

**Railway Companies, Right to Charge Fares in Violation of Law. Rules and Regulations of Railway Company for the Conduct of Its Business.**

1. The rule of a railway company requiring excess fare in excess of that allowed by Chapter 87 of the Laws of 1905, is in violation of that law and subjects it to the penalty thereof.

2. A railway company can make rules and regulations for the operation of its road when same are reasonable and are not in violation of law.

Helena, Montana, Nov. 8, 1907.

The Railroad Commission of Montana,

Helena, Montana.

Gentlemen:—

Your letter of the 7th inst. received, asking for advice as to whether or not a railroad company, (to-wit, the Northern Pacific) operating wholly or in part within the State of Montana can:

(1) As a railroad regulation, or in any other way, collect from passengers on its trains who tender cash fare for their passage, the sum of ten cents on each fare of two dollars and under, and twenty-five cents on each fare over that amount, which penalty sum is refunded at any ticket office of the company upon the presentation of the conductor's slip showing that it has been paid?

(2) Can a railroad company refuse to pay this amount if the claim is not presented within thirty days?

(1) The Constitution of Montana in Paragraph 5 of Art. XV. has given the legislature power over railroads in the control of their rates. The legislature in the exercise of that power has limited the charge on railroads for passengers to three cents per mile, and that no excess greater than ten cents is to be charged or collected from any passenger with promise of refund of the same. Hence, it follows that the charge of ten cents is exclusive, and that a demand for any greater sum would be a violation of the law referred to.

Session Laws 1905, pages 181-182.

The legislature has further within its powers established a railroad commission, giving it power to establish rules and regulations dealing with the passenger and freight trains of the railway companies operating wholly or in part within the State of Montana.

Session Laws 1907, pages 68-86, inclusive.

That commission has passed a rule or regulation whereby no railroad company can issue a tariff or change one covering either passenger or freight rates without its permission. Hence, a proposed change, if without their authorization, would be a violation of that board's rules and regulations, as well as the law referred to.

(2) The rule of the railroad companies requiring rebate checks or slips to be presented to the company within thirty days has been in effect for some time and was adopted by your body at its meeting, fixing the rates, held on July 25, 1907. Hence, it can only be changed by you in the manner required by law or your practice. Railways may make such regulations and rules for the management of their business as are not in violation of the law and are reasonable.

Sec. 894, Par. 10 and 11, Civ. Code, Mont.

See also 6 Cyc. 545, and cases noted.

There is nothing in the law which forbids a railway company requiring claims of this kind to be presented within a reasonable time and requiring it as a reasonable regulation.

1 Elliotton Railroads, Sec. 200.

4 Elliott on Railroads, Sec. 603, and cases cited.

6 Cyc. 548, and cases cited.

In my opinion the rule requiring such claims to be presented within thirty days is a reasonable regulation; provided, that railroad company furnishes ample opportunity for the holder of any rebate slip or check to present the same for payment.

Very truly yours,

ALBERT J. GALEN,

Attorney General.