Comment on Recent Decisions

APPEALS—JURISDICTION—REVIEW OF ORDERS OF PUBLIC SERVICE COMMISSION.—Since the establishment, in 1913,[1] of the Public Service Commission about one hundred orders or decisions of the Commission have reached the Missouri Supreme Court for review as to their "lawfulness or reasonableness" under the statutory provisions granting the privilege of such review, on the record made before the Commission, first by a circuit court and, on appeal, by the Supreme Court.[2] The authority of the Supreme Court to review the orders of the Commission apparently was never seriously questioned, except in a few cases involving the extent or scope of the review,[3] until *State ex rel. Gehrs v. Public Service Commission.*[4] In that case two certificates of convenience and necessity, issued to different highway transport companies, were consolidated upon the purchase by one company of the business and assets of the other. Proper application being made, the Public Service Commission authorized the publication of rates to the points to be served under the consolidated certificate. The Cole County Circuit Court affirmed this action. On the appeal to the Supreme Court the record challenge the jurisdiction of that Court, on the ground of the provisions in the State Constitution defining the appellate jurisdiction of the Court.[5] Without reference to any of its hundred-odd decisions reviewing orders of

---

[1] Public Service Commission Act, Laws of 1913, pp. 556-651; now found in its present form in R. S. Mo. 1929, sec. 5121-5281, Laws of 1931, pp. 304-316; Laws of 1933, pp. 359-360; Laws of 1935, pp. 321-326.

[2] R. S. Mo. 1929, sec. 5234, 5237. Application for a writ of review may be made either to the circuit court in the county where the hearing was held or to the circuit court in the county where the Commission has its principal office. In practice most cases are heard in the circuit court of Cole County, that is, at Jefferson City.

[3] The Court's conception of its function in reviewing orders of the Commission, or its position as to the scope of judicial review provided for by the statute has not been static, but rather has undergone a gradual development as the Commission has developed its functioning. The abandonment of the position that the Court should weigh the evidence and make its own findings of fact on the review, along with a statement of the court's present attitude may be found in State ex rel. and to Use of Chicago Great Western Ry. Co. v. P. S. C. (1932) 330 Mo. 729, 51 S. W. (2d) 73.

[4] (1935) 90 S. W. (2d) 390; three concurrent cases receiving the same treatment were: State ex rel. Pitcairn et al. v. P. S. C. (1935) 90 S. W. (2d) 392; State ex rel. Gehrs v. P. S. C. (1936) 90 S. W. (2d) 394; State ex rel. Pitcairn et al. v. P. S. C. (1935) 90 S. W. (2d) 395.

[5] The Supreme Court has appellate jurisdiction in all cases where the amount in dispute, exclusive of costs, exceeds the sum of seven thousand five hundred dollars; in cases involving the construction of the Constitution of the United States or of the State; in cases where the validity of a treaty or statute or authority exercised under the United States is drawn in question; in cases involving the construction of the revenue laws of the State, or the title to any office under the State; in cases involving title to real estate; in cases where a county or other political subdivision of the State or any State officer is a party; and in all cases of felony. See Mo. Const., Art. 6, Sec. 12 and Sec. 5 of the 1884 Amendment to Art. 6; also sec. 1914 of R. S. Mo. 1929.

the Commission, the Court held that it had no jurisdiction to review the order; that the statute authorizing such review violated the constitutional provision limiting the appellate jurisdiction, and that the cause must be transferred to the appropriate Court of Appeals. There being no constitutional issue going to the merits of the case, and there being no "amount in dispute" involved, the contention for upholding jurisdiction was that a state officer was a party. Citing and following its prior decisions as to the Workmen's Compensation Commission and the Highway Commission,[6] the Court held that even though the members of the Commission are State officers the Commission is a separate and distinct entity existing apart from its individual members and is not a state officer within the provision in the constitution conferring jurisdiction where a state officer is a party.

While ordinarily it would be true that the absence of appellate jurisdiction in the Supreme Court would necessarily make proper a removal to a Court of Appeals, the action in this case would appear doubtful since the statute reads in part "no court of this state, except the circuit courts to the extent herein specified and the Supreme Court on appeal, shall have jurisdiction to review, reverse, correct or annul an order or decision of the Commission. . . ."[7] This would seem specifically to exclude the Courts of Appeals from exerciseing any jurisdiction over the orders of the Commission. Logically, the combination of the constitutional and statutory provisions would seem to preclude any appellate review in those cases where the jurisdictional requirements of the constitution did not inhere in a cause.

The decision does not, of course, invalidate the statutory appeal to the Supreme Court in all cases, but only in those not within the constitutional classification. The decision seems to defeat the statutory scheme intended by the Legislature. It must be recognized that it is generally impossible to determine the "amount involved" in cases like the instant one.

R. S. L. '36.

CONSTITUTIONAL LAW—BANKRUPTCY—MUNICIPAL BANKRUPTCY ACT.—The respondent water improvement district in a farming area of Texas, tax ridden and insolvent, presented a plan of final settlement on $800,000 in improvement bonds proposing a payment of 49.8 cents on the dollar under sections 78, 79 and 80 of the Bankruptcy Act, which were added by an amendment of 1934.[1] The amendment provides for the readjustment of the indebtedness of state subdivisions which are in the financial predicament of the respondent and authorizes a federal court to require objecting bondholders to accept offers to scale down or repudiate indebtedness without the surrender of any property by the subdivisions. *Held*, the amendment is an unconstitutional exercise of congressional power amounting to an impairment of state sovereignty. The majority of the court was of the opinion

---

[6] State ex rel. Goldman v. Missouri Workmen's Compensation Commission et al. (1930) 325 Mo. 153, 27 S. W. (2d) 1026; State Highway Commission v. Day (1931) 327 Mo. 122, 35 S. W. (2d) 37.

[7] R. S. Mo. 1929, sec. 5234.

[1] (May 24, 1934) 48 Stat. 798; 11 U. S. C. A. sec. 301, et seq.