

No. 161

AN ACT

HB 175

Amending the act of April 9, 1929 (P.L.177, No.175), entitled "An act providing for and reorganizing the conduct of the executive and administrative work of the Commonwealth by the Executive Department thereof and the administrative departments, boards, commissions, and officers thereof, including the boards of trustees of State Normal Schools, or Teachers Colleges; abolishing, creating, reorganizing or authorizing the reorganization of certain administrative departments, boards, and commissions; defining the powers and duties of the Governor and other executive and administrative officers, and of the several administrative departments, boards, commissions, and officers; fixing the salaries of the Governor, Lieutenant Governor, and certain other executive and administrative officers; providing for the appointment of certain administrative officers, and of all deputies and other assistants and employes in certain departments, boards, and commissions; and prescribing the manner in which the number and compensation of the deputies and all other assistants and employes of certain departments, boards and commissions shall be determined," providing for the office of Consumer Advocate in the Department of Justice for a limited period; and imposing powers and duties; and making an appropriation.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. The act of April 9, 1929 (P.L.177, No.175), known as "The Administrative Code of 1929," is amended by adding an article to read:

ARTICLE IX-A

Office of Consumer Advocate

Section 901-A. Definitions.—As used in this article:

"Commission" means the Pennsylvania Public Utility Commission.

"Consumer" means any person (i) who makes a direct use or is the ultimate recipient of a product or a service supplied by any person or public utility subject to the authority of the commission or (ii) who may be a direct user or ultimate recipient of a product or service supplied by any person or public utility subject to the authority of the commission and may be affected in any way by any action within the authority of the commission. The term "consumer" includes any "person," "corporation" or "municipal corporation" as defined in section 2 of the act of May 28, 1937 (P.L.1053, No.286), known as the "Public Utility Law."

"Public utility" means public utility as defined in section 2(17), act of May 28, 1937 (P.L.1053, No.286), known as the "Public Utility Law."

Section 902-A. Office of Consumer Advocate.—(a) There is hereby established within the Department of Justice an Office of Consumer Advocate to represent the interest of consumers before the Pennsylvania Public Utility Commission.

(b) The Office of Consumer Advocate shall be headed by a Consumer Advocate who shall be appointed by the Governor, by and with the advice

and consent of a majority of the members elected to the Senate. The Consumer Advocate shall be a person who by reason of training, experience and attainment is qualified to represent the interest of consumers. Compensation shall be set by the Executive Board.

(c) No individual who serves as a Consumer Advocate shall, while serving in such position, engage in any business, vocation, other employment, or have other interests, inconsistent with his official responsibilities, nor shall he seek or accept employment nor render beneficial services for compensation with any "person" or "corporation," as defined in section 2 of the act of May 28, 1937 (P.L.1053, No.286), known as the "Public Utility Law," subject to the authority of the commission during the tenure of the appointment and for a period of two years after the appointment is served or terminated.

(d) Any individual who is appointed to the position of Consumer Advocate shall not seek election nor accept appointment to any political office during the tenure as Consumer Advocate and for a period of two years after the appointment is served or terminated.

Section 903-A. Assistant Consumer Advocates; Employes.—The Consumer Advocate with the approval of the Attorney General shall appoint attorneys as assistant consumer advocates and such additional clerical, technical and professional staff as may be appropriate, and may contract for such additional services as shall be necessary for the performance of his function. The compensation of assistant consumer advocates and such clerical, technical and professional staff shall be set by the Executive Board. No assistant consumer advocate or other staff employe shall, while serving in such position, engage in any business, vocation, other employment, or have other interests, inconsistent with his official responsibilities.

Section 904-A. Powers and Duties of the Consumer Advocate.—(a) In addition to any other authority conferred upon him by this act, the Consumer Advocate is authorized, and it shall be his duty, in carrying out his responsibilities under this act, to represent the interest of consumers as a party, or otherwise participate for the purpose of representing an interest of consumers, before the commission in any matter properly before the commission, and before any court or agency, initiating proceedings if in his judgment such may be necessary, in connection with any matter involving regulation by the commission or the corresponding regulatory agency of the United States whether on appeal or otherwise initiated.

(b) The Consumer Advocate may exercise discretion in determining the interests of consumers which will be advocated in any particular proceeding and in determining whether or not to participate in or initiate any particular proceeding and, in so determining, shall consider the public interest, the resources available and the substantiality of the effect of the proceeding on the interest of consumers. The Consumer Advocate may refrain from intervening when in the judgment of the Consumer Advocate such is not necessary to represent adequately the interest of consumers.

(c) *In addition to any other authority conferred upon him by this act, the Consumer Advocate is authorized to represent an interest of consumers which is presented to him for his consideration upon petition in writing by a substantial number of persons, who make direct use or are ultimate recipients of a product or service supplied by a person, corporation, or municipal corporation subject to regulation by the commission. The Consumer Advocate shall notify the principal sponsors of any such petition within a reasonable time after receipt of any such petition of the action taken or intended to be taken by him with respect to the interest of consumers presented in such petition. If the Consumer Advocate declines or is unable to represent such interest, he shall notify such sponsors and shall state his reasons therefor.*

(d) *Any action brought by the Consumer Advocate before a court or an agency of this Commonwealth shall be brought in the name of the Consumer Advocate. The Consumer Advocate may name a consumer or group of consumers in whose name the action may be brought or may join with a consumer or group of consumers in bringing the action.*

(e) *At such time as the Consumer Advocate determines, in accordance with applicable time limitations, to initiate, intervene, or otherwise participate in any commission, agency, or court proceeding, he shall issue publicly a written statement, a copy of which he shall file in the proceeding in addition to any required entry of his appearance, stating concisely the specific interest of consumers to be protected.*

Section 905-A. Duties of the Commission.—In dealing with any proposed action which may substantially affect the interest of consumers, including but not limited to a proposed change of rates and the adoption of rules, regulations, guidelines, orders, standards or final policy decisions, the commission shall:

(1) *Notify the Consumer Advocate when notice of the proposed action is given to the public or at a time fixed by agreement between the Consumer Advocate and the commission in a manner to assure the Consumer Advocate reasonable notice and adequate time to determine whether to intervene in such matter.*

(2) *Consistent with its other statutory responsibilities, take such action with due consideration to the interest of consumers.*

Section 906-A. Savings Provision; Construction.—(a) Nothing contained herein shall in any way limit the right of any consumer to bring a proceeding before either the commission or a court.

(b) *Nothing contained herein shall be construed to impair the statutory authority or responsibility of the commission to regulate public utilities in the public interest.*

Section 907-A. Reports.—The Consumer Advocate shall annually transmit to the Governor and the Attorney General and to the General Assembly and shall make available to the public an annual report on the conduct of the Office of Consumer Advocate. The Consumer Advocate shall make recommendations as may from time to time be necessary or desirable to protect the interest of consumers.

Section 2. The sum of \$250,000 or as much thereof as may be necessary, is appropriated from the General Fund to the Office of the Consumer Advocate for the fiscal year 1976-77 for the purpose of establishing and operating an Office of Consumer Advocate.

Section 3. If any provision of this act is declared unconstitutional or the applicability thereof to any person or circumstance is held invalid, the constitutionality and effectiveness of the remainder of this act and the applicability thereof to any persons and circumstances shall not be affected thereby.

Section 4. This act shall take effect July 1, 1976 and shall expire June 30, 1979 unless the General Assembly extends its existence prior to April 1, 1979.

APPROVED—The 9th day of July, A. D. 1976.

MILTON J. SHAPP