

**Railroads, Free Transportation By. Transportation, free by
Railroads. Transportation, Free for Certain Classes of People.**

A railroad company may carry free or at reduced rates the property of destitute families, who on account of misfortune are unable to compete with others of their class.

March 8th, 1911.

Railroad Commission of Montana,
Helena, Montana.

Gentlemen:

I am in receipt of your letter of March 7th, wherein you state that

the officers of the G. N. Railway Co., are desirous of transporting, free of charge between certain points in the state of Montana, grain to be used as seed by certain destitute families along the line of their road whose crops the past season were a total failure and who have not the money to pay the regular tariff for the transportation of seed grain. The question is, would such free transportation be in violation of law.

In the recent case of *John vs. N. P. Ry. Co.*, 111 Pac. 632, the supreme court construes Sec. 7, Art. XV, of the State Constitution and also Sec. 4337 of the Revised Codes, which are both directed against discrimination by railroads in charges for the transportation of persons or property within this state, and in the main case the court holds that while different classes may be differently treated in the matter of transportation charges that such classification cannot be made by the railroad company arbitrarily.

However, on motion for a re-hearing the court rendered a supplemental opinion, 111 Pac. 646, wherein it is held that a railroad company.

"May lawfully issue free transportation or sell tickets at reduced rates to the following classes of persons." and names four classes. The court in this supplemental opinion further uses this language:

"No reason exists why children who by reason of * * * * * or other misfortune are unable to compete with mankind in general should not be placed in a class by themselves and carried free or at reduced rates."

While the case which I have considered relates entirely to the transportation of persons, undoubtedly the same rule applies to the transportation of the property of the persons designated and if under the state of facts certain persons along the line of the G. N. Ry., have become destitute through the misfortune of drouth causing the entire failure of crops, they might properly by authorized tariff issued by the railway company and filed with your board, be designated as of a particular class and their property be carried free or at reduced rates. The railroad company having authority to designate the class must in my judgment have authority to determine what persons come properly within the designated class.

You are therefore advised that in my opinion the railroad company may publish the proposed tariff and you have authority to certify it.

Yours very truly,

ALBERT J. GALEN,
Attorney General.