

1975 S.C. Op. Atty. Gen. 57 (S.C.A.G.), 1975 S.C. Op. Atty. Gen. No. 3987, 1975 WL 22285

Office of the Attorney General

State of South Carolina

Opinion No. 3987

March 5, 1975

*1 Honorable J. Lewis Moss
Commissioner
The Public Service Commission
Post Office Drawer 11649
Columbia, South Carolina 29211

Dear Commissioner Moss:

You have inquired as to whether the State Public Service Commission has the authority to determine the salaries of the officers and personnel of the utility companies which fall within its jurisdiction.

The Public Service Commission has the authority to promulgate rules and regulations for the purpose of supervising rates and services of public utility corporations. An example of this statutory authorization, insofar as utilities other than those supplying electricity is concerned, is Section 58–111, 1962 Code of Laws:

‘The Public Service Commission is hereby, to the extent granted, vested with power and jurisdiction to supervise and regulate the rates and service of every public utility in this State, together with the power, after hearing, to ascertain and fix such just and reasonable standards, classifications, regulations, practices and measurements of service to be furnished, imposed, observed and followed by every public utility in this State and the State hereby asserts its rights to regulate the rates and services of every ‘public utility’ as herein defined.’

As to the regulation of utilities supplying electricity, Section 24–111, 1962 Code of Laws, states, in pertinent part:

‘The Commission may, upon its own motion or upon complaint:

‘(1) Ascertain and fix just and reasonable standards, classifications, regulations, practices or service to be furnished, imposed, observed and followed by any or all electrical utilities;

‘(2) Ascertain and fix adequate and reasonable standards for the measurement of quality, quantity, initial voltage or other condition pertaining to the supply of the product, commodity or service furnished or rendered by any or all electrical utilities.’

It is generally held that a public service commission may consider the salaries of officers and personnel of a utility in determining such corporation's operating expenses. 64 Am.Jur.2d Public Utilities § 173:

‘When a test period is examined, all legitimate expenses incurred by the utility during such period must be allowed. In addition to items for maintenance and repair, operating expenses must include such items as . . . salaries and wages of all persons directly employed; and salaries of the public utility officers, if reasonable. See also: [Shirk v. Lancaster](#), 313 Pa. 158, 169 A. 557, 90 A.L.R. 688 (1933); [Petition of New England Tel. and Tel. Co.](#), 115 Vt. 494, 66 A.2d 135 (1949); [Central Maine Power Co. v. Public Utilities Comm.](#), 153 Me. 228, 136 A.2d 726 (1957).

Generally, a public service commission may not regulate the management of the utilities. 73 C.J.S. Public Utilities § 40(a):

'The commission is not a board of managers; nor is it empowered to conduct or control utilities or their affairs or to substitute its judgment for that of the directors of the utility; its power extends merely to correcting abuses of the property rights of a utility, and not to controlling their use, and to determining the reasonable effect of acts already performed.' See also: 64 Am.Jur.2d Public Utilities § 232.

*2 In the absence of bad faith or an attempt to defeat the legislative intent behind utility regulation by paying extravagant and unreasonable salaries, the issue of salary regulation is one of management and not public regulation. 'The function of a public service commission is that of control and not of management, and regulation should not obtrude itself into the place of management. [Bacon v. Boston and M.R.R.](#), 83 Vt. 421, 442, 76 A. 128. This rule is recognized in all of the cases. This matter of salaries and advertising expense calls for the exercise of judgment on the part of the management of the company. Good faith on its part is to be presumed. Although these expenses should be scrutinized with care by the commission, they should not be disallowed or reduced unless it clearly appears that they are excessive or unwarranted or incurred in bad faith. [West Ohio Gas Co. v. Public Utilities Comm.](#), 294 U.S. 63, 55 S.Ct. 316, 79 L.Ed. 761.' [Petition of New England Tel. and Tel. Co.](#), 115 Vt. 494, 66 A.2d 135, 145 (1949). See also: [Central Maine Power Co. v. Public Utilities Comm.](#), 153 Me. 228, 136 A.2d 726 (1957); [United Fuel Gas Co. v. Railroad Comm.](#), 278 U.S. 300, 73 L.Ed. 390 (1929).

The United States Supreme Court in the case of [Missouri ex rel. S. W. Bell Telephone Co. v. Public Service Comm.](#), 262 U.S. 276, 43 S.Ct. 544, 67 L.Ed. 981 (1923) reiterated this rule:

'It must never be forgotten that while the State may regulate, with a view to enforcing reasonable rates and charges, it is not the owner of the property of public utility companies, and is not clothed with the general power of management incident to ownership. The applicable general rule is well expressed in [State Public Utilities Commission ex rel. Springfield v. Springfield Gas & Electric Co.](#), 291 Ill. 209, 234, P.U.R. 1920C, 640, 125 N.E. 891;

'The Commission is not the financial manager of the corporation, and it is not empowered to substitute its judgment for that of the directors of the corporation; nor can it ignore items charged by the utility as operating expenses unless there is an abuse of discretion in that regard by the corporate officers.'

I advise that the salaries paid by a utility do not ordinarily come within the jurisdiction or control of the Public Service Commission, but that they should be scrutinized with care by the Commission and are not subject to disallowance or reduction unless it clearly appears that there has been an abuse of discretion by the utility or that such expenses are excessive or unwarranted or incurred in bad faith.

Very truly yours,

Daniel R. McLeod
Attorney General

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