

Opinion No. 21-2856

March 3, 1921

BY: HARRY S. BOWMAN, Attorney General

TO: Mr. A. S. Kirkpatrick, Albuquerque, New Mexico.

Law to Prevent Duplication Public Utilities.

OPINION

{*30} Referring to your letter of the 9th instant, regarding the provisions of House Bill No. 168 as amended, being "An Act to Control the Duplication of Public Utilities," etc., I note that you are of the opinion that the law would prevent the entry into municipalities of hydro-electric companies who would desire to furnish light, heat or power, if there were already established plants for such purposes within such municipalities.

I have carefully examined the law as passed by the legislature and approved by the Governor, and I do not believe it has the effect which you fear.

The law grants to District Courts the right to determine whether additional plants would be convenient and necessary for the public within the municipality. This, in effect grants to the district court the power to permit the establishment of these utilities, taking that power from the city council or town trustees where it has heretofore rested.

In the event that the convenience and necessity of the public did not require, of course, no such additional plant could be established, and what such necessity or convenience would be is a matter which no one can define at this time.

The right to appeal to the Supreme Court from the decision of the district courts in such matters is granted by the act, and in the event that the district court should arbitrarily refuse to permit an additional plant to be established, there would always be the remedy of an appeal to the Supreme Court.

I am of the opinion that the measure is a good one and that proper administration will follow to improve conditions in this state so far as public utilities corporations are concerned.

The bill also clothes the State Corporation Commission with the jurisdiction to regulate the charges and rates, services and facilities of the public utilities mentioned in the act.