

**Railway Commission Bill, Power of Commission to Fix Rates.**

Under Section 5, Article XV, of the Constitution of Montana the Legislature has power to regulate and control by law the rates or charges for the transportation of passengers and freight by common carriers from one point to another in the State. Having such power, the legislature can delegate the same to a railway commission and may authorize them to hear evidence and determine and fix rates to be charged for the transportation of passengers and freight between points in the State, and to provide that such rates so fixed by the commission shall be *prima facie* correct and reasonable until tested in the courts of the State, and otherwise declared incorrect and unreasonable.

February 8. 1905.

Hon. B. F. White, State Senator, Helena, Montana.

Dear Sir:—In compliance with your request for an opinion from this office as to the power of the legislature to delegate authority to the Railway Commission to determine and fix reasonable rates for the transportation of passengers and freight from one point to another within the State, I respectfully submit the following:

Section 5 of Article 15 of the Constitution of the State of Montana, reads, in part, as follows: "and the legislative assembly shall have the power to regulate and control by law the rates of charges for the transportation of passengers and freight by such companies as common carriers from one point to another in the state."

This provision of the Constitution unquestionably gives the legislature authority to regulate and control such rates, and under the same the legislature could, without doubt, pass a law fixing the maximum rates to be charged for the transportation of passengers and freight within the State and the same would be constitutional, provided such rates were reasonable. Having such authority, there is no question but what the legislature can by law delegate the same to an agency or commission, who may hear evidence and thereupon determine and fix such rates to be charged for the transportation of passengers and freight, and the rates so fixed by such agency or commission would be prima facie correct and reasonable until tested in the courts of the State and otherwise declared incorrect and unreasonable.

The State of Mississippi has passed a railway commission law, the same being set out at length on pages 308 to 314 of volume 116, United States Reports. Under this law they delegated to the railway commission authority to take evidence upon and to determine and fix rates for the transportation of passengers and freight within such State, and declared that the rates so fixed should be prima facie correct and to prevail until tested and otherwise determined in the courts.

The supreme court of Mississippi, in the case of *Stone v. N. J. & C. R. R. Co.*, 62 Miss. 653, in an opinion considering the Mississippi law, used the following language:

"The appellee (N. J. and C. R. R. Co.) is not denied the right to fix, regulate, and receive just and proper charges for transportation. That right is secured to it by its charter, and is not infringed by the act creating a railroad commission. It remains unimpaired. All that has been attempted is to secure conformity to what is reasonable and proper. The creation of a public agency to stand between the railroad companies and those dealing with them, to see that the obligation of the former to be reasonable in their charges is duly observed, is not an infraction of any right. The final test of reasonableness of rates is not with the railroad commission, but, as before, with the government through its judiciary. Fixing rates by the commission is not final and conclusive against a railroad company. It is only prima facie correct and may be tested in the courts. If it is not, it may be assumed that it will not. Of that none should complain. The concession made in the bill of the appellee of the

right of judicial control to prevent extortion and unjust discrimination is an admission of the right of governmental control; and if the State can control or supervise at all, it may select the agency through which to exert its right."

The above opinion of the supreme court of Mississippi was approved by the Supreme Court of the United States. in the case of Stone v. Farmers Loan & Trust Company, volume 116 U. S. p. 336.

I am satisfied that under the authority given to the legislature by Section 5 of Article XV of our State Constitution, the legislature can create a railway commission, as an agent in carrying out such authority, and can authorize such railway commission to determine and fix reasonable rates for the transportation of passengers and freight between points within the State, and can further provide that such rates shall be prima facie correct until tested by the proper courts.

Yours very truly,

ALBERT J. GALEN,

Attorney General.