legislation after 1910.

The political considerations in West Virginia may not have influenced the final result of this legislation, but they must not be disregarded in a study of this sort, because they certainly accelerated the “reform” legislation in the state. Unfortunately, the legislative journals were not published prior to 1917, so the influence that these factors actually had on the legislative history of the act will have to remain here a matter of speculation.

Among the political factors which probably had an influence on the inception of this legislation were the bloody coal strikes of the summer of 1912, and the election scandals of 1911. The coal strikes were merely an incident in the long and bitter war waged by labor unions against the industry in the state, but the violence at this time can hardly have failed to influence public opinion in favor of increased governmental control of industries wherever it might alleviate such conditions. The election scandals of 1911, in connection with the senatorial elections, have been better considered elsewhere, but the mere fact of the scandals must be mentioned here, since it undoubtedly tended to intensify the crusading spirit which led to the legislation of Governor Hatfield’s administration. This spirit was so strong that both parties ascribed to it in 1912: the Democratic state platform was a reform instrument, containing a paragraph endorsing the creation of a public service commission, while the Republican platform outgunned the
other party by including in addition to a paragraph advocating the regulation of railroads and other utilities by commission, a further section pointing out the fate of former similar measures, such as the Pullman Tax, under Democratic administrations. The Republicans, under Henry D. Hatfield, won the election, and prepared to rush the proposed legislation through in spite of any efforts at sabotage which might be made by the corporation trust.

6. Legislative History of the Act. The legislature of 1913 was predominantly a "reform" legislature. Many "reform" movements were sweeping the country at that time, in addition to many of the frivolous and ill-considered schemes which often accompany such trends. Among these were the general agitation for initiative, referendum, recall, popular election of the judiciary, and female suffrage. The national legislature was reforming the tariff and the banking system, and the Federal Constitution had just been amended to permit income taxes and popular election of United States senators; both of these amendments were ratified by West Virginia at this session. The bar was reforming the code of ethics, agitating for judicial reform, and election of the judiciary by the bar, and disbarring several of its prominent members, in other states. The West Virginia legislature passed twenty-three general substantive measures at the 1913 session. Of these fifteen were primarily "reform" measures, including, in addition to the act creating the Public Service Commission, acts providing for a workmen's compensation fund, for the conservation and development of hydroelectric power, hotel inspection, fruit inspection and quarantine, regulation of the sale and gift of tobacco, prohibition of discrimination and "twisting" by life insurance companies, and prohibition of the sale or consumption of alcoholic liquors, in addition to other lesser police measures.

The Public Service Commission act was largely a copy of the Wisconsin act, with reflections of the Interstate Commerce act, to provide for uniform regulations as to railroads. The Wisconsin act, which relied chiefly on publicity for its efficacy as to railroads,
had been in operation for six years, and had heard over seven thousand cases, in its quasi-judicial capacity. The eminently successful career of the Wisconsin commission as an adjudicator led to the creation of the West Virginia commission under the slogan of "court of the people".

The organization, functioning and personnel provisions of the act were largely taken from the Wisconsin act, and there is today little difference in the structure as to the technical phases, such as engineering and accountancy departments. Governor Hatfield, as has been noted before, was the chief motive force behind this legislation. In the case of the public service commission and the workmen's compensation fund legislation he met determined opposition, and the result was a compromise, which placed both functions in one four-man board. The reason for this measure may perhaps be sought in opposition to the workmen's compensation measure, rather than to the proposed public service commission, because the water power act of the same session indicates a sentiment much in favor of governmental regulation of enterprises for the development of natural resources, which in West Virginia constitute a great portion of the utilities. In the legislative debates as to the act, which went through more or less simultaneously with the water power act, the chief matter of interest is that the utilities seem not, with the exception of the railroads, to have opposed the bill. Mr. A. B. McCrum had been counsel for utility interests, and was one of the supporters of the bill. Others who were connected with the drafting of the bill were Fred Blue, state tax commissioner, George Sturgiss, then a circuit Judge, Frank Cox, an ex-Supreme Court judge, E. H. Vickers, an economist in the legislature, and W. T. Willey, a teacher of law. The opposition came largely, it seems, from the conservative Democrats, who represented, the landholding interests, those who owned the oil and gas property, and the land which would be condemned by hydroelectric companies.

In 1915 the legislature was much more favorable to Governor Hatfield's schemes, having seen the existing versions of some of them in action. Consequently the Public Service Commission and

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37 ROEMER, loc. cit. supra n. 4; HOLMES, REGULATION OF RAILROADS AND UTILITIES IN WISCONSIN, 1915; PRESTON, REGULATION OF UTILITIES BY THE PUBLIC SERVICE COMMISSION OF WEST VIRGINIA (address) 1935.
39 See (1913) 29 W. VA. BAR ASS'N REP. 144-179, for a discussion of some of the opinions affecting this legislation and the related act, which was the subject of heated controversy.
the Workmen's Compensation Commission were separated and the power of the Public Service Commission somewhat enlarged, especially as to rate fixing. The organization of the board was altered slightly to meet the change in functions.\(^{40}\) It is interesting to note that at this time the members of the Public Service Commission were more highly paid than any other state officers, and that they received more than the governor for many years afterward. It is evident, then, that the need for competent officials in this field was recognized and met.\(^{41}\)

There have not been many substantial amendments to the Public Service Commission law as it stood in 1915, in spite of several criticisms which have been made. In 1921 several gaps were filled in, and the attorney-general was authorized to represent the commission in court.\(^{42}\) It is probable that litigation was expected in connection with the embargo on natural gas, added to the act in 1919.\(^{43}\)

The commission was widely criticized after the war on the ground that the 'Wisconsin experiment' had been tried and found wanting, and that changes should be made to supply deficiencies and eliminate points of friction.\(^{44}\) Among these was the dissatisfaction engendered by the utilities' efforts to meet the emergencies created by the European war. The commission, of course, shared the blame for the necessarily increased rates at this time. Another important source of hostility was the labor element in the utility field. Labor became a critic of the regulatory power over service and rates at an early date, and used it as a talking point for many years. Generally voiced objections to the functioning of the commission were delay in action, frequent changes in personnel, and the exercise of combined functions of judge and prosecutor in hearings. These were standard objections the country over, and were not particularly applicable to the West Virginia situation.

Changes, mostly of a highly experimental nature, were being made in several states at this time, but the West Virginia act was not changed until 1935, when certain elements of the commission's jurisdiction were redefined, and additional sanctions placed on violations of the act, taking it one step further from the Wisconsin

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\(^{40}\) W. Va. Acts Reg. Sess. 1915, c. 8. Chapter 9 was the organic act for the newly-created separate Workmen's Compensation Commission.

\(^{41}\) SHAW KEY, HISTORY OF WEST VIRGINIA (1927) 293 ff.

\(^{42}\) W. Va. Acts 1921, c. 150.

\(^{43}\) W. Va. Acts 1919, c. 71. The terms of this act bear out the conclusion.

idea, abandoned even there, of a publicity-enforced regulation.\footnote{W. Va. Acts 1935, c. 115.} In summary, it may be observed that the West Virginia commission has functioned smoothly, on the whole, and that the act of 1915 has proved adequate, with minor changes, to meet the problems existing in the state.

7.\textit{Organization and Personnel of the Commission.} The Public Service Commission of West Virginia is composed of three members (four before 1915) appointed by the governor with the advice and consent of the senate. Actually this amounts merely to confirmation of the governor’s choice, which tends in practice not to be motivated by political considerations. The term of service is six years, and the appointment is staggered at two-year intervals. Appointments to fill vacancies must be for the unexpired term only. The chairman of the commission is designated annually by the governor. All the commissioners must be citizens and residents of the state, and at least one member must be a lawyer of at least ten years’ actual experience at the bar. No person employed by, or bearing any official relation to, any utility company subject to the commission’s regulation may be a member thereof; neither may any security-holder of such utility, or anyone else pecuniarily interested in such utility. No commissioner may accept any free pass, or anything else of value, either directly or indirectly, from any such utility. Commissioners may not run for or hold public office, or serve on any political committee, and if any commissioner does so, his office is vacated automatically.

Each commissioner receives a salary of six thousand dollars per year. This compensation was provided for in 1915, when the commission was set up in its present form; the governor of the state received only five thousand dollars annual salary for some time after that. Commissioners are required to take the oath provided for in the state constitution for public officers.\footnote{W. Va. Const. art. IV, § 5.}

The governor has the power of removal of public service commissioners from office for incompetency or neglect of duty, or for gross immorality or malfeasance in office. His affirmative action is not necessary, however, in case of an act which would have disqualified the commissioner from taking office \textit{ab initio}.\footnote{These provisions are found in the act See W. Va. Rev. Code (1931) c. 24, art. 1.}

The commission has been fortunate in the men who have served as members during the last quarter-century. During the first two
years, when the Public Service Commission administered the workmen's compensation fund, the chairman was Lee Ott, who in 1915 became workmen's compensation commissioner, and served in that capacity until 1927. The other commissioners were also able administrators, and got the commission off to a good start. The new commission appointed in 1915 included W. M. O. Dawson, who had been governor of the state for four years, and secretary of state for eight, Elliott Northcott, later, and still, a judge of the Fourth Circuit Court of Appeals, and E. F. Morgan, a former judge, and later governor of the state, from 1921 to 1925. This exceedingly able group made the commission a respected agency. Those who followed were not quite so eminent in their prior careers, but several served more than one term each, and the stability thus lent the commission has benefited it, in that it ceased not only to be, but also to be thought of as, a political agency, as the commissioners ceased to be political spoilsmen. That the commissionership in West Virginia has never been regarded generally as a political plum is due primarily to these two factors: the extraordinary calibre of the early membership, and the long tenure of office of commissioners since that time. So far as personnel goes, this "court of the people" has been subject to less political maneuvering than even the supreme court of the state. It is interesting, therefore, to analyze the administrative plan of the commission organized and run by these men, and to compare its operation, in a small state with many important public service problems, with that of similar agencies in larger, wealthier states.  

The commission is empowered to appoint and discharge a secretary and any other necessary employees, and to fix the compensation of such employees. In legal matters the attorney general acts for the commission, except that the governor may appoint counsel to represent it, at compensation to be fixed by the commission. There are at present seventy-five persons employed on the staff of the commission, including the secretary, stenographic help, engineers, and accountants.

The commission was organized originally according to the following classification: first, railroads, including all types; second, "utilities proper", including water distributing companies, and municipalities exercising any of these functions; third, hydro-

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48 See W. VA. LEGISLATIVE MANUAL 1916-1937.
49 Employees are subject to the same restrictions as commission members, as to pecuniary or other connection with public utilities subject to the commission's jurisdiction, and as to political activities.
electric companies, for the generation and transmission of heat, light, or power, toll bridges and ferries, telegraph and telephone companies, and pipe line companies transporting gas, oil, or water. The internal organization of the commission was into two technical divisions, an engineering department, to facilitate investigation of plants, and an accounting department, for the handling of information, and to supervise business methods. The commission still maintains this general internal setup, consisting of the accounting, engineering, and secretarial departments, subdivided somewhat according to the classification of utilities outlined above, which is still used for reports and compilations of statistics.\(^5\)

The secretary is charged with the recording of all proceedings, acts, orders, and judgments of the commission, and is responsible for the preservation and filing of all materials connected with any activities of the commission. The secretary also administers oaths in commission hearings and inquiries.

The engineering department is charged with the inspection service of the commission respecting the operation and management of the various utilities and transportation companies of the state, in order to determine the adequacy of their equipment to render efficient service; it is also required to make physical valuations of their plants. The inspection service includes all gas, electric, and water meters, and similar equipment, which is sealed by the commission after examination, proving, and testing.

The accounting department’s function is to investigate the financial operation and management of state public service corporations, and to recommend or prescribe uniform accounting systems for the various classes of utilities. Statistical investigations and reports are made, to enable the determination of reasonable rates. The accounting department also prepares the valuation tables and other statistical materials published in the annual reports, as described below.\(^6\)

Of course problems arise occasionally which cannot be dealt with according to this dichotomy. Such problems are those regarding proposed new railroad lines, dam sites, and similar initial installations of utility plants, where a judgment not only as to the soundness of the financial structure of the proposed company, and the technical feasibility of the plan for such plant, but also as to such intangible factors as the need for such a new utility in the area to be served, is required. These problems are usually dealt


with by the commission directly, after hearings and investigations, and, with the settlement of disputes, keep the function of the commission from being reduced to a mere mechanical process. The nature of other problems not actually litigated will be discussed in connection with the cases herein dealt with, of problems which were litigated. 52

The commission is financed by a fund fed by license fees paid by all public utilities under its jurisdiction. The state auditor establishes the amount of the annual license fee, apportioned according to assessed property value, so as to produce a revenue of eighty thousand dollars (increased by recent enactments) or whatever lesser sum may be necessary for the expenses of the commission. 53 The amount collected is kept as a special fund in the treasury, for the purpose of paying the expenses of the commission, and the salaries, compensations, costs, and expenses of its employees. The salaries of the commissioners are paid out of the general fund for state officers' salaries, and are not dependent on the collection of the license fee fund. 54

8. Volume and Type of Business. The population of West Virginia is about one million, eight hundred thousand — one for every thousand on earth. The assessed value of all property in the state is about one billion, eight hundred million. That of public utility property is about six hundred million dollars. The job of the Public Service Commission, the coordinator of five hundred utilities of fifteen types, owning one-third of the state's assessed property, is a large one for any agency of seventy-five members. 55 The commission does most of the appraising and accounting in assessing these companies on their property, as well as supervising all their work, setting rates, and settling disputes arising between any utility and the public.

All utilities are required to file annual reports showing in detail the condition of business at the end of the preceding year. This shows the operating history of the utilities, and facilitates account examination. The commission takes action in relation to the control of any utility only after extensive scrutiny of these reports.

52 W. VA. LEGISLATIVE MANUAL (1920) 521-6.
53 Since 1937 the revenue to be raised has been set at a flat sum instead of being dependent on the needs of the commission.
54 W. VA. REV. CODE (1931) c. 24, art. 3, § 6; id. c. 24, art. 1, § 2.
55 There were only thirty-four prior to the increase in the commission's budget.
Each utility must keep its books and records according to the uniform system of accounts prescribed by the commission for that type of utility. These accounting systems, which vary according to the classification of activities engaged in by the service companies, as well as the various minor reports and duties, such as meter testings, are calculated not only to facilitate the commission's statistical compilations, but also to keep the utilities so far as possible on an up-to-date business basis.

The great majority of litigation before the commission consists of informal complaints. The commission handles from three to four hundred informal cases annually. These are made by letter or by personal call, and are disposed of, usually after factual investigations, and, occasionally, legal work on the part of the commissioners, as often as possible by a compromise or other settlement satisfactory to both parties. If this is impossible in any case, the complaint must be made formal, to satisfy due process requirements. A formal complaint is filed with the commission, and a complete hearing had, with a stenographic record, and transcript, of all the proceedings, as soon as is consistent with proper notice to all parties concerned. Some cases may be disposed of quickly, but others take all the time of the commission for weeks or even months. The commission then renders a written opinion, similar to that of an appellate court, accompanying its order. The commission handles a great many of these formal cases — three thousand since its inception, or over one hundred per year.

If the commission proposes to take action against any utility on its own motion, due to irregularities appearing in the reports submitted by such utility, or in other data concerning the company, the first step is to arrange a conference with the executives of the utility. If the utility remedies the situation voluntarily, or on a commission order after waiver of process and hearing, the matter closes without any public proceedings whatever.

If this method fails, the utility remaining unconvincled, and the commission convinced, of error, a formal order of investigation is issued, and the staffs commence their investigation. Then, usually some time later, the reports of the commission’s experts are prepared and the utility company confronted with them. The utility may take exceptions to the reports and correct them immediately, or reserve its side of the case until the hearing. The hearing is conducted like a court trial, various reports being submitted as evidence under oath, and lawyers being permitted to cross-examine and break down so much of the case as possible. If the commis-
sion's case survives this, an order is entered, and if there is no ap-
peal to the court, another completed case is marked up — one of
a hundred a year, in each of which, it seems, the greater part of
the burden of preparation is on the commission. The commission
takes some pride in its status as a "court of the people", and an
investigation of its work and methods seems to substantiate its
case.\(^{56}\)

In addition to the work of the commission thus far discussed,
it is required to submit an annual report to the governor of the
state, bound in book form, and including a statement of all acts
and proceedings of the commission, and tabulation, in statistical
form, of all public utility reports and statements, and the results
of any special investigations conducted by the commission.\(^{57}\)

These reports seem to be valuable not so much as sources of
public utility law, but rather as references for business and other
economic statistics on the most important activities of the state,
and they find their place along with dictionaries and registers in
business offices, rather than on lawyers' shelves.\(^{58}\)

9. Comparison with Organization and Personnel of Other State
Commissions. A basis for comparison of West Virginia's public
service commission law with those of other states, as to the subject
matter of this chapter may be found in the various provisions for
qualifications and methods of selection, and methods and causes
of removal of commissioners, with other provisions relating to
commission membership, and in the methods of organization of
commission staffs in different states, with the actual practice as to
staff employees and their work.

West Virginia's qualifications for commissioners, as to age, ex-
perience, and civic status, are not so rigid as those of many states;
the provisions, however, as to connection with utility interests or
political activities, are a great deal more stringent than those of
the average state. Most states require that commissioners be citi-
zens and residents. Some require that residence be in certain dis-
tricts, so that the membership of the commission will be distrib-
uted over the state. Southern states often require eligibility to
vote. A few states require a minimum age. All states require an
oath of office similar to the West Virginia oath, while many also
require bond to be posted. A few require special experience on

\(^{56}\) See Preston, \textit{op. cit. supra} n. 37.

c. 1, § 95, G. (Water power resources investigation and report authorized.)

\(^{58}\) See the various volumes of the \textit{Reports}, \textit{op. cit. supra} n. 51.
the part of one or all commissioners, as to business, law, or engineering, West Virginia being the only one with a simple law practice requirement. All prohibit any pecuniary interest in utility companies, although the extent of the restrictions as to utility business connections vary. A few require an oath disavowing such connection. Only a half-dozen states have provisions as to political activities or public office, although many require whole-time work by commissioners, state capital residence, or forbid any inconsistent position. Provisions similar to those in West Virginia are, however, widely recommended.

The members of public service commissions in almost all states are gubernatorial appointees. Some southern and western states have elected commissioners, although the recent trend seems to be toward appointive commissions. Some states require legislative consent to appointments, and many provide for legislative action, initial or concurrent, in removal of commissioners. The chairman of the commission is designated by the governor in only about one-third of the states. A six-year term and three-man commission seems to be standard, with over two-thirds of the states using them; a staggered replacement system is also used in almost all states. However, only about half of the states have had commissioners who have actually averaged a full term or longer in tenure of office. The average salary for commissioners is less than five thousand dollars per year, although several of the larger states pay more than West Virginia. There are about a dozen standard causes for removal of commissioners from office; only four of these exist as such in West Virginia, although a supervening disqualifying factor operates as a cause for removal, or as a vacating factor.

Staff organizations differ widely from state to state; over half are organized like West Virginia's, functionally; the rest are organized in general according to their classification of utilities. Some states have staffs on a civil service basis, some maintain requirements of previous practical experience, and some require technical training for some or all positions. Salaries of commission staffs range widely, from the high set by the New York commission to very low ones paid in some southern and western states.

In general, it may be said that West Virginia's commission rates very high among those of states of a comparable size. The six or eight states having commissions generally better organized, equipped and staffed are the largest and wealthiest of the union,
while many larger states have much poorer provisions for commissions than those under consideration here.\footnote{See Buggles, Aspects of the Organization, Functions, and Financing of State Public Utility Commissions (1937) for a more detailed comparison of various state commissions.}

To be continued.

\footnote{In several respects the West Virginia law as to the jurisdiction of the commission differs sharply from the norm. These instances will be noted later in dealing with the jurisdiction of the commission, and legal problems connected therewith.}