

PUBLIC MEETINGS

CHAPTER 191.

(S. B. No. 113—Liederbach.)

PUBLIC BUILDINGS AND PUBLIC PARKS.

An Act Providing for the Use of Public Buildings and Public Parks for Public Meetings.

Be it Enacted by the Legislative Assembly of the State of North Dakota:

Sec. 1. That any officer or officers of the State of North Dakota, any municipality therein or any subdivision thereof, who shall have custody and control of any public building or public park suitable for holding public meetings therein shall, when petitioned so to do by twenty-five resident tax payers of the municipality or political subdivision owning said building or public park, open said building or park for any public meeting which is to be non-sectarian and non-fraternal in character; provided, however, that no such public building shall be used for such purpose when in actual and necessary use in carrying out the purpose for which it was constructed.

Sec. 2. Any person or persons violating the provisions of this Act shall be guilty of a misdemeanor.

Approved March 7, 1919.

PUBLIC UTILITIES

CHAPTER 192.

(H. B. No. 97—Labor Committee.)

RAILROAD COMMISSIONERS WITH REFERENCE TO PUBLIC UTILITIES.

An Act Authorizing the Board of Railroad Commissioners of the State of North Dakota to Regulate, Control and Fix Rates, Charges and Services of all Public Utilities; Prescribing the Powers and Duties of Public Utilities; Defining Public Utilities; Providing an Appropriation to Carry Out its Provisions; and Repealing Sections 534 and 4736 of the Compiled Laws of North Dakota for 1913 and Chapter 208 and Section 9 of Chapter 209, Laws of North Dakota for 1915 and all other Acts or Parts of Acts in Conflict with the Provisions of this Act; Providing Penalties for the Violation Thereof.

Be it Enacted by the Legislative Assembly of the State of North Dakota:

Sec. 1. (a) The term "Commissioners" when used in this Act, means the Board of Railroad Commissioners of the State of North Dakota. (b) The term "Commissioner" when used in this Act means one of the members of the Board of Railroad Commissioners.

Sec. 2. The jurisdiction of the Commissioners shall extend to and include: (a) common carriers, railroads, street railroads, express companies, sleeping car companies, toll bridges, ferries and steam and other boats engaged in the transportation of freight and passengers; (b) telegraph and telephone companies engaged in the transmission of messages or conversations; (c) pipe line companies for the transportation of gas, oil and water; (d) electric light companies for the purpose of generating and distributing light, heat or power; (e) gas companies for the manufacture or distribution of gas, natural or artificial; (f) water companies for the storage and distribution of water for domestic and all beneficial uses; (g) all heating companies for the distribution of heat; (h) warehouse, packing and cold-storage companies for the marketing, storage or handling of food and other agricultural products; (i) stock yard companies engaged in the business of caring for, feeding and watering live stock; (j) all other public utility corporations and all persons, associations, corporations, or agencies employed or engaged in any of the businesses hereinafter enumerated.

The words "Public Utility" used in this Act shall include all associations, persons, firms, corporations and agencies engaged or employed in any business herein enumerated or in any other public utility business, whether above enumerated or not and whether incorporated or not. The jurisdiction of the Commissioners shall extend to and include all such public utilities engaged in business in this State or in any county, city, town, township or village of the State or any political subdivision of the State.

Sec. 3. The Commissioners are hereby given the power to investigate all methods and practices of public utilities or other persons, subject to the provisions of this Act: to require them to conform to the laws of this State and to all rules, regulations and orders of the Commissioners not contrary to law; to require copies of reports, rates, classifications, schedules and time tables in effect and used by such utilities or other persons to be filed with the Commissioners and all other information desired by the Commissioners relating to such investigations and requirements.

The Commissioners may compel obedience to its lawful orders by proceedings of mandamus or injunction or other proper proceedings in the name of the State in any court having jurisdiction of the parties or of the subject matter, and such proceedings shall have priority over all pending cases.

The Commissioners may change any intra-state rate, charge or toll which is unjust or unreasonable and may, after hearing and notice, prescribe such rate, fare, charge or toll as is just and reasonable, and change or prohibit any particular device or method of service in order to prevent undue discrimination or favoritism between persons, localities, or classes of freight.

Every order entered by the Commissioners shall continue

in force until the expiration of the time, if any, named by the Commissioners in such order or until revoked or modified by the Commissioners, unless the same be suspended, modified or revoked by order or decree of a court of competent jurisdiction.

Sec. 4. The Commissioners shall have the power, after notice and hearing, to enforce, originate, establish, modify or adjust and promulgate tariffs, rates, joint rates, tolls and charges of all public utility corporations and whenever the Commissioners shall, after hearing, find any existing rates, tolls, tariffs, joint rates or schedules unjust, unreasonable, insufficient or unjustly discriminatory or otherwise in violation of any of the provisions of this Act, the Commissioners shall, by an order, fix reasonable rates, joint rates, tariffs, tolls, charges or schedules to be followed in the future in lieu of those found to be unjust, unreasonable, insufficient or unjustly discriminatory or otherwise in violation of any provision of law.

Provided, that when any public utility corporation, company or person operating said public utility shall in any proceeding before the Commission, ask to have its rates raised, above the maximum rate contained in its charter, such public utility shall furnish the Commission, the original cost of all its property, the date of the acquisition of said property, the amount of money invested in said property, the amount of stock outstanding, the amount of bonds outstanding against said property, blueprints showing the location and position of all mains, pole lines, wires, and all other property belonging to the company, and shall furnish the Commission with all books, papers and memoranda of the company showing the financial condition of said utility and shall furnish the Commission with the number of persons in its employ, the salary paid such employees, its total monthly salaries and wage expense for such time as the Commission may request. Also an itemized statement of its expenditures and the details of its profit and loss account and any and all other books, papers, vouchers, accounts which the said Board of Railroad Commissioners shall ask to have produced as evidence at such hearing.

Sec. 5. Whenever the Commissioners shall find, after hearing, that the rules, regulations, practices, equipment, appliances, facilities or service of any public utility, or the methods of manufacture, distribution, transmission, storage, or supply employed by it are unjust, unreasonable, unsafe, improper, inadequate or insufficient, the Commissioners shall determine the just, reasonable, safe, proper, adequate or sufficient rules, regulations, practices, equipment, appliances, facilities, service, or methods to be observed, furnished, constructed, enforced or employed, and shall, after hearing, fix the same by its order, rule or regulation. The Commission shall prescribe, after hearing, rules and regulations for the performance of any service or the furnishing of any commodity, of a character furnished or supplied by any public utility and, on demand and tender of rates, such public utility

shall furnish such commodity and render such service within the time and upon the conditions provided in such rules.

Whenever the Commissioners shall find that application has been made by any corporation or person to a railroad corporation for a connection or spur line track and that the railroad corporation has refused to provide such connection or spur and that the applicant is entitled to have the same provided for him, the Commissioners shall make an order requiring and providing for such connection or spur and the maintenance and use of the same upon reasonable terms which the Commissioners shall have the power to prescribe.

The Commissioners shall likewise have the power to require any railroad corporation to switch to private spurs and industrial tracks upon its own railroad, the cars of a connecting railroad corporation, and to prescribe the rules and compensation for such service.

Sec. 6. The Commissioners shall have the power to order and require the installation of track scales by common carriers at all points in the State where the same are deemed to be necessary and to enforce reasonable regulations for the weighing of cars and freight.

Sec. 7. Whenever the Commissioners shall find, after hearing, that a physical connection can reasonably be made between the lines of two or more telephone corporations, or two or more telegraph corporations by the construction and maintenance of suitable connections for the transfer of messages or conversations, public conveniences and necessity will be subserved thereby, the Commissioners may, by their order, require that such connection be made.

The Commissioners may, after hearing, establish rates for the transfer of messages or conversations over two or more telephone companies or over two or more telegraph companies and order that conversations be transmitted and messages transferred by such companies.

Sec. 8. Whenever the Commissioners have found that public convenience and necessity require the use by one public utility of the conduits, subways, tracks, wires, poles, pipes or other equipment or any part thereof, on, over or under any street or highway, and belonging to another public utility, and that such use will not result in irreparable injury to the owner or other users of such conduits, subways, tracks, wires, poles, pipes or other equipment, or any substantial detriment to the service and that such public utilities have failed to agree upon such use or the terms and conditions or compensation for the same, the Commissioners may, by order, direct that such use be permitted and prescribe reasonable compensation and reasonable terms and conditions for the joint use. If such use be directed, the public utility to whom the use is permitted shall be liable to the owner or other users of such conduits, tracks, wires, poles, pipes or other

equipment for such damage as may result therefrom to the property of such owner or other users thereof.

Sec. 9. (a) The Commissioners and their officers and employes shall have the power to enter upon any premises occupied by any public utility for the purpose of making examinations and tests and exercising any of the powers provided for in this Act and to set out and use on said premises any weights or appliances necessary therefor. (b) Any consumer or user of any produce or commodity or service of a public utility may have any appliance used in the measurement thereof tested by paying the fees fixed by the Commissioners. The Commissioners shall establish and fix reasonable fees to be paid for testing such appliances. (c) The Commissioners shall have the power to ascertain and fix just and reasonable standards, classifications, regulations, practices, measurements or services to be furnished, imposed, observed and followed by all public utilities; to ascertain and fix adequate and serviceable standards for the measurement, quantity, quality, pressure, initial voltage or other condition pertaining to the supply of the product, commodity or service furnished or rendered by any such public utility; to prescribe reasonable regulations for the examination and testing of such products, commodity or service and for the measurement thereof; to establish reasonable rules, regulations, specifications and standards to secure the accuracy of all meters and appliances for measurements, and to provide for the examination and testing of any and all such appliances used for the measurement of any product, commodity or service of any public utility.

Sec. 10. The Commissioners shall have the power to ascertain the value of the property of every utility in this State and every fact which, in its judgment, may or does have any bearing on such value. The Commissioners shall have power to make re-valuations from time to time and to ascertain the value of all new construction, extensions, or additions to the property of every public utility.

Sec. 11. The Commissioners shall have power to establish a system of accounts to be kept by the public utility, subject to its jurisdiction, or to classify said public utilities and to establish a system of accounts for each class and to prescribe the manner in which such accounts shall be kept. It may also, in its discretion, prescribe the forms for accounts, records and memoranda to be kept by such public utilities, including the accounts, records and memoranda of the movement of traffic, as well as the receipts and expenditures of moneys, which, in the judgment of the Commissioners may be necessary to carry out any of the provisions of this Act.

When the Commissioners shall have prescribed the forms for accounts, records or memoranda to be kept by any public utility for any of its business, it shall thereafter be unlawful for such public utility to keep any accounts, records or memoranda

of such business other than those as prescribed by or under authority of any other state or of the United States excepting such accounts, records, or memoranda as shall be explanatory of and supplemental to the accounts, records or memoranda prescribed by the Commissioners.

Sec. 12. All charges made, demanded or received by any public utility or by any two or more public utilities of any produce or commodity furnished or to be furnished, or any service rendered or to be rendered, shall be just and reasonable. Every unjust and unreasonable charge made, demanded or received for such produce, commodity or service is hereby prohibited and declared unlawful.

Sec. 13. Every public utility shall furnish, provide and maintain such service, instrumentalities, equipment and facilities as shall promote the safety, health, comfort and convenience of its patrons, employees and the public, and as shall be in all respects adequate, convenient, just and reasonable and without any unjust discrimination or preference.

Sec. 14. No change shall be made by any public utility in any tariffs, rates, joint rates, fares, tolls, schedules or classifications, or service in force at the time this Act takes effect, except after thirty days' notice to the Commissioners, which notice shall plainly state the changes proposed, and, upon a showing before the Commissioners and a finding by the Commissioners that such increase is justified.

(b) Whenever there shall be filed with the Commissioners a notice or any schedule stating an individual or joint rate, fare, toll, rental, charge, classification, contract, practice, rule or regulation, increasing or resulting in an increase in any rate, fare, toll, rental or charge, the Commissioners shall have power and it is hereby given authority, either upon complaint or upon its own initiative without complaint, at once and, if it so orders, without answer or other formal pleadings by the interested public utility or utilities, but upon reasonable notice, to enter upon a hearing concerning the propriety of such rate, fare, toll, rental, charge, classification, contract, practice, rule or regulation and, pending the hearing and decision thereon, such rate, fare, toll, rental, charge, classification, contract, practice, rule or regulation shall not go into effect, provided that the period of suspension of such rate, fare, toll, rental, charge, classification, contract, practice, rule or regulation shall not extend beyond 120 days beyond the time when such rate, fare, toll, rental, charge, classification, contract, practice, rule or regulation would otherwise go into effect unless the Commissioners, in their discretion, extend the period of suspension for a further period not exceeding six months. On such hearing, the Commissioners shall establish the rates, fares, tolls, rentals, charges, classifications, contracts, practices, rules or regulations proposed, in whole or in part, or others in lieu thereof, which it shall find to be just and reasonable. At

any such hearing, after the passage of this Act, the burden to show that the increased rate or proposed change of fare, charge, classification, regulation or practice is just and reasonable shall be upon the public utility making application for such change. All such rates, fares, tolls, rentals charges, classifications, contracts, practices, rules or regulations not so suspended shall, on the expiration of thirty days from the time of filing the same with the Commissioners, or of such lesser time as the Commissioners may grant, go into effect and be the established and effective rates, tolls, fares, rentals, charges, classifications, contracts, practices, rules and regulations, subject to the power of the Commissioners, after a hearing had on its own motion or upon complaint, as herein provided, to alter or modify the same.

Sec. 15. All rules and regulations made by any public utility affecting or pertaining to its charges or service to the public shall be just and reasonable.

Sec. 16. It shall be unlawful for any public utility corporation subject to the provisions of this Act to make or give any undue or unreasonable preference or advantage to any particular person, company, firm, corporation or locality or any particular character of traffic or service in any respect whatsoever, or to subject any particular person, firm, corporation, company or locality or any particular character of traffic or service to any undue or unreasonable prejudice or disadvantage in any respect whatsoever. No public utility corporation subject to the provisions of this Act shall, directly or indirectly, by any special rate, rebate, drawback or other device or method, charge, demand, collect, charge or receive from any person, firm or corporation a greater or less compensation for any service rendered or to be rendered than he charges, demands, collects or receives from any other person, firm or corporation for doing a like and contemporaneous service under the same or substantially similar circumstances and conditions.

Nothing in this Act shall prohibit a public utility from entering into any reasonable agreement with its customers, consumers or employees, or for providing for a sliding scale of charges, unless the same is prohibited by the terms of the franchise or permit under which such public utility is operated. No such agreement or sliding scale shall be lawful unless and until the same shall be filed with and approved by the Commissioners.

Sec. 17. Every telephone corporation and telegraph corporation operating in this State shall receive, transmit and deliver, without discrimination or delay, the conversations and messages of every other telephone and telegraph corporation with whose line a physical connection may have been made.

Sec. 18. Every public utility shall annually furnish to the Commissioners, at such time and in such form as the Commissioners may require, a report in which the public utility shall specifically answer all questions propounded by the Commission-

ers upon or concerning which the Commissioners may desire information, and any and all other information required by it to carry into effect the provisions of this Act. The Commissioners shall have the authority to require any public utility to file monthly reports of earnings and expenses and to file periodical or special reports concerning any matter about which the Commissioners are authorized by this or any other Act to inquire or to keep itself informed or which it is required to enforce. The reports shall be under oath when required by the Commissioners.

Sec. 19. Every public utility shall obey and comply with all and every requirement of every order, decision, direction, rule or regulation made or prescribed by the Commissioners in the matters herein specified or any other matter in any way relating to or affecting its business as a public utility and shall do everything necessary or proper in order to secure compliance with any observation of every such order, decision, direction, rule or regulation by all of its officers, agents or employees.

Sec. 20. The power of public utilities to issue stocks, bonds, notes, and other evidence of indebtedness, to create liens upon their property situated in this State, except such as are payable within one year from date of issue, is a special privilege and shall be exercised by such utilities under the supervision, regulation, restriction and control of the Commissioners, subject to such rules and regulations as the Commissioners may prescribe.

No provision of this Act and no deed or Act done or performed under or in connection therewith, shall be held or construed to obligate the State of North Dakota to pay or guarantee in any manner whatsoever, any stock, or stock certificate or bond, note or other evidence of indebtedness authorized, issued or executed under the provisions of this Act.

Sec. 21. No public utility shall hereafter sell, assign, lease, transfer, mortgage or otherwise dispose of or encumber the whole or any part of its franchise, works or system, necessary or useful in the performance of its duties to the public not, at any time, directly or indirectly, merge or consolidate such works or system or franchise, or any part thereof with any other person, corporation or public utility, without first having secured from the Commissioners an order authorizing it to do so. Every such sale, assignment, lease, transfer, mortgage, disposition, encumbrance, merger or consolidation made, other than in accordance with the order of the Commissioners authorizing the same, shall be void.

Sec. 22. No public utility shall, directly or indirectly acquire the stock or business of any other corporation incorporated for or engaged in the same or similar business or proposing to operate or operating under a franchise from the same or any other authority unless authorized to do so by the Commissioners. Every such transaction made, other than in accordance with the order of the Commissioners authorizing the same shall be void.

Sec. 23. Nothing in this Act shall authorize the Commis-

sioners to make any order affecting rates, tolls or charges, contracts, or services rendered or the safety, adequacy, sufficiency of facilities, or the rules or regulations of any public utility owned and operated by the State, city, county, township, town or village or any other political subdivision of the State, or any public utility that is not operated for profit, but all other provisions herein shall apply to such utilities.

Provided, however, that any and all telephone and telegraph utilities so owned or operated shall be subject to the jurisdiction of the Commissioners and to the provisions contained in Sections 7 and 8 of this Act.

Sec. 24. All hearings, investigations and proceedings shall be public and shall be governed by this Act and by the rules of practice and procedure to be adopted by the Commissioners and in the conduct thereof the technical rules of evidence shall not be applied. No informality in any hearing, investigation or proceeding or in the manner of taking testimony, shall invalidate any order, decision, rule or regulation made, approved or confirmed by the Commissioners.

The Commissioners shall have authority and power to employ any and all rate experts, engineers, accountants and any and all other experts, help and assistance, and fix the compensation and the bond of all such employees, provided, that the same shall not exceed the amount appropriated for the purpose of carrying out the provisions of this Act.

Sec. 25. The Commissioners and each Commissioner shall have power to administer oaths, certify to all official acts, and to issue subpoenas for the attendance of witnesses and the production of papers, waybills, books, accounts, documents and testimony in any inquiry, investigation, hearing or proceeding in any part of the State. Each witness who shall appear, by order of the Commissioners or a Commissioner, shall receive for his attendance the same fees and mileage allowed by law to a witness in civil cases. All subpoenas issued by the Commissioners shall extend to all parts of the State and shall be served in the manner provided for such service in courts of record.

Sec. 26. (a) Any court of record in and for the county in which any inquiry, investigation, hearing or proceeding may be held by the Commissioners or any Commissioner, shall have the power, upon petition therefor, to compel the attendance of witnesses, the giving of testimony and the production of papers, including waybills, books, accounts and documents as required by any subpoena issued by the Commissioners or any Commissioner.

(b) The Commissioners or any Commissioner or any party may in any investigation or hearing before the Commissioners, cause the deposition of witnesses residing within or without the State to be taken in the manner prescribed by law for like depositions in civil actions in the district courts of this State.

(c) No person shall be excused from testifying or giving evidence in any investigation or inquiry by or hearing before the Commissioners or any Commissioner, when ordered to do so, upon the ground that the testimony or evidence required of him may tend to incriminate him or subject him to penalty or forfeiture, but no person shall be prosecuted, punished or subjected to any penalty or forfeiture for or on account of any Act, transaction, matter or thing concerning which he shall, under oath, have testified to produced documentary evidence; provided, that no person so testifying shall be exempt from prosecution or punishment for any perjury committed by him in his testimony. Nothing herein contained shall be construed as in any manner giving to any public utility immunity of any kind.

Sec. 27. Copies of all official documents and orders filed or deposited according to law in the office of the Commissioners certified by a Commissioner or by the Secretary or assistant secretary under the official seal of the Commissioners to be true copies of the originals, shall be evidence in like manner as the originals.

Sec. 28. The Commissioners shall determine and fix all charges for furnishing copies, records, reports and evidence and in all proceedings by the Commissioners. All fees charged and collected under this section shall be paid into the State Treasurer to the credit of the fees appropriated for the use of the Commissioners.

Sec. 29. The Commissioners, each Commissioner and each officer and person duly authorized by the Commissioners shall have the right, at any and all times, to inspect the accounts, books, papers and documents of any public utility and the Commissioners and each Commissioner and any officer of the Commissioners or any employee authorized to administer oaths shall have power to examine, under oath, any officer, agent or employee of such public utility in relation to the business and affairs of said public utility.

Sec. 30. Complaint may be made by the Commissioners of its own motion or by any corporation or person, chamber of commerce, board of trade, or any civic, commercial, mercantile, traffic, agricultural or manufacturing association or organization or any body politic or municipal corporation, by petition or complaint in writing, setting forth any fact or thing done or omitted to be done by any public utility, including any rule, regulation or charge heretofore established or fixed by or for any public utility, in violation or claimed to be in violation of any provision of law or of any order or rule of the Commissioners. The Commissioners shall fix the time when and place where a hearing will be had upon the complaint and shall serve notice thereof upon the complainant and the utility affected thereby not less than ten days before the time set for such hearing, unless the Commissioners shall find that public necessity requires that such

hearing be held at an earlier date, provided, that no complaint shall be entertained by the Commissioners, except on its own motion, as to the reasonableness of any rates or charges, of any heat, gas, electrical, water or telephone utility, unless the same be signed by the mayor, council, commission or other legislative body of the county, city, town or village, if any, within which the alleged violation occurred, or not less than fifteen consumers or purchasers or prospective consumers or purchasers of such heat, gas, electrical, water or telephone service.

Sec. 31. At the time fixed for a hearing before the Commissioners or a Commissioner, or the time to which the same may have been continued, the complainant and the utility or person complained of, and such corporations or persons as the Commissioners may allow to intervene, shall be entitled to be heard and to introduce evidence. After the conclusion of the hearing, the Commissioners shall make and file their order containing their decision. A copy of such order, certified under the seal of the Commissioners, shall be served upon the corporation or person complained of or his or its attorney by registered mail. Said order shall become final twenty days after the service thereof.

Sec. 32. The Commissioners may, at any time, upon notice to the public utility affected and after opportunity to be heard as provided in the case of complaints, rescind, alter or amend any decision made by it. Any order rescinding, altering or amending a prior order or decision shall, when served upon the public utility affected, have the same effect as is herein provided for original orders or decisions.

Sec. 33. In all collateral actions or proceedings, the orders and decisions of the Commissioners which have become final shall be conclusive.

Sec. 34. Any party to any controversy heard by the Commissioners feeling aggrieved by the decision or by the entry of any final order of the Commissioners therein may appeal therefrom from the District Court in the district in which the hearings of the Commissioners were held in the matter, by serving notice in writing on all other parties to said controversy and on the Commissioners within thirty days after the rendering of said decision and entry of the final order therein by the Commissioners.

Sec. 35. On such appeal the lawfulness of the decision or final order shall be inquired into and determined on the record of the Commissioners as certified to by it. No new or additional evidence shall be taken on such appeal or introduced in evidence by any party to such hearing on appeal in the district court. Any appeal from any final order of the Commissioners shall not suspend or delay the execution or operation thereof pending the appeal and final determination thereof, but the court in which such appeal is pending may in its discretion suspend in whole or in part the operation of the Commissioners' order or decision.

(b) In case the order or decision of the Commissioners is

stayed or suspended, the order of the court shall not become effective until a suspending bond shall first have been executed and filed with and approved by the Commissioners (or approved on appeal by the district court), payable to the people of the State of North Dakota, and sufficient in amount and security to insure the prompt payment, by the party appealing, of all damages caused by the delay in the enforcement of the order or decision of the Commissioners, and of all the moneys which any person or corporation may be compelled to pay, pending the appeal, for transportation, transmission, product, commodity or service in excess of the charges fixed by the order or decision of the Commissioners, in case said order or decision is sustained. The district court, in case it stays or suspends the order or decision of the Commissioners in any matter affecting rates, fares, tolls rentals, charges or classifications, shall also by order direct the public utility affected to pay into court, from time to time, there to be compounded until the final decision of the case, or into some bank or trust company paying interest on deposits, under such conditions as the court may prescribe, all sums of money which it may collect from any corporation or person in excess of the sum which corporation or person would have been compelled to pay if the order or decision of the Commissioners had not been stayed or suspended. The Commissioners, any public utility or person or complainant may after the entry of judgment in the district court in any such action, prosecute an appeal to the Supreme Court of this State. Such appeal shall be prosecuted as appeals from the judgment of the district court in civil cases except as otherwise provided in this Act. The record and testimony and exhibits, certified to by the Commissioners and filed in the district court in any such action, together with a transcript of the proceedings in the district court shall constitute the record on appeal to the Supreme Court. The general laws relating to appeals to the Supreme Court shall, so far as applicable and not in conflict with the provisions of this Act, apply to appeals taken under the provisions of this Act.

Sec. 36. All actions and proceedings under this Act and all actions or proceedings to which the Commissioners or the State of North Dakota may be parties, and in which any question arises under this Act, or under or concerning any order or decision of the Commissioners, shall be preferred over all other civil causes and shall be heard and determined in preference to all other civil business, irrespective of position on the calendar. The same preference shall be granted upon application of the attorney of the Commissioners in any action or proceeding in which he may be allowed to intervene.

Sec. 37. The Commissioners, for the purpose of ascertaining the reasonableness and justice of the rates and charges of public utilities, or for any other purpose authorized by law, shall investigate and determine the value of the property of every public

utility used and useful for the service and convenience of the public, excluding therefrom the value of any franchise or right to own, operate or enjoy the same in excess of the amount (exclusive of any tax or annual charge) actually paid to any political subdivision of the State or County as a consideration for the grant of such franchise or right by reason of a monopoly or merger. The Commissioners shall prescribe the details of the inventory of the property of each public utility.

In ascertaining the value of the various kinds and classes of property of each public utility, the Commissioners shall have authority to ascertain and report, in such detail as it may deem necessary, as to each piece of property owned or used by such public utility to show separately the following facts:

(a) The original cost, if any, of each parcel of land owned and used by such public utility and a statement of the conditions of acquisition, whether by direct purchase, by donation, by exercising the power of eminent domain or otherwise.

(b) The value, as of a date certain, of each parcel of land owned and used by such public utility by comparison with the value of contiguous and neighboring parcels of land and land of similar character as to location and use.

(c) If there should be any additional value to such utility by reason of the ownership by it of one or more parcels of land, and it is used as a continuous right of way for transportation purposes, or for other purposes, such additional value shall be separately and specifically set forth for each parcel.

(d) The cost of new production, as of a date certain, of all physical property other than land, owned and used by such public utility showing the valuation of the separate item comprising such property, together with the unit basis of such valuation.

(e) Depreciation, if any, from the new reproductive cost, as of a date certain, of existing mechanical deterioration, of age, of obsolescence, of lack of utility or for any other cause, the percentage and amount of each class of depreciation, if any, to be specifically set forth in detail.

(f) The net value, as of a date certain, of all physical property other than land owned by such public utility, to be derived by deducting the sum of the amounts of depreciation from the sum of the new reproductive costs.

(g) The value of the property of a public utility company, as determined by the Commissioners, shall be such sum as represents, as nearly as can be ascertained, the money honestly and prudently invested in the property. In valuing the property on the basis of the cost to reproduce the same, unit prices of material and labor entering into construction shall be based on the average prices of a sufficient period of years to secure normal results. Equipment shall be valued on the average prices of a sufficient period of years to secure normal results, and there shall be deducted from the total amounts, as thus determined,

such sum as is properly chargeable to depreciation under the provisions of sub-division (e), Section 37. The Commissioner shall exclude from such valuation all unearned values or unearned increment.

Such investigation and report shall also show, whenever the Commissioners may deem necessary, the amounts and dates and rates of interest of all bonds outstanding against each utility, the property on which they are a lien, the amounts paid therefor and, in such detail as may be necessary the original capital stock and the moneys received by any such utility by reason of any issue of stock, bonds or other securities; the net and gross receipts of such utility; the method by which moneys were expended and the purpose of such payments. The Commissioners shall have the power to establish rules and regulations to be followed in making such investigation and valuation.

Sec. 38. The Commissioners, during the making of the valuation herein provided for and for the purpose thereof, shall thereafter in like manner keep itself informed through its experts and other assistants of all extensions and improvements or other changes in the conditions and value of the property of all public utilities and shall ascertain the value of such extensions, improvements and changes and shall from time to time, as may be required for the proper regulation of such utilities, revise and correct its valuation of such property. Such revaluation and correction shall be filed in the same manner as is provided for original reports.

Sec. 39. The Commissioners, whenever they shall have completed a valuation of the property of any public utility and before such valuation shall have become final, shall give notice by registered letter to such public utility. If, within thirty days after such notice, no protest shall have been filed with the Commissioners, then said valuation shall become final. If notice of protest shall have been filed, however, by any such public utility, the Commissioners shall fix the time of hearing the same and shall consider at such hearing any matter material thereto presented by such public utility in support of its protest. If, after the hearing of any protest (if any valuation was fixed), the Commissioners shall be of the opinion that its inventory is incomplete or incorrect or that its valuation is incorrect, it shall make such changes as may be necessary and shall issue an order making such corrected valuation final. The final valuation by the Commissioners and all classifications made for the ascertainment of such valuations shall be public and shall be prima facie evidence relative to the value of the property.

Sec. 40. For the purpose of ascertaining the reasonableness and justice of the rates and charges of public utilities or for any other purpose authorized by law, the Commissioners may cause a hearing or hearings to be held at such time or times and place or places as the Commissioners may designate to determine the

value of the property of public utilities actually used or useful for the convenience of the public, excluding therefrom the value of any franchise or right, to own, operate or enjoy the same in excess of the amount (exclusive of any tax or annual charge) actually paid to any political subdivision of the State or county as a consideration of such franchise or right; and exclusive of any value to the right by reason of a monopoly or merger.

Sec. 41. Before any hearing is had, the Commissioners shall give the public utility affected thereby at least thirty days' written notice, specifying the time and place of said hearing. This provision shall not prevent the Commissioners from making any preliminary examination or investigation into the matters herein referred to or from inquiring into such matters in any other investigation or hearing.

Sec. 42. The public utilities affected shall be entitled to be heard and to introduce evidence at such hearing or hearings. The Commissioners are empowered to resort to any other source of information available. The evidence introduced at such hearing shall be reduced to writing and certified under the seal of the Commissioners. The Commissioners shall make and file their findings of fact in writing upon all matters concerning which evidence shall have been introduced before it which, in its judgment, have a bearing on the value of the property of the public utility. Such findings shall be subject to review by the Supreme Court of this State in the same manner and within the same time as other orders and decisions of the Commissioners.

Sec. 43. The findings of the Commissioners, as made and filed, when properly certified by the Commissioners, shall be admissible as evidence in any proceeding or hearing before the Commissioners or any court in which the Commissioners, the State or any officer, department or institution thereof or any county, city, municipality or other body politic and the public utility affected thereby may be interested, whether arising under the provisions of this Act or otherwise, and such findings, when so introduced, shall be conclusive evidence of the facts therein stated as of the date therein stated under conditions then existing and such facts can only be controverted by showing a subsequent change in conditions bearing upon the facts therein determined. The Commissioners may, from time to time, cause further hearings and investigations to be had for the purpose of making re-valuations or ascertaining the value of any betterments, improvements, additions or extensions made by any public utility subsequent to any prior hearing or investigation and may examine into all matters which may change, modify or affect any finding of fact previously made and may at such time make findings of fact supplementary to those theretofore made. Such hearings shall be had upon the same notice and be conducted in the same manner and the findings so made shall have the same force and

effect as is provided herein for such original notice, hearing, and finding, provided that such findings made at such supplemental hearings or investigations shall be considered in connection with and as a part of all original findings except insofar as such supplemental findings shall change or modify the findings made at the original hearing or investigation.

Sec. 44. When complaint has been made to the Commissioners concerning any rate, fare, toll, rental or charge for any product or commodity furnished or service performed by any public utility and the Commissioners have found after investigation that the public utility has charged an excessive or discriminatory amount for such product, commodity or service, in excess of the schedules, rates and tariffs on file with the Commissioners, or has discriminated under said schedules against the complainant, the Commissioners may order that the public utility make due reparation to the complainant therefor, with interest from the date of collection; provided, no discrimination will result from such reparation.

Sec. 45. Upon the request of the Commissioners, it shall be the duty of the Attorney General or the States Attorney of the proper district or county to aid in any investigation, hearing or trial under the provisions of this Act, and to institute and prosecute actions or proceedings for the enforcement of the provisions of the constitution and statutes of this State affecting public utilities and for the punishment of all violations thereof.

Sec. 46. In case any public utility shall do, cause to be done or permit to be done, any act, matter or thing prohibited, forbidden or declared to be unlawful, or shall omit to do any act, matter or thing required to be done, either by the constitution, any law of this State or any order or decision of the Commissioners, such public utility shall be liable to the persons or corporations affected thereby for all loss, damages, or injury caused thereby or resulting therefrom, and if the court shall find that the act or omission was wilful, the court shall, in addition to the actual damages, award damages for the sake of example and by way of punishment. An action to recover for such loss, damage or injury may be brought in any court of competent jurisdiction by any corporation or person.

(b) No recovery as in this section provided shall in any manner affect a recovery by the State of the penalties in this Act provided or the exercise by the Commissioners of their power to punish for contempt.

Sec. 47. All penalties accruing under this Act shall be cumulative of each other, and a suit for the recovery of one penalty shall not be a bar to or affect the recovery of any other penalty or forfeiture or be a bar to any criminal prosecution against any public utility or any officer, director, agent or employee thereof, or any other corporation or person, or be a bar to the exercise by the Commissioners of its power to punish for contempt.

Sec. 48. (a) Any public utility which violates or fails to comply with any provision of the Constitution of this State or of this Act, or which fails, omits or neglects to obey, observe or comply with any order, decision, decree, rule, direction, demand or requirement or any part or provision thereof of the Commissioners, in a case in which the penalty has not hereinbefore been provided for such public utility, is subject to a penalty of not less than five hundred dollars nor more than two thousand dollars for each and every offense.

(b) Every violation of the provisions of this Act or of any order, decision, decree, rule, direction, demand or requirement of the Commissioners, or any part or portion thereof by any corporation or person is a separate and distinct offense, and in case of a continuing violation, each day's continuance thereof shall be and be deemed to be a separate and distinct offense.

(c) In construing and enforcing the provisions of this Act relating to penalties, the act, omission or failure of any officer, agent or employee of any public utility, acting within the scope of his official duties or employment, shall in every case be and be deemed to be the act, omission or failure of such public utility.

Sec. 49. Every officer, agent or employee of any public utility, who violates or fails to comply with, or who procures, aids or abets any violation by any public utility of any provisions of the Constitution of this State or of this Act, or who fails to obey, observe or comply with any order, decision, rule, direction, demand or requirement or any part or provision thereof, of the Commissioners, or who procures, aids or abets any public utility in its failure to obey, observe and comply with any such order, decision, rule, direction, demand, requirement or any part or provision thereof, in a case in which the penalty has not hereinbefore been provided for such officer, agent or employee, is guilty of a misdemeanor and is punishable by a fine not exceeding one thousand dollars or by imprisonment in a county jail not exceeding one year, or by both such fine and imprisonment.

Sec. 50. Every person who, either individually or acting as an officer, agent or employe of a corporation other than a public utility, violates any provision of this Act, or fails to observe, obey or comply with any order, decision, rule, direction, demand or requirement, or any part or portion thereof, of the Commissioners, or who procures, aids or abets any such public utility in its violation of this Act, or in its failure to obey, observe or comply with any such order, decision, rule, direction, demand or requirement, or any part or portion thereof, in a case in which a penalty has not hereinbefore been provided for such person, is guilty of a misdemeanor and is punishable by a fine not exceeding one thousand dollars, or by imprisonment in a county

jail not exceeding one year, or by both such fine and imprisonment.

Sec. 51. Neither this Act nor any provisions thereof, except when specifically so stated, shall apply or be construed to apply to commerce with foreign nations or commerce among the several states of this Union, except insofar as the same may be permitted under the provisions of the Constitution of the United States and the Acts of Congress.

Sec. 52. The Commissioners may, by one or more of the Commissioners, prosecute any inquiry necessary or hearing, into any matter or question of fact pertaining to the business of any public utility, subject to the provisions of this Act.

Sec. 53. The provisions of this Act shall not impair or affect any Act of the Legislative Assembly establishing rates and charges for the transportation of freight or passengers by common carriers in this State and shall not authorize the Commissioners or any common carrier to increase any such rates or charges, except in the manner provided by an Act entitled "An Act relating to freight rates in North Dakota; the transportation of freight within the State; the classification of freight for the purpose of such transportation and the application of rates thereon; fixing the maximum rates and charges for transportation of freight intra-state; providing penalties and punishments for the violations of the provisions thereof and defining certain duties and powers of the Board of Railroad Commissioners which Act was adopted by the Sixteenth Legislative Assembly of the State of North Dakota. Nor shall this Act affect or impair the provisions of an Act adopted at the Sixteenth Legislative Assembly defining the powers and duties of the State Inspector of Grades, Weights and Measures.

Sec. 54. This Act is to be construed and interpreted with all other Statutes of this State, having for their purpose the regulation and control of public utilities and is intended to be supplemental to such statutes and Chapter 14 of the Compiled Laws of North Dakota for 1913, Chapters 202, 203 and 204 of the Laws of North Dakota for 1915; Chapters 185, 186, 187, 188, 191 and 192 of the Laws of North Dakota for 1917, except insofar as such statutes conflict with the provisions of this Act, shall apply to such utilities.

Sec. 55. Sections 584 and 4736 of the Compiled Laws of the State of North Dakota for 1913; Chapter 208 and Section 9 of Chapter 209, Laws of North Dakota for 1915; and all other Acts and parts of Acts in conflict with this Act are hereby repealed.

Sec. 56. The sum of Fifty Thousand Dollars (\$50,000.00) or as much thereof as shall be necessary, is hereby appropriated for the purpose of carrying out the provisions of this Act.

Sec. 57. An emergency is hereby declared to exist and does exist and this Act shall be in force and effect from and after its passage and approval.

Approved March 5, 1919.

RAILROADS

CHAPTER 193

(S. B. No. 36—Ingerson.)

RAILROADS—REQUIRED TO BUILD AND MAINTAIN FENCES, ETC.

An Act to Amend and Re-enact Section 4646 of the Compiled Laws of the State of North Dakota for the Year of 1913, as Amended by Chapter 202 of the Laws of North Dakota for the Year 1915, Requiring Railroads to Build and Maintain Fences, Cattle Guards, Swinging Gates, and Providing Penalties for Failure to Comply Therewith.

Be it Enacted by the Legislative Assembly of the State of North Dakota:

Sec. 1. AMENDMENT.) Section 4646 of the Compiled Laws of the State of North Dakota for the year 1913, as amended by Chapter 202 of the Laws of North Dakota for the year 1915, is hereby amended and re-enacted to read as follows:

Sec. 4646. RIGHT OF WAY TO BE FENCED.) Every person, company or corporation owning or operating any line of railroad or railway within the State, shall, within eighteen months from the taking effect of this Act, or within six months from the completion of any railway or railroad, construct, maintain and keep in repair on each side of its right of way a suitable fence. Such fences shall be constructed of not less than four barbed wires, securely fastened to good posts firmly set in the ground not more than twenty feet apart, the top wire to be not less than fifty-four inches above the ground, the bottom wire approximately sixteen inches above the ground, and two center wires equally distant between the two; or such fences shall be constructed of good posts firmly set in the ground not more than twenty feet apart with woven wire not less than forty-eight inches wide; provided, however, that every owner or lessee of any tract of land abutting upon or through which any railroad has or may be constructed, who shall have built a hog-tight fence upon said tract of land on all sides, excepting that abutting against the railroad right of way, may demand of the owners or operators of such railroad that it enclose its right of way adjacent to such tract of land with a hog-tight fence and maintain the same in good repair and condition so long as the owner of said tract shall continue to maintain a hog-tight fence around the other sides of such enclosure. A hog-tight fence for the purpose of