

HOUSE No. 2230

The Commonwealth of Massachusetts

HOUSE OF REPRESENTATIVES, March 20, 1952.

The House Committee on Rules, to whom was referred the order (filed on March 19 by Mr. Graham of Boston) relative to requesting the opinions of the Honorable the Justices of the Supreme Judicial Court on the constitutionality of certain provisions of a bill pending before the General Court relative to appeals from licenses, orders or rulings of the Department of Public Utilities and relative to the enforcement of said orders (House, No. 86), report that the same ought to be adopted (House, No. 2230).

For the committee,

ROBERT F. MURPHY.

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Whereas, There is pending before the General Court a bill printed as House, No. 86, entitled, "An Act relative to Appeals from Decisions, Orders or Rulings of the Department of Public Utilities and relative to the Enforcement of Orders of said Department," being based on House, No. 85, which is that portion of the annual report of the Department of Public Utilities for the year nineteen hundred and fifty-one, which contains drafts for legislative action, together with drafts of bills embodying the legislation recommended, both of which documents are submitted herewith; and

Whereas, It appears from an examination of both of said documents that House, No. 86 is intended to strike out section five of chapter twenty-five of the General Laws, as appearing in the Tercentenary Edition and substitute a new section, which, instead of allowing an appeal to the Supreme Judicial Court from certain decisions of said department changes the procedure and substitutes a petition for a claim of appeal; and

Whereas, Said House, No. 86 provides that an appeal as to matters of law from any final decision, order or ruling of the commission may be taken to the Supreme Judicial Court and that no new or additional evidence may be introduced on appeal; and

Whereas, Said House, No. 86 provides further that the court may, in certain cases, remand the case to the department to take further evidence; and

Whereas, Said House, No. 86 provides further that the Supreme Judicial Court shall not consider any issue of law which does not appear to have been raised in the proceedings before the commission; and

Whereas, The court has said, in *Lowell Gas Company v. Department of Public Utilities*, 324 Mass. 80, at 88: — “It must, therefore, be taken to be the law of this Commonwealth, not often stated, to be sure, but nevertheless unanimously, that the Declaration of Rights guarantees to an owner, who alleges that confiscation of his property will result from a rate order of the department, a fair opportunity for submitting that issue to a court for determination upon its own independent judgment as to both law and facts, and that G. L. (Ter. Ed.) c. 25, § 5, affords him a remedy adequate to enforce that right;” and

Whereas, The court has further said in said case, at page 89: — “Our conclusion means that inquiry here on the issue of confiscation is not confined to the findings of the department or to the evidence introduced before the department;” and

Whereas, In *New England Telephone and Telegraph Company v. Department of Public Utilities*, 1951 A. S. 271, at 274, the court says: — “It is elementary that the fixing of rates is not a proper judicial function. On the other hand, where a rate established by a public regulatory body is attacked as confiscatory the Constitution of this Commonwealth and seemingly still that of the United States require that there be a full opportunity for judicial review as to both fact and law;” and

Whereas, There is grave doubt as to the constitutionality of certain provisions of said bill, House, No. 86, if enacted into law; therefore be it

Ordered, That the opinions of the Honorable the justices of the Supreme Judicial Court be required by the House of Representatives of the General Court upon the following important questions of law: —

1. May the General Court constitutionally enact legislation providing that the Supreme Judicial Court could not in any case arising under section 5 of chapter 25 of the General Laws hear any evidence?

2. May the General Court constitutionally enact legislation providing that the Supreme Judicial Court

could not hear any evidence if the case involved the question of confiscation of property?

3. May the General Court constitutionally enact legislation providing that the Supreme Judicial Court could not hear any evidence if the case did not include the question of confiscation of property?

4. Would said bill, House, No. 86, if enacted into law be violative of the Fourteenth Amendment to the Constitution of the United States?

5. Would said bill, House, No. 86, if enacted into law be violative of any other provision of the federal constitution?

6. Would said bill, House, No. 86, be constitutional if enacted into law?

LAWRENCE R. GROVE,

Clerk.