

Opinion No. 43-4266

April 14, 1943

BY: EDWARD P. CHASE, Attorney General

TO: Governor John E. Miles, Chairman, New Mexico Public Service Commission, Santa Fe, New Mexico

We have your letter of April 9, 1943, wherein you request an opinion of this office concerning public utilities which have gone out of business during the year by reason of their selling to municipalities, as to whether they should continue to pay fees for the remainder of the year. You cite the specific examples of the villages of Capitan and Cimarron, New Mexico.

Section 72-608, New Mexico 1941 Compilation (Laws of 1941, Chapter 84, Section 44) provides:

"Each utility doing business in this state and subject to the control and jurisdiction of the commission with respect to its rates and service regulations, shall pay annually to the state a fee for the inspection and supervision of such business, an amount equal to * * *"

It is noted that the test set out in the statute is whether the utility is doing business in the state, and is subject to the control and jurisdiction of the commission. Therefore, since the utilities that you mentioned operated during a part of the year, and were subject to the supervision of the Public Service Commission, they became subject to the annual fee provided for in the above section. It is further noted that such fee is to be determined solely on the grounds of the previous year's receipts, and therefore, it is clear that the receipts for the current year are immaterial in computing the fee for such year. It follows that the fact for a period of several months in such year that the above-mentioned utilities may not have had any receipts due to the fact of having sold the utilities to a village would be immaterial.

Therefore, it is my opinion that when a utility does business in this state for any part of a year, subject to the supervision of the Public Service Commission, that they immediately subject themselves to a full annual fee, regardless of whether or not they operate the entire year.

Your letter indicates the further question as to whether such private utility companies would be subject to any fees the following year after having sold their properties to a municipality. Even though it is true that such companies would have had gross receipts for a part of the preceding year, they cannot be charged fees for a year in which they do no business in the state subject to the control and jurisdiction of the commission.

You ask a further question concerning the Lincoln County Utilities Company which sold its electrical utility to the village of Carrizozo on July 7, 1942, with the exception of a small part of its system which services White Oaks, New Mexico. In view of the fact that the Lincoln County Utilities company did not completely dispose of its property, and is still operating as a public utility to the town of White Oaks only, you ask whether or not the fees for 1942 for the last two quarters shall be based on the 1941 gross receipts under Section 44 of the Public Utility Act, and whether the 1943 fees should be based on combined 1942 receipts, for the year 1944 based on 1943 gross receipts, and thereafter until the company ceases to function as a public utility.

It is clear, in view of the above discussion, that the sale in 1942 of a part of the properties, even though a major part did not in any way affect the liability of the Lincoln County Utilities Company in respect to its annual fee for 1942, since under the facts you outline they did business as to all of the above mentioned properties in 1942 subject to the supervision of the Public Service Commission, and therefore, they became subject to a fee based upon the entire gross receipts of such company during the preceding year.

However, an additional problem is raised concerning the correct method of computing fees in 1943. The problem is raised of whether the entire gross receipts of the Lincoln County Utilities Company in 1942 should be used in computing the fees in 1943.

Upon a careful analysis of this situation, it seems clear to me that the intent of the statute was to measure the fees of a present plant by the gross receipts of the preceding year for the same plant, and not on other plants that may or may not have been owned and operated by the same company either in conjunction or not in conjunction with the plant upon which supervision fees are charged.

Therefore, it is my opinion that in determining the fees for the White Oaks properties, now the sole utility property operated by the Lincoln County Utilities Company, that you must determine such fees upon a basis which only takes into consideration the gross receipts for the White Oaks property for the previous year upon which the fee is computed, and so long as the White Oaks Utility is operated this would be the manner in which the fees should be computed each year.

Trusting that the foregoing sufficiently answers your inquiry, I am

By HARRY L. BIGBEE,

Asst. Atty. General