

OFFICIAL OPINION NO. 112

December 17, 1953.

Mr. Warren Buchanan, Chairman,  
Public Service Commission,  
Room 401, State House,  
Indianapolis, Indiana.

Dear Sir:

I have received your letter requesting an official opinion, which letter reads as follows:

“An official opinion is respectfully requested as to whether the Public Service Commission of Indiana has authority, under the Public Service Commission Act, 1913, as amended (Burns’ 54-101 *et seq.*), to grant permits, franchises, or certificates of public convenience and necessity to persons or corporations seeking authority to operate either Class A or Class B public warehouses; or, whether such authority still remains vested in the auditor of the county in which such warehouses are located. Burns’ 67-201 (Acts 1875, Ch. 121, Sec. 1, as amended).”

Chapter 121 of the Acts of the Indiana General Assembly of 1875 as found in Burns’ Indiana Statutes Annotated (1951 Repl.), Section 67-201 provides for the regulation of public warehouses and divides them into two classifications: Class A, consisting of grain warehouses, and Class B, consisting of warehouses storing all other types of property. Those persons desiring to keep a public warehouse within the provisions of the Act could do so by making written application to the auditor of the county in which the warehouse was to be situated. But the obtaining of such permit was permissive, and those persons who did not obtain such a permit did not come within the provisions of the Act, by amendment (Acts 1879 (Spec. Sess.), Ch. 119, Sec. 1).

In 1913, the Public Service Commission of Indiana was created by the Acts of the Indiana General Assembly of 1913, Chapter 76, which Act also set up a comprehensive regulatory system for many operations affected with a public interest, and provided among other things:

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"SECTION 1. \* \* \* That the term '*public utility*' as used in this act shall mean and embrace every corporation, company, individual, association of individuals, their lessees, trustees or receivers appointed by any court whatsoever, and every city or town, that now or hereafter may own, operate, manage or control any \* \* \* plant or equipment within the state for \* \* \* *the furnishing of elevator or warehouse service* either directly or indirectly to or for the public.

"\* \* \*

"SEC. 97. *No license, permit or franchise shall be granted to any person, copartnership or corporation to own, operate, manage or control any plant or equipment of any public utility in any municipality where there is in operation a public utility engaged in similar service under a license, franchise or permit without first securing from the commission a declaration after a public hearing of all parties interested, that public convenience and necessity require such second public utility.* Any existing permit, license or franchise which shall contain any term whatsoever interfering with the existence of a second public utility is hereby declared to be against public policy and is hereby amended in such manner as to permit a municipality to grant a license, franchise, or permit for the operation of such second public utility pursuant to the provisions of this act.

"\* \* \*

"SEC. 101. Any public utility *operating under any existing license, permit or franchise shall, upon filing at any time prior to the expiration of such license, permit or franchise and prior to July 1, 1915, with the clerk of the municipality which granted such franchise and with the commission, a written declaration, legally executed, that it surrenders such license, permit or franchise, receive by operation of law, in lieu thereof an indeterminate permit as provided in this act; and such public utility shall hold such permit under all the terms, conditions and limitations of this act.*

"\* \* \*

“SEC. 130. All acts and parts of acts conflicting with the provisions of this act are repealed insofar as they are inconsistent herewith.” (Our emphasis.)

The provisions of the 1913 Act are mandatory instead of permissive, and Section 97 of the 1913 Act requires existing permit holders to comply with the provisions of the 1913 Act within a given time limit. It is apparent from a comparison of the two Acts that the permissive provisions of Acts 1875, Chapter 121, conflict with the mandatory, comprehensive regulatory provisions of Acts 1913, Chapter 76, and are, therefore, repealed by Section 130 of the latter Act.

The Public Service Commission of Indiana created by Acts 1913, Chapter 76, was abolished by Acts 1933, Chapter 93, which created a new Commission, which, in turn, was abolished by Acts 1941, Chapter 101, which created the present Public Service Commission. In each case, only the Commission as then constituted was abolished, and the other provisions of the prior Act continued in full force, except as amended, and any powers granted in said provisions passed on to the new Commission.

Thus, Acts 1941, Chapter 101, Section 12 provides:

“All the rights, powers and duties conferred by any law upon the public service commission of Indiana which was created by chapter 76 of the Acts of the General Assembly for the year 1913, and amendments thereof not in conflict herewith, and all of the rights, powers and duties conferred by any law upon the public service commission which was created by chapter 93 of the Acts of 1933 of the General Assembly, are continued in full force and effect and are hereby transferred to and conferred upon the public service commission of Indiana hereby created \* \* \*.”

Among these “rights, powers and duties” so “transferred and conferred” are those contained in Section 1 of Chapter 76, Acts 1913, as amended (Burns’ 54-105) which still defines the term “public utility” to include “public elevators and warehouses”; also those contained in Section 97 of Chapter 76, Acts 1913, as amended (Burns’ 54-601), which still requires

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“public elevators and warehouses” to secure a permit of public convenience and necessity where there is an existing similar warehouse within the municipality, although the amended section now specifically exempts municipality operation.

For reference as to the jurisdiction of the Public Service Commission over the rates and tariffs of public warehouses and their enforcement, see 1946 Opinions Attorney General, page 280, No. 75, which did not require a discussion of the status of the 1875 Act about which this current opinion was requested.

It is therefore my opinion that the Public Service Commission of Indiana, as created by Acts 1941, Chapter 101, alone has authority under the Public Service Commission Act of 1913, Chapter 76, as amended, to grant permits, franchises or certificates of public convenience and necessity to persons or corporations seeking authority to operate public warehouses.

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OFFICIAL OPINION NO. 113

December 18, 1953.

Mr. R. R. Wickersham,  
State Examiner,  
State Board of Accounts,  
304 State House,  
Indianapolis, Indiana.

Dear Mr. Wickersham:

This is in reply to your letter of November 13, 1953, which reads in part as follows:

“1. Is the Deputy Director of Printing as provided in Section 5, Chapter 279, Acts of 1947 required to act as ex officio Clerk of the State Election Board as provided in Section 10, Chapter 208, Page 680, Acts of 1945?

“2. If the answer is in the affirmative, is the Deputy Director of Printing, serving as Clerk of the Election Board, required to serve without additional compensation?”