

Interstate Commerce—Railroads—Rates—Troops.

Section 1402, Revised Codes of Montana, 1921, providing for the transportation of troops at the rate of not to exceed one cent per mile may be enforced in the absence of any adverse order of the Interstate Commerce Commission.

Col. Charles L. Sheridan,
Adjutant General,
Helena, Montana.

My dear Colonel Sheridan:

You have requested an opinion of this office as to whether Section 1402, R. C. M. 1921, providing for the transportation of troops at a rate of not to exceed 1c per mile, is still effective.

Your inquiry involves a consideration of the effect of the Interstate Commerce Act upon state statutes regulating railroad rates.

Section 3 of the Interstate Commerce Act makes it unlawful for any carrier "to make or give any undue or unreasonable preference or advantage to any particular person or locality, or to subject any particular person or locality to any undue or unreasonable prejudice or disadvantage in any respect whatever."

Section 22 of the same Act provides:

"That nothing in this Act shall prevent the carriage, storage or handling of property free or at reduced rates for the United States, state, or municipal governments."

In the two cases of *Nashville, Chattanooga & St. Louis Railway v. The State of Tennessee*, and *United States v. The State of Tennessee*, being cases Nos. 396 and 429, 262 U. S. 320, the Supreme Court of the United States construed the foregoing sections together, and held that Section 22, *supra*, must be read in connection with the rest of the Act. The Court decided that a lower rate on carload lots of stone and gravel consigned to state authorities constituted an illegal discrimination against interstate commerce and an undue prejudice to persons and localities engaged in such commerce. In explanation of the conclusion reached, the Court used the following language, which I quote for the reason that, in my opinion, it lays down the rule by which your inquiry must be determined:

"Every rate which gives preference or advantage to certain persons, commodities, localities or traffic is discriminatory. For such preference prevents absolute equality of treatment among all shippers or all travelers. But discrimination is not necessarily unlawful. The Act to Regulate Commerce prohibits (by Sections 2 and 3) only that discrimination which is unreasonable, undue, or unjust. (Citing cases.) Whether a preference or discrimination is undue, unreasonable or unjust is ordinarily left to the Commission for decision; and

the determination is to be made, as a question of fact, on the matters proved in the particular case. (Citing case.) The Commission may conclude that the preference given is not unreasonable, undue or unjust, since it does not, in fact, result in any prejudice or disadvantage to any other person, locality, commodity or class of traffic. On the other hand, preferential treatment of a class, ordinarily harmless, may become undue, because, under the special circumstances, it results in prejudice, or disadvantage to some other person, commodity, or locality, or to interstate commerce."

Applying the principle above laid down, it is, I believe, clear that if the movement of troops in intrastate commerce in Montana is sufficient in volume so that a reduced rate would cause any prejudice or disadvantage to any other commodity or class of traffic, or to interstate commerce, then the rate is discriminatory and the Montana statute would have to yield to an order of the Interstate Commerce Commission authorizing a higher rate.

This is, however, a question of fact which would have to be determined by the Interstate Commerce Commission upon an investigation of the extent and cost of the movement of troops within the State of Montana.

It is, therefore, my opinion that the Railroad Commission of this state can, by appropriate order, safely enforce Section 1402, R. C. M. 1921, in the absence of any adverse order of the Interstate Commerce Commission.

Very truly yours,

WELLINGTON D. RANKIN,
Attorney General.