

**Railroad, Right to Absorb Switching Charges. Municipal Corporation, Not Entitled to Preference in Freight Rates. Freight Rates, Same to Municipal Corporations as to Individuals.**

The provisions of Section 5335, Revised Codes, providing that a common carrier must always give a preference in time and may give a preference in price to the United States or to this state do not apply to municipal corporations, and a railroad cannot therefore absorb switching charges on freight consigned to a municipal corporation, or extend such corporation any greater rights or privileges in the transportation of freight than it extends the general public.

August 25, 1911.

Railroad Commission of Montana,  
Helena, Montana.

Gentlemen:

I am in receipt of your letter of the 18th inst., wherein you state that the C. M. & P. S. Ry. Co., has made application to you to absorb a portion of the Northern Pacific Company's switching charge on coal consigned to the Miles City Lighting Plant, which is owned by the

city. You request my opinion as to whether or not this may be done; and, if so, would the railway company be required to file the tariff providing for such absorption with the commission.

In reply I will say that Section 22, Chap. 37, Session Laws 1907, reads as follows:

"If any railroad subject hereto, directly or indirectly or by any special rate, rebate, drawback, or other device, shall charge, demand or receive from any person, firm or corporation, a greater or less compensation for any service rendered, or to be rendered, in the transportation of property subject to the provisions of this act, than that fixed by the said board of railroad commissioners for such service, such railroad shall be deemed guilty of extortion, and shall forfeit and pay to the state of Montana not less than five hundred, nor more than two thousand dollars for each offense; provided, that nothing herein shall be so construed as to prevent any railroad or railroad corporation from giving excursion rates to or from any point within or without the state."

It will be noticed that this section prohibits any railroad from giving to any person, firm or corporation a greater or less rate than fixed by the commission for the general public.

Section 3805, Revised Codes, defines a corporation to be a creature of the law, having certain powers and duties of a natural person. By the provisions of Sec. 3806, corporations are declared to be either public or private. Public corporations are formed or organized for the government of a portion of the state; all other corporations are private.

Section 22, above quoted, uses the word "corporation," and does not distinguish between public and private corporations, and therefore the word corporation used in the section includes both public and private.

Section 5335, Revised Codes, provides that a common carrier must always give a preference in time, and may give a preference in price, to the United States and to this state.

This is the only section of our codes which in anywise limits Section 22 of Chap. 37, Session Laws 1907, in so far as this question is concerned, and that section applies only to the "United States" and to this "State." The word "State" cannot, in my opinion, be given a construction broad enough to include a municipal corporation, and you are therefore advised that a railroad cannot absorb the switching charges on freight consigned to a municipal corporation, or extend to such corporation any greater rights or privileges in the transportation of freight than it extends to the general public.

Yours very truly,

ALBERT J. GALEN,  
Attorney General.