

1980 WL 121176 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

April 17, 1980

**\*1 RE: Notice of Ratemaking Proceedings**

Mr. Irvin D. Parker  
Consumer Advocate of South Carolina  
P.O. Box 5757  
Columbia, S.C. 29250

Dear Mr. Parker:

You have recently requested an opinion from this Office concerning notice of proceedings before the South Carolina Public Service Commission. Specifically, you have asked whether the notice required in [South Carolina Code § 1-23-320](#) is required to be given to the Consumer Advocate prior to the Public Service Commission's fixing or approving rates, fares or charges for motor carriers pursuant to [South Carolina Code § 58-23-1010](#). It is the opinion of this Office that such notice should be provided to the Consumer Advocate.

[South Carolina Code § 58-23-1010](#) provides in part as follows:

The Commission shall supervise and regulate every motor carrier in this State and fix or approve the rates, fares, charges, classifications and rules and regulations pertaining thereto of each such motor carrier. The rates now obtaining for the respective motor carriers shall remain in effect until such time when, pursuant to complaint and proper hearing, the Commission shall have determined that such rates are unreasonable . . .

The foregoing statute was enacted as part of Act 116 of the Acts & Joint Resolutions of South Carolina (1977), and was approved by the Governor on May 24, 1977. The statute gives the Public Service Commission the authority to fix or approve the rates, fares or charges of every motor carrier in this State. While the General Assembly permitted the rates then in effect to remain so on the date of the statute's enactment, it seems clear that such rates could thereafter be changed only pursuant to complaint and proper hearing.

The question of whether or not the notice contained in [§ 1-23-320](#) must be given to the Consumer Advocate of proceedings held pursuant to [§ 58-23-1010](#) involves an inquiry into two fundamental questions:

(1) Are proceedings to fix or approve rates, fares or charges as envisioned in Code [§ 58-23-1010](#) 'contested cases' within the meaning of the Administrative Procedure Act;

(2) Is the Consumer Advocate a 'party' within the meaning of the Administrative Procedure Act?

Both of these questions may be answered in the affirmative.

[South Carolina Code § 1-23-310\(2\)](#) defines 'contested case' as ' . . . a proceeding, including but not restricted to ratemaking, price fixing, and licensing, in which the legal rights, duties or privileges of a party are required by law to be determined by an agency after an opportunity for hearing.' Code [§ 58-23-1010](#) plainly says that the Commission may not determine that the rates currently in force are unreasonable until after there has been a complaint and proper hearing. An opportunity for hearing is thus required in the statute. Moreover, any proceeding in which the rates or charges of a motor carrier are fixed or approved will by definition determine legal rights or privileges of the motor carrier. The elements of a 'contested case' are clearly present

in Code § 58-23-1010. Furthermore, the fact that the General Assembly specified 'ratemaking' and 'price fixing' proceedings within the definition of 'contested case' indicates a legislative intent that any proceeding in which a State agency purports to fix rates or prices should be considered a 'contested case.' Since proceedings under § 58-23-1010 are 'contested cases' the notice required in § 1-23-320 must be given.

\*2 There remains the question, however, of whether or not such notice must be given to the Consumer Advocate. Code § 1-23-320(a) only requires that 'parties' are entitled to the notice provided for in the statute. Therefore, the question becomes: Is the Consumer Advocate a 'party' to the proceedings envisioned in Code § 58-23-1010?

The term 'party' is defined in the Administrative Procedure Act as '. . . each person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party.' Code § 1-23-310(4). (Emphasis added). The Division of Consumer Advocacy is charged with the responsibility of providing legal representation of the consumer interest before State regulatory agencies when such agencies undertake to fix rates or prices for consumer products or services or to enact regulations or establish policies related thereto. Section 37-6-604(1). The Consumer Advocate is given wide discretion to determine whether or not to intervene in ratemaking or price fixing proceedings. Section 37-6-609. At the very least, the Consumer Advocate must be deemed entitled as a matter of right to be admitted to ratemaking or price fixing proceedings in view of his responsibilities set forth in § 37-6-604(1). Moreover, it must be assumed that, as to a particular proceeding, the Consumer Advocate will properly seek to be admitted as a party if, in the exercise of his discretion, he determines that the public interest requires his intervention. In these circumstances, it seems clear that the Consumer Advocate would have to be considered a 'party' within the meaning of Code § 1-23-310(4).

Since the proceedings provided for in § 58-23-1010 are 'contested cases' within the meaning of the Administrative Procedure Act, and the Consumer Advocate is a 'party' within the meaning of such Act, it is the opinion of this Office that the notice required in the Administrative Procedure Act (§ 1-23-320 of the Code) must be given to the Consumer Advocate prior to the fixing or approving of rates or charges of motor carriers. Without notice of the existence of rate fixing proceedings, the Consumer Advocate simply cannot effectively discharge the duties set forth in § 37-6-604(1). Of course, once notice is given, the Consumer Advocate would have to take the proper steps to be admitted as a party. And if the proper steps are not taken, the proceeding can go forward without his participation.

I trust that this information will be of assistance to you.

Very truly yours,

L. Kennedy Boggs  
Assistant Attorney General

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