

Railroad Commissioners—Authority to Change Classification Resulting in Changes of Freight Rates Without a Notice and Hearing.

Section 4377 of the Revised Codes of 1907 as amended by Chapter 176 of the Laws of 1921 construed to prohibit the Board of Railroad Commissioners from effecting a change in the classification resulting in an increase of freight rates without a notice and hearing as provided for in that section.

Board of Railroad Commissioners,
State Capitol Building,
Helena, Montana.

Gentlemen:

You have inquired whether you may put into effect changes in the western classification of freight without the necessity of first publishing notice and conducting a hearing under Chapter 176 of the Laws of 1921, your letter being as follows:

“The Western Classification, to which all western lines of railroads are a party, classifies freight of all descriptions. From time to time, changes and amendments are made, some involving increases, others decreases, the latter predominating, inasmuch as the object is to bring about uniformity with what is known as the Official and Southern Classifications. Generally speaking, Montana and other western states are being constantly benefited by these changes, although as stated above, there are at times indirect increases, and the question comes to us—Have we the right, without holding a public hearing, in view of Chapter 176, Session Laws of 1921, to authorize these various supplements applicable on Montana intrastate business? To do otherwise would mean endless hear-

ings on matters of little importance, while on the whole, our certification of the proposed changes would accrue to the advantage of the Montana shippers and receivers of freight.

"We are of the opinion that inasmuch as the few increases are more than offset by numerous decreases, we would be within our rights in accepting the change as a whole, without the necessity of holding a formal hearing.

"At your convenience, we would be pleased to have you look into this matter and advise us."

Chapter 176 of the Laws of 1921, amending Section 4377 of the Codes of 1907, omitting the formal parts, is as follows:

"Section 4377. The said Board shall have the power from time to time to change, alter, amend or abolish any classification or rate established by it when deemed necessary, and such amended, altered or new classifications or rates shall be put into effect in the same manner as original classifications or rates. The said Board shall make and establish reasonable rates for the transportation of passengers over each and all of the railroads subject hereto, and shall prescribe rates, tolls, and charges for all other services performed by any railroad subject hereto. The said Board shall not make or establish any increase or raise in the rate of charge for the transportation of freight by any railroad within the State of Montana, unless ten days notice be published in two daily papers, one of which shall be published in the city of Helena, setting forth in said notice that at a certain time and place the Board will proceed to make and establish such increase or raise in the rate of charge for the transportation of freight; and the Board shall at such time and place hold a public hearing thereon, at which time and place the public generally, or any person, firm or corporation, shall be given an opportunity to present such facts, information or statistics as shall be pertinent to the hearing then being held. The said Board must, within forty (40) days after the filing with such Board of a complaint by a shipper, or other person interested, proceed to investigate and determine the justness and reasonableness of any classification, rate, charge, toll, regulation or order made by said Board."

It is to be noted that it is required that "the said Board shall not make or establish any increase or raise in the rate of charge for the transportation of freight," etc., unless ten days' notice be published and a hearing had. There is no prohibition against the lowering of rates without such notice and hearing; and while it might be contended that the rule should work both ways, and that if rates may not be raised without notice and hearing they should not be lowered without compliance with this requirement, nevertheless the statute does not so provide. Doubtless the Legislature, in making the above provision, took into consideration the difference between the situation

of a railroad, with a department of experts trained in rate matters, and that of the average shipper, having no special knowledge of this difficult subject.

Section 4377, prior to its amendment in 1921, was construed by a former Attorney General to permit changes in rates without notice and hearing (6, Opinions of Attorney General, 262), and since the amendment deals only with increases, the question of decreases without notice and hearing is eliminated from the present inquiry.

In view of the express prohibition of the statute against any increase of rate without notice and hearing, it follows that such must be had if a "classification" resulting in a greater charge on a given commodity is an "increase or raise in the rate of charge for the transportation of freight."

Classification is the separation into groups of classes on some systematic basis, taking note of differences for the purpose of excluding from and of similarities for the purpose of including in, any given class.

The conclusion to be arrived at as to the authority of the Board to increase rates without notice depends upon the construction of the phrase above quoted, "the said board shall not make or establish any increase or raise in the rate of charge for the transportation of freight," etc. The peculiar wording of this phrase, and the fact that instead of merely the word "rate" being used additional and qualifying terms are used, lead to the necessity of inquiring the reason for the use of this language.

The distinction between rates and classifications is well understood and established in transportation circles and in the courts. It is well brought out in the case of *In Re Suspension of Western Classification No. 51*, 25 I. C. C. Reports, 442, where it was said:

"In asking this question it is assumed that the work of classification is to be confined to classification as such, entirely separated from the question of rates and revenues of carriers. These latter are vital, of course, and must be carefully considered, but not until after the classification has actually been worked out.

"Rates a Separate Issue.

"Classification is an art or a science in itself. Having completed a new classification along these or similar lines, each carrier can readjust its rates on the basis of that classification in such a manner as to preserve its existing revenues. This assumes what, in our judgment, is the correct method of procedure, that the uniform classification must be worked out without an attempt to affect revenues. Classification and rates and revenues should be kept entirely separate. There will doubtless be many coincidences in which the present rate applied to the new classification will bring about the exact transportation charge which results from the old rate applied to the old classification. In other cases the rate must be ad-

vanced or reduced, depending upon the change in the classification of the article in order to protect existing revenues. This is entirely without reference to the sufficiency or insufficiency of present revenues, which is a distinct and very different question."

However, the establishment of classifications is only for the purpose of assisting and simplifying the fixing of rates, and while it is true that the classification of a given article does not in itself fix the rate for the transportation of the same, nevertheless a change in classification from a lower class to a higher necessarily results, in fact, in a greater cost for transportation of the given article, and would I believe come within the language "increase of rate of charge for the transportation of freight."

It is to be observed that in the first part of Section 4377, supra, the term "classification" was used by the Legislature in the phrase "classification or rate." The disjunctive being used, it follows that the Legislature was regarding the terms separately and used them advisedly; and when it, in the same enactment, used the expression "rate of charge for the transportation of freight," the omission of the word "classification" and the use of the above phrase, instead of simply the word "rate," lead to the conclusion that the Legislature had a certain object to attain by the use of this language, which object must have been to include something more than is included in the meaning of the word, "rate." If such was the case, the expression quoted must mean the amount of charge for transportation, whether the same be fixed by changes in classification or changes in rate.

I am, therefore, of the opinion that in using the language above quoted the Legislature intended to include changes in the rate of charge for the transportation of any given article by whatever means such rate of charge might be increased, whether by changes in classification or by increase of rates direct, and that the Board may not make or establish any change in classification resulting in an increased charge for transportation without notice and hearing as provided in Section 4377.

Very truly yours,

WELLINGTON D. RANKIN,

Attorney General.