

Chapter 756

Public Utility Commissioner

Chapter 756

NOTES OF DECISIONS

It is beyond the power of judicial review conferred on the Supreme Court to examine the evidence, in a proceeding to set aside an order of the commissioner, to resolve questions of fact. *Mt. Hood Stages, Inc., v. Hill*, (1966) 243 Or 283, 413 P2d 392.

FURTHER CITATIONS: *Anderson v. Heltzel*, (1952) 197 Or 23, 251 P2d 482; *Portland Gen. Elec. Co. v. United States*, (1960) 189 F Supp 290.

756.010

ATTY. GEN. OPINIONS: Construing public utility definition as applied to companies, associations and cooperatives, furnishing telephone service, 1950-52, p 145.

756.020

CASE CITATIONS: *Southern Pac. Co. v. Heltzel*, (1954) 201 Or 1, 268 P2d 605.

ATTY. GEN. OPINIONS: Authority for terminal leave pay for commissioner, 1956-58, p 295.

756.040

NOTES OF DECISIONS

1. In general

The jurisdiction of the commissioner is exclusive in the first instance, and the courts will not interfere therewith. *First Nat. Bank v. Pac. Tel. & Tel. Co.*, (1916) 81 Or 307, 159 P 561.

The commissioner has only the authority granted by the legislature. *Gates v. Pub. Serv. Comm.*, (1917) 86 Or 442, 167 P 791, 169 P 939.

The commissioner has wide range of discretion in the exercise of the power to prescribe reasonable charges, and he is not bound to fix uniform rates for all commodities or to secure the same percentage of profit on every sort of business. *Valley & Siletz R. Co. v. Thomas*, (1935) 151 Or 80, 48 P2d 358.

The authority of the commissioner to order reformation and to determine the amount thereof is limited to those instances in which some administrative function or discretion is involved; it does not include cases in which the court has jurisdiction without prior finding or order by the commissioner as to the reasonableness of any rate, rule or regulation. *Lee, Inc. v. Pac. Tel. & Tel. Co.*, (1936) 154 Or 272, 59 P2d 683.

2. State and municipal regulation

Rates may be fixed for a local utility different than those specified in the ordinance granting the franchise. *City of Woodburn v. Pub. Serv. Comm.*, (1916) 82 Or 114, 161 P 391, Ann Cas 1917E, 996, LRA 1917C, 98; *City of Hillsboro v. Pub. Serv. Comm.*, (1920) 97 Or 320, 187 P 617, 192 P

390; *Salem v. Salem Water, Light & Power Co.*, (1919) 166 CCA 465, 255 Fed 295.

A city's grant of a franchise containing a rate provision is subject to the reserved power of the state to compel a change in the rates. *City of Woodburn v. Pub. Serv. Comm.*, (1916) 82 Or 114, 161 P 391, Ann Cas 1917E, 996, LRA 1917C, 98; *City of Hillsboro v. Pub. Serv. Comm.*, (1920) 97 Or 320, 187 P 617, 192 P 390; *Portland v. Pub. Serv. Comm.*, (1918) 89 Or 325, 173 P 1178; *Central Ore. Irr. Co. v. Pub. Serv. Comm.*, (1921) 101 Or 442, 196 P 832, 15 ALR 1216.

Alteration of rates prescribed in a municipal franchise does not impair the obligation of the contract, since the right of the state to exercise its regulatory powers is implied therein. *City of Woodburn v. Pub. Serv. Comm.*, (1916) 82 Or 114, 161 P 391, Ann Cas 1917E, 996, LRA 1917C, 98; *Central Ore. Irr. Co. v. Pub. Serv. Comm.*, (1921) 101 Or 442, 196 P 832, 15 ALR 1216.

The statute operates to transfer the regulatory authority over utilities, except those owned by municipalities, from cities and towns to the commissioner. *Portland v. Pub. Serv. Comm.*, (1918) 89 Or 325, 173 P 1178; *Calif.-Ore. Power Co. v. City of Grants Pass*, (1913) 203 Fed 173.

FURTHER CITATIONS: *Oregon R. & Nav. Co. v. Campbell*, (1909) 173 Fed 957; *Kalich v. Knapp*, (1914) 73 Or 558, 604, 142 P 594, 145 P 22, Ann Cas 1916E, 1051; *In re County Road No. 65*, (1919) 90 Or 519, 177 P 426; *Portland Ry., Light & Power Co. v. Portland*, (1914) 210 Fed 667; *Portland Traction Co. v. Hill*, (1962) 231 Or 354, 372 P2d 501.

ATTY. GEN. OPINIONS: Power of commissioner to permit a public utility to change a public use into an exclusively private use, 1920-22, p 245; authority for terminal leave pay for commissioner, 1956-58, p 295.

LAW REVIEW CITATIONS: 25 OLR 159; 1 WLJ 204.

756.060

LAW REVIEW CITATIONS: 1 WLJ 148, 152.

756.062

NOTES OF DECISIONS

Two letters specifying rates filed with the commissioner fulfilled the requirements of a valid schedule and order. *McPherson v. Pac. Power & Light*, (1956) 207 Or 433, 296 P2d 932.

FURTHER CITATIONS: *Portland Ry., Light & Power Co. v. R.R. Comm.*, (1912) 229 US 397, 33 S Ct 820, 57 L Ed 1248; *City of Woodburn v. Pub. Serv. Comm.*, (1916) 82 Or 114, 161 P 391, Ann Cas 1917E, 996, LRA 1917C, 98.

756.064

CASE CITATIONS: *Board of R.R. Commr's. v. Oregon Ry. & Nav. Co.*, (1888) 17 Or 65, 19 P 702, 2 LRA 195; *Oregon Ry. and Nav. Co. v. Campbell*, (1909) 173 Fed 957.

ATTY. GEN. OPINIONS: Authority to assess auditor's salary and expenses as part of charge made to interstate carriers for audits outside state, 1940-42, p 311.

756.070

ATTY. GEN. OPINIONS: Examination of income tax returns in possession of State Tax Commission by the commissioner or a complainant, 1956-58, p 91.

LAW REVIEW CITATIONS: 1 WLJ 204.

756.090

CASE CITATIONS: Oregon Telephone Co. v. Pub. Util. Commr., (1971) 5 Or App 231, 483 P2d 822.

756.105

ATTY. GEN. OPINIONS: Examination of income tax returns in possession of State Tax Commission by commissioner or complainant, 1956-58, p 91.

756.115

ATTY. GEN. OPINIONS: Examination of income tax returns in possession of State Tax Commission by commissioner or complainant, 1956-58, p 91.

756.160

CASE CITATIONS: McPherson v. Pac. Power & Light Co., (1956) 207 Or 433, 296 P2d 932; Portland Traction Co. v. Hill, (1960) 222 Or 636, 352 P2d 552, 353 P2d 838; State v. Portland Traction Co., (1963) 236 Or 38, 386 P2d 435.

ATTY. GEN. OPINIONS: Authority of commissioner to entertain complaint of private person that utility is aiding and abetting the operation of unlawful establishments, 1936-38, p 442; Public Utility Commissioner's authority to compel Portland and Multnomah County to allow for tracks across Hawthorne Bridge, 1954-56, p 202.

756.180**NOTES OF DECISIONS****1. Under former similar statute**

In order to justify the granting of an injunction under an express and unrestricted statutory authority, no balancing of the equities was necessary. State v. O.K. Transfer Co., (1958) 215 Or 8, 330 P2d 510.

The legislature intended by the former statute to confer a special power on the courts unfamiliar to the common law, since the injunctive remedy authorized was directed towards conduct criminal in nature. Id.

The former statute did not specifically, either directly or by implication, require the commissioner to show irreparable injury or lack of other remedies in order to obtain injunctive relief against violations of the Motor Transportation Code. Id.

The validity of the commissioner's order could not be collaterally attacked in an application to the court to enforce the order, but had to be questioned in the manner set forth in the statutes. Morgan v. Portland Traction Co., (1958) 222 Or 614, 331 P2d 344, 353 P2d 838.

FURTHER CITATIONS: Anderson v. Heltzel, (1952) 197 Or 23, 251 P2d 482; McPherson v. Pac. Power & Light Co., (1956) 207 Or 433, 296 P2d 932; Portland Traction Co. v. Hill, (1960) 222 Or 636, 352 P2d 552, 353 P2d 838.

756.185**NOTES OF DECISIONS**

Under a former similar statute, treble damages could not be recovered for a mere overcharge. Service Lbr. Co. v. Sumpter Valley R. Co., (1913) 67 Or 63, 135 P 539.

A patron who has received a refund of an excess charge made by a utility cannot be said to be an "injured" person within the meaning of this section. Cash v. Portland R.R., Light & Power Co., (1919) 92 Or 81, 179 P 909.

The complaint was required to show that the order was in effect at the time the injury complained of was suffered, otherwise there could be no recovery of treble damages. Crown Mills v. Ore. Elec. R. Co., (1933) 144 Or 25, 21 P2d 214.

756.325

ATTY. GEN. OPINIONS: Authority of the commissioner to collect filing fees for amended applications, 1938-40, p 518.

LAW REVIEW CITATIONS: 1 WLJ 206.

756.360

ATTY. GEN. OPINIONS: Authority of State Treasurer to transfer a portion of fees collected and paid to the commissioner by public utilities, 1936-38, p 288.

756.370

ATTY. GEN. OPINIONS: Leasehold in lieu of deposit, 1960-62, p 287.

756.375

ATTY. GEN. OPINIONS: Sufficiency of notice of withdrawal from transaction of business within state, 1928-30, p 183; leasehold in lieu of deposit, 1960-62, p 287.

756.500**NOTES OF DECISIONS****1. In general**

To determine the jurisdiction of the commissioner over a particular business, one must refer to the substantive statutes governing that business. McPherson v. Pac. Power & Light, (1956) 207 Or 433, 296 P2d 932.

This section is only a uniform practice Act which governs all proceedings over which jurisdiction has been conferred upon the commissioner in respect to various businesses within his jurisdiction. Id.

2. Under former similar statute

(1) **In general.** Rate making was a legislative function. Southern Pac. Co. v. Campbell, (1911) 189 Fed 182.

The right of the carrier to fix its rates was subject to the revision of the commissioner under the statute. Hammond Lbr. Co. v. Public Serv. Comm., (1920) 96 Or 595, 189 P 639, 9 ALR 1223.

The commissioner was authorized to change rates only in the event that he found them to be unreasonable. Valley & Siletz R. Co. v. Thomas, (1935) 151 Or 80, 48 P2d 358.

The legislature had not given the commissioner power to establish minimum rates. Southern Pac. Co. v. Heltzel, (1954) 201 Or 1, 268 P2d 605.

It was not necessary, in an investigation of alleged discrimination in giving transfer privileges over another road to patrons of one branch line while denying them to patrons of another, that the road honoring the transfers be made a party. Portland Ry., Light & Power Co. v. R.R. Comm., (1910) 56 Or 468, 105 P 709, 109 P 273.

(2) Construction of former statute. The statute did not define unjust discrimination, but left its existence in a particular case to be determined by the commissioner. *Portland Ry., Light & Power Co. v. R.R. Comm.*, (1912) 299 US 397, 33 S Ct 820, 57 L Ed 1248.

The statute did not authorize the filing of a complaint merely for the recovery of an alleged overcharge. *Ore.-Wash. R. & Nav. Co. v. McColloch*, (1936) 153 Or 32, 55 P2d 1133.

The word "unreasonable," used in the statute did not have reference to charges based on rates in excess of those established. *Id.*

FURTHER CITATIONS: *McPherson v. Pac. Power & Light Co.*, (1956) 207 Or 433, 296 P2d 932.

LAW REVIEW CITATIONS: 1 WLJ 207, 208, 210, 212, 213.

756.512

LAW REVIEW CITATIONS: 1 WLJ 209, 211, 212, 213.

756.515

NOTES OF DECISIONS

1. Under former similar statute

An order that was based on a finding unsupported by the evidence could be set aside in a proper case. *Hammond Lbr. Co. v. Pub. Serv. Comm.*, (1920) 96 Or 595, 189 P 639, 9 ALR 1223; *Ore.-Wash. R. & Nav. Co. v. Corey*, (1927) 120 Or 517, 252 P 955.

A rate did not need to be unreasonable in order to be discriminatory. *Portland Ry., Light & Power Co. v. R.R. Comm.*, (1910) 56 Or 468, 105 P 709, 109 P 273.

The pole star in all rate investigations was reasonableness. *Portland v. Pub. Serv. Comm.*, (1918) 89 Or 325, 173 P 1178.

The commissioner had no authority to reduce a rate that was conceded by the persons interested therein to be fair and reasonable. *Oregon -Wash. R. & Nav. Co. v. Corey*, (1927) 120 Or 517, 252 P 955.

The commissioner was authorized to change rates only in the event that he found them to be unreasonable. *Valley & Siletz R. Co. v. Thomas*, (1935) 151 Or 80, 48 P2d 358.

The legislature had not given the commissioner power to establish minimum rates. *Southern Pac. Co. v. Heltzel*, (1954) 201 Or 1, 268 P2d 605.

The scope of hearing complaints under this section was limited to only such complaints as may be filed under ORS 757.505 [repealed 1971; see ORS 756.520]. *McPherson v. Pac. Power & Light*, (1956) 207 Or 433, 296 P2d 932.

FURTHER CITATIONS: *Southern Pac. Co. v. R.R. Comm.*, (1911) 60 Or 400, 119 P 727.

756.518 to 756.610

CASE CITATIONS: *Mt. Hood Stages, Inc. v. Haley*, (1969) 252 Or 538, 451 P2d 125; *Mt. Hood Stages, Inc. v. Haley*, (1969) 253 Or 28, 453 P2d 435.

756.518

NOTES OF DECISIONS

Where the commissioner fails to make findings on basic issues, the Supreme Court is not authorized to review such issues. *Pacific Tel. & Tel. Co. v. Flagg*, (1950) 189 Or 370, 220 P2d 522.

The demands of this Act are not met by the entry of general findings by the commissioner. *Valley & Siletz R. Co. v. Flagg*, (1952) 195 Or 683, 247 P2d 639.

FURTHER CITATIONS: *Morgan v. Portland Traction Co.*, (1958) 222 Or 614, 331 P2d 344.

ATTY. GEN. OPINIONS: Examination of income tax returns in possession of State Tax Commission by the commissioner or a complainant, 1956-58, p 91.

LAW REVIEW CITATIONS: 1 WLJ 205, 207.

756.525

LAW REVIEW CITATIONS: 1 WLJ 211.

756.530

CASE CITATIONS: *McPherson v. Pac. Power & Light Co.*, (1956) 207 Or 433, 296 P2d 932.

756.555

LAW REVIEW CITATIONS: 1 WLJ 218, 220.

756.558

NOTES OF DECISIONS

Where the commissioner fails to make findings on basic issues, the Supreme Court is not authorized to review such issues. *Pacific Tel. & Tel. Co. v. Flagg*, (1950) 189 Or 370, 220 P2d 522.

The demands of this Act are not met by the entry of general findings by the commissioner. *Valley & Siletz R. Co. v. Flagg*, (1952) 195 Or 683, 247 P2d 639.

The commissioner in a proceeding challenging the rates made as being confiscatory should enter findings disposing of all the issues, showing (1) the manner and the amount in which he distributed the indirect costs among the traffic which the carrier bore, and (2) his segregation of the property and revenue between the interstate and intrastate phases of the carrier's operations. *Id.*

Commissioner is required by this section to make findings of fact in support of his order. *Pacific Tel. & Tel. Co. v. Hill*, (1961) 229 Or 437, 365 P2d 1021, 367 P2d 790.

There is a need for clarity and completeness in the basic or essential findings on which administrative orders rest. *Mt. Hood Stages, Inc. v. Hill*, (1966) 243 Or 283, 413 P2d 392.

FURTHER CITATIONS: *Morgan v. Portland Traction Co.*, (1958) 222 Or 614, 331 P2d 344, 353 P2d 838.

LAW REVIEW CITATIONS: 1 WLJ 214, 216, 217, 220, 221.

756.565

NOTES OF DECISIONS

The statute means merely that the courts will presume that the commissioner acted reasonably, fairly and justly. *Southern Pac. Co. v. R.R. Comm.*, (1911) 60 Or 400, 119 P 727; *Southern Pac. Co. v. Campbell*, (1911) 189 Fed 182.

In view of this section, it is unnecessary, in an action to recover a penalty for disregard of an order of the commissioner, to allege that the order was reasonable. *State v. Corvallis & E.R. Co.*, (1911) 59 Or 450, 117 P 980.

Under a former similar statute the commissioner's orders were not conclusive on the court. *Pacific Tel. & Tel. Co. v. Wallace*, (1938) 158 Or 210, 75 P2d 942.

The manner of challenging in the circuit court an order entered by the commissioner is by a suit against the commissioner. *Southern Pac. Co. v. Heltzel*, (1954) 201 Or 1, 268 P2d 605.

A writ of prohibition is available to railroads and public utilities since appeal is an inadequate remedy. *Id.*

FURTHER CITATIONS: *Morgan v. Portland Traction Co.*, (1958) 222 Or 614, 331 P2d 344, 353 P2d 838; *Portland Traction Co. v. Hill*, (1962) 231 Or 354, 372 P2d 501; *Mt. Hood Stages, Inc. v. Haley*, (1969) 252 Or 538, 451 P2d 125.

LAW REVIEW CITATIONS: 1 WLJ 222.

756.572

NOTES OF DECISIONS

Under a former similar statute a railroad company leasing its road to another corporation without special statutory authority could be held responsible for the lessee's torts. *Lakin v. Willamette Valley & Coast R. Co.*, (1886) 13 Or 436, 11 P 68, 57 Am Rep 25.

Under a former similar statute, an order of the commissioner remained in effect unless it was suspended in accordance with statutory authority. *Crown Mills v. Ore. Elec. R. Co.*, (1933) 144 Or 25, 21 P2d 214.

756.580

NOTES OF DECISIONS

1. In general
2. Under former similar statutes
 - (1) Procedure for utilities
 - (2) Procedure for railroads
 - (a) In general
 - (b) Constitutionality
 - (c) Burden of proof
 - (d) Complaint
 - (e) Parties

1. In general

Findings of fact of the commissioner will not be disturbed on review unless they are not supported by the record. *Pacific Tel. & Tel. Co. v. Hill*, (1961) 229 Or 437, 365 P2d 1021, 367 P2d 790; *Mt. Hood Stages, Inc. v. Haley*, (1970) 4 Or App 385, 478 P2d 645, Sup Ct review denied.

The manner of challenging in the circuit court an order entered by the commissioner is by a suit against the commissioner. *Southern Pac. Co. v. Heltzel*, (1954) 201 Or 1, 268 P2d 605.

Courts will not review the orders of public administrative bodies that have failed to comply with statutes requiring findings of fact and conclusions of law but will hold orders made without meeting these requirements void. *Mitchell Bros. Truck Lines v. Hill*, (1961) 227 Or 474, 363 P2d 49.

The burden of proof to establish that existing rates are confiscatory and the proposed rates reasonable rests with the utility. *Pacific Tel. & Tel. Co. v. Hill*, (1961) 229 Or 437, 365 P2d 1021, 367 P2d 790.

The commissioner's findings are binding on the court, in the event of judicial review, if supported by cogent, competent, material and substantial evidence. *Borich Transfer Co. v. Haley*, (1970) 2 Or App 606, 469 P2d 638, Sup Ct review denied.

2. Under former similar statutes

(1) **Procedure for utilities.** The remedy provided by the statute was exclusive. *Gates v. Public Serv. Comm.*, (1917) 86 Or 442, 167 P 791, 168 P 939.

The city in which the utility operated was not a necessary party to a suit against the commission to set aside a rate order made by it. Id.

An action to enjoin enforcement of an order fixing rates of a private corporation was properly brought by mortgagees and bondholders, and the corporation itself was not an indispensable party. *De Pauw Univ. v. Public Serv. Comm.*, (1917) 247 Fed 183.

A writ of prohibition was available to railroads and public utilities when appeal was an inadequate remedy. *Southern Pac. Co. v. Heltzel*, (1954) 201 Or 1, 268 P2d 605.

The burden of proof to establish that rates were confiscatory and proposed rates reasonable rested with the utility. *Pacific Tel. & Tel. Co. v. Hill*, (1962) 229 Or 437, 365 P2d 1021, 367 P2d 790.

The duty of the court was purely to review determinations made by the commissioner, not fix rates or direct what additional orders or findings should be made. Id.

(2) Procedure for railroads

(a) **In general.** The only method by which a railroad company could challenge the reasonableness of an order of the commissioner was that provided by the statute. *State v. Corvallis & E.R. Co.*, (1911) 59 Or 450, 117 P 980.

The courts were authorized to review the findings of the commissioner only so far as to determine whether the rates promulgated by him would deprive the carrier of its property without due compensation. *Southern Pac. Co. v. Campbell*, (1911) 189 Fed 182.

The rate complained of would not be set aside unless the evidence showed that the commissioner exceeded his authority. *Hammond Lbr. Co. v. Public Serv. Comm.*, (1920) 96 Or 595, 189 P 639, 9 ALR 1223.

The findings of the commissioner in a proceeding of the kind authorized were conclusive upon the court unless they were without evidentiary support or were otherwise invalid. *Oregon-Wash. R. & Nav. Co. v. Corey*, (1927) 120 Or 517, 252 P 955.

The statute did not apply to orders awarding a shipper reparation. *Oregon-Wash. R. & Nav. Co. v. McColloch*, (1936) 153 Or 32, 55 P2d 1133.

A writ of mandamus or an enforcement order made pursuant to statute was effective until the validity of the commissioner's order was determined in a review proceeding, or until a stay was granted by the reviewing court. *Morgan v. Portland Traction Co.*, (1958) 222 Or 614, 331 P2d 344, 353 P2d 838.

Reduction or discontinuance of service required consideration of (1) the cost of providing the present service, (2) the use by the public of the present service, and (3) availability and adequacy of other transportation facilities. *Portland Traction Co. v. Hill*, (1962) 231 Or 354, 372 P2d 501. But see *Hammond Lbr. Co. v. Public Serv. Comm.*, (1920) 96 Or 595, 189 P 639, 9 ALR 1223.

(b) **Constitutionality.** The procedure outlined in the statute is consistent with the U.S. Const., Am. 14. *Southern Pac. Co. v. Campbell*, (1912) 230 US 537, 33 S Ct 1027, 57 L Ed 1610.

(c) **Burden of Proof.** The burden was on the complainant to show by clear and satisfactory proof that the rates were confiscatory. *Southern Pac. Co. v. Campbell*, (1911) 189 Fed 182.

The plaintiff in a suit of the character authorized was not required to produce a greater amount of proof than would be necessary to overturn the findings of any selected body of experts. *Southern Pac. Co. v. R.R. Comm.*, (1911) 60 Or 400, 119 P 727.

A carrier assailing an intrastate rate fixed by the commission had to show that it was invalid for one reason or another, else the courts were without power to grant relief. *Oregon-Wash. R. & Nav. Co. v. Corey*, (1927) 120 Or 517, 252 P 955.

(d) **Complaint.** A complaint in an action to set aside a rate order which failed to segregate the expenses of doing intrastate business from total expenses was wholly insufficient. *Southern Pac. Co. v. Campbell*, (1912) 230 US 537, 33 S Ct 1027, 57 L Ed 1610.

(e) **Parties.** It was customary to join with the commissioner as defendants the persons who obtained the order sought to be set aside. *Oregon-Wash. R. & Nav. Co. v. McColloch*, (1936) 153 Or 32, 55 P2d 1133.

FURTHER CITATIONS: *Butcher v. Flagg*, (1949) 185 Or 471, 203 P2d 305; *Bend-Portland Truck Serv., Inc. v. Pub. Util. Commr.*, (1960) 221 Or 514, 351 P2d 1117; *Portland Traction Co. v. Hill*, (1960) 222 Or 636, 352 P2d 552, 353 P2d 838; *Rogers Constr. Co. v. Hill*, (1963) 235 Or 352, 384 P2d 219; *State v. Portland Traction Co.*, (1963) 236 Or 38, 386 P2d 435; *Mt. Hood Stages, Inc. v. Hill*, (1966) 243 Or 283, 413 P2d 392; *Smith Canning & Freezing Co. v. Lloyd Krause, Inc.*, (1968) 398 F2d 128; *Mt. Hood Stages, Inc. v. Haley*, (1969) 252 Or 538, 451 P2d 125; *Mt. Hood Stages, Inc. v. Haley*, (1969) 253 Or 28, 445 P2d 878.

LAW REVIEW CITATIONS: 40 OLR 258, 259; 43 OLR 278-280; 1 WLJ 221, 222.

756.590

NOTES OF DECISIONS

1. Under former similar statute

A carrier was not bound to comply with an order that had been suspended. *Crown Mills v. Ore. Elec. R. Co.*, (1933) 144 Or 25, 21 P2d 214.

There could be no recovery of treble damages for non-compliance with an order that had been suspended. *Id.*

A writ of prohibition was available to railroads and public utilities when appeal was an inadequate remedy. *Southern Pac. Co. v. Heltzel*, (1954) 201 Or 1, 268 P2d 605.

A writ of mandamus or an enforcement order made pursuant to statute was effective until the validity of the commissioner's order was determined in a review proceeding, or until a stay was granted by the reviewing court. *Morgan v. Portland Traction Co.*, (1958) 222 Or 614, 331 P2d 344, 353 P2d 838.

FURTHER CITATIONS: *Portland Traction Co. v. Hill*, (1960) 222 Or 636, 352 P2d 552; *Portland Traction Co. v. Hill*, (1962) 231 Or 354, 372 P2d 501; *State v. Portland Traction Co.*, (1963) 236 Or 38, 386 P2d 435.

LAW REVIEW CITATIONS: 40 OLR 259; 1 WLJ 221.

756.594

NOTES OF DECISIONS

A stipulation that the evidence introduced in the circuit court should not be referred to the commissioner and that the court should determine the suit on the law and the facts in the record did not relieve plaintiff of burden of proof under a former similar statute. *Butcher v. Flagg*, (1949) 185 Or 471, 203 P2d 305.

FURTHER CITATIONS: *Pacific Tel. & Tel. Co. v. Wallace*, (1938) 158 Or 210, 75 P2d 942; *Portland Traction Co. v. Hill*, (1962) 231 Or 354, 372 P2d 502; *State v. Portland Traction Co.*, (1963) 236 Or 38, 386 P2d 435.

LAW REVIEW CITATIONS: 40 OLR 259; 1 WLJ 222.

756.600

NOTES OF DECISIONS

The commissioner's findings are binding on the court if supported by cogent, competent, material and substantial evidence. *Pierce Auto Freight Lines v. Flagg*, (1945) 177 Or 1, 159 P2d 162.

A stipulation that the evidence introduced in the circuit court should not be referred to the commissioner and that the court should determine the suit on the law and the facts in the record did not relieve plaintiff of burden of proof under OCLA 112-458 [ORS 757.585], and did not transfer from the commissioner to the court the determination of whether plaintiff should be granted or denied permission to construct a highway across certain railroad tracks. *Butcher v. Flagg*, (1949) 185 Or 471, 203 P2d 305.

The demands of this Act are not met by the entry of general findings by the commissioner. *Valley & Siletz R. Co. v. Flagg*, (1952) 195 Or 683, 247 P2d 639.

The commissioner in a proceeding challenging the rates made as being confiscatory should enter findings disposing of all the issues, showing (1) the manner and the amount in which he distributed the indirect costs among the traffic which the carrier bore, and (2) his segregation of the property and revenue between the interstate and intrastate phases of the carrier's operations. *Id.*

Rescission under subsection (3) contemplates that the order rescinded shall have no validity after the time it was given. *Portland Traction Co. v. Hill*, (1960) 222 Or 636, 352 P2d 552.

An order "rescinding" prior orders, but only prospectively, was not a rescission within the meaning of subsection (3) *Id.*

FURTHER CITATIONS: *Horger v. Flagg*, (1948) 185 Or 109, 201 P2d 515; *Pacific Tel. & Tel. Co. v. Wallace*, (1938) 158 Or 210, 75 P2d 942; *Morgan v. Portland Traction Co.*, (1958) 222 Or 614, 331 P2d 344; *Portland Traction Co. v. Hill*, (1962) 231 Or 354, 372 P2d 501; *State v. Portland Traction Co.*, (1963) 236 Or 38, 386 P2d 435; *Borich Transfer Co. v. Haley*, (1970) 2 Or App 606, 469 P2d 638, Sup Ct review denied.

ATTY. GEN. OPINIONS: Construing "rescind," 1966-68, p 6.

LAW REVIEW CITATIONS: 40 OLR 258, 259; 1 WLJ 219, 222.

756.610

CASE CITATIONS: *Morgan v. Portland Traction Co.*, (1958) 222 Or 614, 331 P2d 344, 353 P2d 838; *Appleton v. Ore. Iron & Steel Co.*, (1961) 229 Or 81, 358 P2d 260, 366 P2d 174; *State v. Portland Traction Co.*, (1963) 236 Or 38, 386 P2d 435; *Mt. Hood Stages, Inc. v. Hill*, (1966) 243 Or 283, 413 P2d 392.

LAW REVIEW CITATIONS: 40 OLR 259.

756.990

NOTES OF DECISIONS

A former similar statute received a strict construction, and no accumulation of offenses was carved out of it unless expressly authorized therein. *Oregon R. & Nav. Co. v. Campbell*, (1909) 173 Fed 957.

An order absolutely void under a former similar statute was not an order than could be the basis of a penalty. *State v. Portland Traction Co.*, (1963) 236 Or 38, 386 P2d 435.

FURTHER CITATIONS: *Portland Traction Co. v. Hill*, (1960) 222 Or 636, 352 P2d 552, 353 P2d 838.