

OPINION 45

OFFICIAL OPINION NO. 45

December 31, 1970

Mr. John L. Ryan
Chairman, Public Service Commission
901 State Office Building
Indianapolis, Indiana 46204

Dear Mr. Ryan:

This is in response to your request for my Official Opinion on the legality of the Public Service Commission's authority to collect and, where necessary, compromise civil penalties under Acts of 1969, Ch. 296, Sec. 5, as found in Burns' (1970 Supp.), Section 55-4705.

ANALYSIS

The Public Service Commission is essentially a quasi judicial administrative agency and as such is given broad powers to settle and compromise claims subject to approval by the Governor and the Attorney General. The federal statutory analogue to Burns' Section 55-4705, *supra*, is 49 U. S. C. A. 167 (P. L. 90-481) which provides in subsection (b) the following:

"Any such civil penalty may be compromised by the Secretary. In determining the amount of such penalty, or the amount agreed upon in compromise, the appropriateness of such penalty to the size of the business of the person charged in attempting to achieve compliance, after notification of a violation shall be considered. The amount of such compromise may be deducted from any sums owing by the United States to the person charged or may be recovered in a civil action in the United States district courts."

The federal statute allows for a good faith effort to be made to compromise claims on an administrative level before resorting to federal courts for recovery. The guidelines set up in the federal statute for settlement of civil penalties are equally pertinent in settling claims in Indiana. There is no reason to presume that the General Assembly contemplated a different scheme of enforcement. In fact, in Burns' Section

55-4708(4), there is a provision requiring reports of compromises of alleged violations.

While Acts of 1913, Ch. 76, Sec. 124, as found in Burns' (1951 Repl.), Section 54-453 provides for litigation in the circuit or superior court where the utility has its principal place of business, that section also provides for extensive enforcement powers:

"The commission shall inquire into any neglect or violation of the laws of this state or the ordinances of any city or town by any public utility doing business therein, or by the officers, agents or employees thereof, or by any person operating the plant of any public utility, and shall have the power, and shall be its duty to enforce the provisions of this act as well as all other laws relating to public utilities."

Enforcement of the statutes requiring civil penalties for non-compliance necessarily entails compromising claims. Pragmatically to hold otherwise would require mandatory litigation of all civil penalties which would be both time-consuming, and expensive. No reasonable justification exists for eliminating an intervening administrative level of compromise before litigation must be instituted.

This provision, however, is subject to the general statutory language found in Acts of 1889, Ch. 71, Sec. 15, as found in Burns' (1964 Repl.), Section 49-1917, which states that no claim in favor of the state can be compromised without the approval of the Governor and the Attorney General.

CONCLUSION

It is, therefore, my opinion that the Public Service Commission not only has the power to compromise civil penalties before instituting suit, but should actively seek settlement whenever possible, subject to the approval of the Governor and Attorney General as the law requires.