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The Public Services Commission of Maryland

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BOOK REVIEWS


This work was prepared as a dissertation in the Political Science Department of the Johns Hopkins University, and also as a part of the study of judicial administration in the state of Maryland by the Institute of Law. As such it comes under good auspices. It is well planned and the material is presented with faithful, yes, even with painstaking attention to detail. This is a study in facts. The author states in his preface that "It was not designed to enter the field of controversial writings and theories concerning public utilities" nor does he depart from this avowed purpose except in the closing chapter when he discusses valuation and rate cases. He may well be pardoned for this slight deviation, for it is not in human nature to write on this subject without revealing some preconceived views thereon.

Chapter one is given to an historical review of the passage of the Maryland Public Service Commission Law. The early bills are followed through the struggle for the survival of the fittest, and prominent characters in Maryland history, sponsors and antagonists, pass in review across the legislative stage. Forces working for and against the regulation of utilities are clearly indicated. The Commission Law finally enacted in 1910 was modelled on the New York and Wisconsin statutes. The material used by the author in this chapter is taken from legislative records and newspaper files, for the most part. The resulting story is instructive and at the same time interesting. There is historical continuity between this chapter and the rather unusual recital in chapter three of the subsequent efforts to amend the Public Service Law, for better or worse. This recital is based entirely upon legislative records and is more prosaic. The author finds that the Commission has never been very effective in securing legislative changes. "The timidity of the Commission in requesting legislative changes", he says, "is striking".

The analysis of the Public Service Law itself in chapter two needs no comment. Nothing of importance is omitted. The same may be said of the description of the organization of the Commission, its costs, and its dockets. The latter is accompanied with elaborate statistical tables, by types of cases formal and informal and by five year periods, from which the author draws conclusions as to important trends. One trend noted is the decrease in the
absolute and relative importance of the complaint cases. Another is the disappearance after 1915 of reparation cases. Apparently the regulatory purpose is being accomplished in Maryland without the necessity of intervention, in many instances, by the Commission. There is also noted an expected increase in motor vehicle cases. Security issues cases have fallen off markedly. Mr. Burke attributes this to the assumption of jurisdiction over railroad issues by the Interstate Commerce Commission under the Transportation Act of 1920, to a lessening of electric power financing since 1925, and to the general effects of the depression since 1929. He also finds that in many cases of large security issues of holding companies which controlled Maryland public utilities, which issues bore no substantial relation to Maryland operating companies, the approval of the Commission meant a mere formal "O. K." Under a ruling of the General Counsel of the Commission, made in 1929, the Commission still rules upon holding company security issues without exercise of discretion or control, its authority to control being confined to those issues which affect the functions of the local operating utilities. This situation is suggestive of the lethargy of states in respect to security issues of holding companies which is inexplicable to many students of the subject. Why do our state legislatures, in the correction of conditions, lag so far behind the creation of evils?

Discussion of the Commission and the courts reveals the striking fact that of a total number of 3183 formal cases filed with the Commission during the years 1910 to 1930, orders of the Commission were involved in but 46 of the cases which went to the courts. The net number is in reality but 41, for there were two appeals in one case and four others were taken to the Federal courts, three to the United States Supreme Court from the Maryland Court of Appeals. More noteworthy still, 22 of these 41 court cases fall within the five year period from 1910 to 1915, leaving but 19 in the fifteen year period from 1915 to 1930. Here, in Maryland, is food for reflection for those who fear that there is an excess of judicial review of the administrative determinations of state public utility commissions. True, however, it appears, from the discussion of valuation and rate cases in the concluding chapter of this work, that the number of major rate and valuation cases before this Maryland Commission has been small — twenty-six cases in all. One of these developed into the celebrated Supreme Court case of West v. United Railways & Electric Company.¹ Three

¹ 280 U. S. 234, 50 S. Ct. 123 (1930).
only of the twenty-six rate and valuation cases have been taken into the courts.

With reference to such valuations, the author observes that the number should not occasion surprise. He points out the magnitude of some of these cases. He says, "It appears impossible for the Commission to be engaged in more than one major rate and valuation case at a time." He outlines in brief the legal theory of rate making and develops quite fully the practice in Maryland. He analyzes the process by which in each of its major proceedings the Commission arrived at a valuation. The United Railways case is given special consideration, in its local aspects before the Commission. The opinion of the Supreme Court in that case, approving the use of reproduction value rather than original cost as the basis for calculating depreciation, does not meet with the approval of the author of this study. He adds his bit to the glorification of Justice Brandeis' dissenting opinion — which seems to be quite the prevailing fashion in law journals in recent years — by his characterization of the dissent in this case as "brilliant". This is fully in keeping with such terms found as "challenging", "swordlike", "breathtaking". May it not be that there is no such basis for attack upon reproduction value as a factor in rate making in these times of fallen values as there was in the heyday of past prosperity and high price levels. When cost of reproduction now has a depressing influence upon fair value, as it must now have under the logic of the Supreme Courts' decisions, it will be at the expense of the utilities, and not of the public, contrary to Mr. Burke's view.

On the whole this worthy study of Maryland law and practice should be emulated in other jurisdictions. A group of such thorough and efficient studies as this, coming from different states, would afford a basis for still more interesting and valuable comparative studies.

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