

DECISIONS OF

Pennsylvania Public Utility Commission

VOLUME 23



HARRISBURG, PENNSYLVANIA

1944

Rule 2 of the Commission Rules of Practice requires that complaints be "sworn to by the complainant." The present complaint is sworn to by William J. Kast, as President of the Rate Consulting Corporation, and the affidavit does not, therefore, comply with our rule.

Furthermore, the Commission Rules of Practice limit representation before the Commission to attorneys-at-law. The authorization of Rate Consulting Corporation by Superior Paper Box Company to represent the latter as "Attorney in Fact" does not qualify Rate Consulting Corporation of America to file and prosecute this complaint. As stated by Judge Levinthal in *Blair v. Motor Carriers' Service Bureau, Inc.* (Court of Common Pleas No. 6 of Philadelphia, No. 4863 in Equity, June Term, 1938), "the rules of the Public Utility Commission now properly provide that only lawyers may appear and practice before it." (See also *French Creek Granite Co., Inc., v. Metropolitan Edison Co.* (C. 13285)).

Orderly and proper conduct of proceedings before us require that complaints be authenticated by the party directly aggrieved and that, where an individual does not appear on his own behalf, representation shall be by attorneys-at-law trained in presentation of causes and subject to court discipline.

By reason of the stated non-compliance with the Commission Rules of Practice, the complaint must be dismissed, without prejudice, however, to the right of Superior Paper Box Company to file a new complaint with a proper affidavit, and to be represented by an attorney-at-law in the prosecution of such new complaint; THEREFORE,

NOW, to wit, February 16, 1942, IT IS ORDERED: That the instant complaint be and is hereby dismissed without prejudice.

Commissioners Buchanan and Morgal dissented.

THE BOROUGH OF NORTHUMBERLAND

v.

THE DELAWARE, LACKAWANNA AND WESTERN RAILROAD COMPANY, THE PENNSYLVANIA RAILROAD COMPANY, COUNTY OF NORTHUMBERLAND and DEPARTMENT OF HIGHWAYS OF THE COMMONWEALTH OF PENNSYLVANIA.

Practice and Procedure—Amendments (pleadings).

Concerning the right of litigants to amend pleadings, the Commission is guided by the practice adopted by the Courts of this Commonwealth. The right to amend is a broad one, entirely within the discretion of the court, but will generally be permitted when it does not violate any law or prejudice the rights of opposing parties.

No appearances.

BY THE COMMISSION, *February 16, 1942:*

On October 10, 1940, the Borough of Northumberland filed a complaint with this Commission at Complaint Docket No. 13425 against The Delaware, Lackawanna and Western Railroad Company, The Pennsylvania Railroad Company, County of Northumberland and Department of Highways of the Commonwealth of Pennsylvania, alleging that certain existing crossings at grade, where the track of The Delaware, Lackawanna and Western Railroad Company crosses State Highway Route No. 25-Spur (Water Street), where the track of the same railroad company crosses State Highway Route No. 18 (King Street) and where the track of the same railroad crosses Queen Street, Orange Street, Hanover Street and various alleys in between said streets at points in the Borough of Northumberland, Northumberland County, are dangerous and should be eliminated for the safety, accommodation and convenience of the public. Answers to said complaint were duly filed by all of the above respondents.

On December 1, 1941, the complainant, by petition filed an amendment to the original complaint to include the proposed alteration of an existing highway crossing below grade, alleged therein to be dangerous, where State Highway Route No. 25-Spur (Water Street) crosses under the grade of the tracks of the Pennsylvania Railroad at a point in the Borough of Northumberland. Notice of the filing of the petition to amend, together with a copy thereof, have been served upon each of the above respondents.

This matter is now before us for determination of whether or not the petition of complainant to amend the original complaint shall be granted.

Concerning the rights of litigants to amend pleadings, the Commission is guided by the practice adopted by the courts of this Commonwealth. The right to amend is a broad one, entirely within the discretion of the court, but will generally be permitted when it does not violate any law or prejudice the rights of opposing parties: *Bowman v. Gum, Inc., et al.*, 327 Pa. 403 (1937); *Trabue, Appellant v. Walsh*, 318 Pa. 391 (1935).

Having carefully considered all of the matters involved herein we find that the request of the complainant to amend its original complaint is reasonable and not prejudicial to the respondents; THEREFORE,

NOW, to wit, February 16, 1942, IT IS ORDERED: That the prayer of Complainant's petition to amend its original complaint filed in these proceedings so as to include the proposed alteration of an existing highway crossing below grade, where State Highway Route No. 25-Spur (Water Street) crosses under the grade of the tracks of The Pennsylvania Railroad Company at a point in the Borough of Northumberland, be and is hereby granted.

PENNSYLVANIA PUBLIC UTILITY COMMISSION

v.

PHILADELPHIA ASSOCIATION OF WHOLESALE
OPTICIANS

COMPLAINT DOCKET No. 13611

Jurisdiction—Cooperative Association.

Commission jurisdiction attaches to any transportation service rendered "for compensation" except when the service is performed by a bona fide cooperative association or by a bona fide agricultural cooperative association [Art. I, Sec. 2(5)(7) of Public Utility Law].

The last two words of the corporate entity of cooperative associations incorporated under the Act of June 7, 1887, P. L. 635, Section (1), must be "cooperative association."

The Commission held that the Philadelphia Association of Wholesale Opticians, which furnished a transportation service, for a consideration, solely to its members, was neither a bona fide cooperative association nor a bona fide agricultural cooperative exempt from Commission jurisdiction and ordered it to cease and desist from further operation until it procured a certificate of public convenience.

Thomas M. Kerrigan for Pa. Public Utility Commission.

Richard V. Zug for Pa. Motor Truck Assn.

Joseph Sharfsin for Hourly Messengers, Inc.

Joseph Ehrenreich for Respondent.