

Opinion No. 34-821

October 23, 1934

BY: E. K. NEUMANN, Attorney General

TO: Mr. Don R. Casados, Chairman State Corporation Commission, Santa Fe, New Mexico.

{*162} In your letter of October 19, 1934 you enclose a letter from the relief administrator at Reserve, New Mexico, together with other correspondence, and ask "Will you kindly advise whether this Commission can insist {*163} upon the installation of the telephone requested by the relief administrator at Reserve, New Mexico."

The general law with reference to cases of this kind is stated in 62 C.J. 79 as follows:

"Broadly speaking, it is the duty of a telegraph or telephone company, or the like, to furnish reasonably good service and reasonably adequate facilities * * * the duty of a company is not limited to the giving of what may have been regarded as adequate service at the time of its organization, but keep pace with changing conditions * * * the adequacy of the service furnished is a matter to be determined in the first instance by the state or the administrative agency to which it has delegated its regulatory power * * * ."

Assuming that the above stated general principles apply to the present case, the question remains as to whether or not the state has delegated such regulatory powers to the State Corporation Commission. It apparently has not done so in the state constitution. It seems to have attempted to do so by Section 90-2207 of the 1929 Compilation. This section provides in part as follows:

"The state corporation commission shall have power to regulate all charges and rates **service and facilities** of the public utilities mentioned in Section 1 (90-2201) of this act under such rules and regulations as said corporation commission may adopt, etc.,".

However in the same section we find the following:

"The provisions of this section shall not apply to any utility whose rates are now subject to regulation by the state corporation commission under the constitution of the state."

It will be noted that the rates of telephone companies are subject to regulation by the state corporation commission under Section 7, Article 11 of the state constitution.

The statute does not state specifically that the corporation commission may require telephone companies to furnish adequate facilities. However, it might be sufficient to support a rule to that effect by the commission. I am not informed whether or not you have such a rule.

The case of La Follette vs. Albuquerque Gas & Electric Company Rates, 37 N.M. 57, 17 P. (2d) 944 decides that the corporation commission does not have power to regulate the rates of electric transmission companies under Section 7, Article 11 of the state constitution. The question of its authority under Section 90-2207 of the 1929 Compilation does not seem to have been decided in the opinion although it must have been before the court.

I also call your attention to the fact that some attorneys have questioned the right of the legislature to confer powers upon the corporation commission which are not contained in the state constitution. I am not convinced that they are correct in this position but the question, nevertheless, has not been decided by our Supreme Court and will remain open until such a decision has been made.

In view of the facts before me and the law as above stated I am extremely doubtful whether or not the corporation commission has jurisdiction in the present case. Owing to the vagueness and uncertainty of the statute above mentioned and for the reasons above stated I am of the opinion that the commission could not compel the installation of the telephone referred to.

By: QUINCY D. ADAMS,

Asst. Attorney General