Public Law: Public Utilities

Melvin G. Dakin
In *City of Monroe v. Louisiana Public Service Commission*, the court concludes, after two rehearsings, that the city has retained the power to fix utility rates against an assertion by the Commission, joined in by the United Gas Corporation, that such power, under the Constitution and implementing statutes, was vested in the Commission.

The majority find the power to fix rates of a privately owned utility in the charter of the City of Monroe, which grants power "[t]o provide an adequate water supply; and to erect, purchase, maintain and operate waterworks and electric and gas light plant, and to regulate the same; and to prescribe rates at which water and gas and electric lights shall be supplied to the inhabitants." They find such power preserved to the city in Article VI, Section 7, of the Constitution, which, while providing for rate-making power in the Louisiana Public Service Commission, provides also that "nothing in this article shall affect the powers of supervision, regulation and control over any street railway, gas, electric light, heat, power, waterworks, or other local public utility, now vested in any town, city, or parish government, unless and until at an election to be held pursuant to laws to be hereafter passed by the Legislature, a majority of the qualified electors of such town, city, or parish, voting thereon, shall vote to surrender such powers." They find support in the court's precedents in cases involving New Orleans and Baton Rouge, where the constitutional reservation was interpreted to preserve rate-fixing power to municipalities.

The dissenters note that it is not so clear as to be unmistakable that the City of Monroe had anything more than rate-fixing

*Professor of Law, Louisiana State University.
1. 233 La. 478, 97 So.2d 56 (1957).
2. 233 La. 478, 531, 97 So.2d 56, 75 (1957). In *People's Gas & Fuel Co. v. Louisiana Public Service Commission*, 177 La. 722, 149 So. 435, 437 (1932), the court said of such a provision: "This power to establish rates for a plant owned by the municipality is quite different from the power to fix rates compulsorily for gas to be furnished by a privately owned corporation, and does not include the latter power."
3. *State v. New Orleans*, 151 La. 24, 91 So. 533 (1922); *Baton Rouge Waterworks Co. v. Louisiana Public Service Commission*, 156 La. 539, 100 So. 710 (1924). General rate-fixing powers over private utilities was found to be present in the charter of the City of New Orleans and reasonably implied rate-fixing power over water utilities was found to be present in the charter of the City of Baton Rouge at the time of the adoption of the Constitution of 1921.
power over municipally owned utilities at the time of the Constitution of 1921; they cite later cases than those cited by the majority holding that unless the power of rate-fixing is expressly given to municipalities, they do not have that power. Since the City of Monroe does not have clear rate-fixing power, dissenters conclude it cannot have been reserved to them under Article VI, Section 7, of the Constitution. They note also that the Constitution treats rate-fixing by the Louisiana Public Service Commission separate and apart from supervision and control and that reservation of the latter alone cannot reserve the rate-fixing power unless it has been specifically granted in charter or statute.

Either literal interpretation of the Monroe charter, of course, has plausibility; hence, the issue might have been resolved more clearly on the basis of the policy decision seemingly made when a constitution was adopted providing for state-wide rate-fixing powers in the Louisiana Public Service Commission; this step would seem to have been clearly a decision in favor of commission powers rather than municipal power generally and would seem a basis for resolving a close problem of statutory and constitutional interpretation such as is here involved in favor of, rather than against, commission rate-fixing authority.

STATE AND LOCAL TAXATION
(Exclusive of Income Tax)

Charles A. Reynard*

Twelve of the cases decided by the court at the past term raised issues in the field of taxation. Four of these involved the state's income tax and are treated in a separate section of this symposium. Three others posed constitutional issues and are

6. LA. CONST. art. VI, § 3 et seq.
7. Dissenting Justices rely particularly on the court's statement in Shreveport v. Southwestern Gas & Electric Co., 151 La. 804, 870, 92 So. 365, 367 (1922): "Indeed, this power compulsorily to impose rates being a high attribute of sovereignty, not particularly needed by municipalities for properly functioning, and not usually delegated to them, its delegation could not well be held to have resulted unless from such terms as were positive or absolutely unmistakable."

*Late Professor of Law, Louisiana State University.