

Railroads, Right to Make Classification. Freight, Transportation Of to Section Houses Along Line of Railroad. Transportation, of Freight at Free or Reduced Rates.

A railroad company may make a classification of keepers of section houses along its line and transport to such section houses freight free of charge, or at reduced rates.

If no classification is made the railroad company would have no right to transport goods free of charge or at reduced rates in such cases.

Helena, Mont., July 25, 1911.

Railroad Commission of Montana,
Helena, Montana.

Gentlemen:

I am in receipt of your letter of July 11th requesting me to give you my official opinion upon the following question:

May a railroad company lawfully transport free of charge

supplies such as groceries, meat, ice, etc., to section houses along its line, said section houses being occupied and operated by the section foreman who boards the men? The railway company owns the building but the section house keeper purchases the supplies and runs the boarding house on his own account.

In reply I will say that Sec. 7, Art. XV, of the Constitution of the state of Montana, provides:

"All individuals, associations, and corporations shall have equal rights to have persons or property transported on and over any railroad, transportation or express route in this state. No discrimination in charges or facilities for transportation of freight or passengers of the same class shall be made by any railroad, or transportation, or express company, between persons or places within this state * * * * *

In the case of John vs. N. P. R. R. Co., reported in 42 Mont. 18; 111 Pac. 632, the supreme court of our state construed this section of our constitution and held that the railroads may in the absence of classification by the legislature make a reasonable classification for transportation of passengers or freight. As to what is a reasonable classification in each particular instance appears to be a mixed question of law and fact. In the John case the supreme court held that a railroad company may lawfully issue free transportation to the employees of the issuing road and to members of their families, doctors, nurses, and helpers being carried to wrecks; to soldiers and sailors going to or coming from the institution for their keeping; to ministers of religion and persons engaged in charitable and religious work; and to members and employees of the railroad commission when traveling on official business.

It is my opinion that a railway company might make a classification of keepers of section houses along its line and transport to such section houses freight free of charge or at a reduced rate. However, if no classification of this character was made the railway company could not, under the decision in the John case, transport free or at reduced rates property to keepers of section houses along its line, unless such transportation at free or reduced rates was a part of the contract between the railway company and the section house keeper for boarding the employees of the railway company. It is my opinion that the railway company could make a classification so that they might transport free of charge or at reduced rates supplies to section houses along its line as it is not the contemplation of the law to require a person or company to pay freight to itself and if the railway company is required to charge the section house keeper for transporting his supplies to him the section house keeper must then in turn charge the railway company a higher rate for boarding its men.

You are therefore advised that unless the railroad company has made a classification of the character above referred to or unless the transportation of the goods at free or reduced rates to the section houses keeper is a part of his contract with the railway company for boarding the men, under the decision in the John case, the railway company

would have no right to transport such goods free of charge or at reduced rates.

Yours very truly,
ALBERT J. GALEN,
Attorney General.