

**..Constitutional Law, Railroad Transportation. Railroad Rates, Under Constitution. Rates, Charged by Railroad Under Constitution.**

Section 7, Article XV, of the Constitution of the State of Montana extends only to the carriage of freight or passengers being transported in the same direction.

January 17th, 1911.

Railroad Commission of Montana,  
Helena, Montana.

Gentlemen:

I am in receipt of your letter of January 7th, wherein you ask my interpretation of Section 7, Article XV, of the Constitution of the state of Montana, and particularly as to whether the prohibition contained therein, against a greater charge or toll for transportation of freight or passengers to any place or station upon its route or line than it charges for the transportation of the same class of freight or passengers to any more distant place or station upon its route or line within this state.

You are advised that in my opinion the prohibition contained in the section of the constitution above referred to extends only to the carriage of freight or passengers being transported in the same direction. In other words, I believe this section of the constitution contemplates

that the rate for transportation between two fixed points shall not be less than the rate from one of these points to an intermediate station. Interpreting the plain language of the constitution it would seem that the prohibition is based on the theory of a mileage basis for rate making. I do not believe, however, that the courts would now sustain that theory in view of the widely different conditions existing on different parts of the same line of railroad which diversity of condition is brought about in Montana by the cost of mountain operation in some parts of the state and of prairie operation in other parts of the state, and also by the density of the population in some sections and the sparsely settled condition of others, the huge bulk of traffic that is offered the railroads for transportation at some points and the meager shipments from others. If we should interpret the constitution to mean that the railroad could not charge a greater rate for a shorter than for a longer distance, the rate making departments of the railroads and of the railroad commission would have to eliminate every feature of tariff making except distance. I do not believe that the court would so construe the section under consideration that this condition would result. Stimson in his work "Federal and State Constitutions of the United States" seems to read into the provisions the words, "in the same direction." Sec. 523, pages 325-326.

You state that it has been generally understood that the long and short haul provisions contained in this section of the constitution applies to transportation on the route and in the same direction.

You are advised that this conforms to my interpretation of the constitutional provisions.

Yours very truly,

ALBERT J. GALEN,

Attorney General.