

Opinion No. 104.**State Board of Railroad Commissioners
—Rate Schedule Decreases.**

HELD: The State Board of Railroad commissioners may grant carriers permission to decrease their rates when such decreases are requested by the carriers, and notice and hearing are not required.

December 6, 1954.

State Board of Railroad Commissioners
State Capitol Building
Helena, Montana

Gentlemen:

You have requested my opinion relative to the interpretation of Sections 72-117 and 72-118, R.C.M., 1947. You

state that the policy of the Board in the past has been to allow carriers voluntary reduction of rates without compelling notice and hearing. You ask whether that method of procedure is correct and in accordance with the statutory provisions above mentioned.

Section 72-117, R.C.M., 1947, provides as follows:

"Making Schedules Effective. When any schedules shall have been made or revised, it shall be the duty of said commissioners to cause notice thereof to be published for two successive weeks in some newspaper published in the city of Helena, which notice shall state the date of taking effect of said schedule, and said schedule shall take effect at the time so stated in such notice, and a printed notice of such schedule shall be conspicuously posted by such common carrier in each freight office and passenger depot upon its lines; provided, that before finally fixing and deciding what the original maximum rates and classifications shall be, it shall be the duty of the railroad commissioners to publish ten days' notice in two daily papers, one of which is published in the city of Helena, setting forth in such notice that at a certain time and place they will proceed to fix and determine such maximum rates and classifications; and they shall at such time and place, and as soon as practicable, afford to any person, firm, corporation, or common carrier who may desire it, an opportunity to make an explanation or showing, or to furnish information to said railroad commissioners on the subject of determining and fixing such maximum rates and classifications.

"All classifications and rates fixed and established by the board shall become effective twenty days after the railroad affected thereby shall have received certified copies thereof from said board. Each railroad affected by the provisions of this Act shall display, in a conspicuous place in each of its stations in this state, a schedule printed in plain, legible, English type, showing all classifications and rates fixed and established by the said board. Any failure or refusal on the part of any railroad to comply with the provisions of this

section shall subject such railroad to a penalty of not less than one hundred dollars nor more than five hundred dollars for each day that such failure or neglect is continued."

This statute must be read in connection with the preceding statute, Section 72-116, R.C.M., 1947, which makes it mandatory for the Board of Railroad Commissioners to establish rates for the transportation of property within the State of Montana. Both sections referred to were in the original Act of 1907 (Sec. 13, Chapter 37) which created the board and conferred upon it the various powers and duties it now has. In the first sentence of Section 72-117, *supra*, it is stated that when the original rates and schedules shall have been made by the Board, or revised to a level where they then become the original maximum rate, certain notices of them will be supplied the public in a prescribed manner. It appears that the legislature intended by these two sections to (1) direct the Board to establish original maximum rates, and (2) set forth the manner in which the public was to be notified of the actions taken. When the Board did set up the rates and schedules and complied with the provisions regarding notification to the public, the purposes for these two sections had been served.

In Section 72-118, *supra*, the legislature recognized that there would be a need for revisions and modifications in the established original maximum rates and charges arrived at. The legislature intended, by Section 72-118, to vest power in the Board to make, from time to time, such changes in rates as were deemed necessary. It was legislative recognition that our system of economy is a dynamic one, and that to bind both shippers and carriers with the original maximum rates might eventually work an injustice to one or both.

Section 72-118, *supra*, reads as follows:

"Power To Alter Classification Or Rate—Hearing Complaint. 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 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."

A question arises as to what the legislature intended at the outset of this section as to change, alteration, modification, or abolishment of a classification or rate, and the placing of them into effect as per the original maximum rates procedure set forth.

It is my opinion that the entire statute must be read, and not just a segment therefrom. It has been shown time and again that a false impression is often the result of removing a line or a paragraph from the context, and only the true intention of the legislature can be ascertained in a careful study of the entity.

The prescribing of notice and hearing as set forth above has only to do with increases in the rates with the primary purpose of protecting the shipper. There is nothing contained therein regarding decreases requested by the carriers, and it is obvious the shipper would welcome the decrease.

It is therefore my opinion that the Board may grant carriers permission to decrease their rates when such decreases are requested by the carriers, and that notice and hearing are not required. That said notice and hearing are required only for increases pertaining to the establishment of maximum rates.