

Transportation of Property, at Free or Reduced Rates. Free or Reduced Rates, in Transportation of Property. Municipal Corporations, Transporting Property for at Free or Reduced Rates. Fairs, Transporting Property for at Free or Reduced Rates. Charitable Purposes, Transporting Property for at Free or Reduced Rates.

Railway companies cannot transfer property at free or reduced rates to a municipal corporation without extending the same privilege to all municipal corporations.

Property may be transported to public fairs for exhibition purposes at free or reduced rates so long as the tariff is open to the general public.

Railway companies may authorize a tariff and file the same with the board of railroad commissioners for the purpose of transporting at free or reduced rates property for charitable purposes.

April 5, 1912.

Railroad Commission of Montana,
Helena, Montana.
Gentlemen:

I am in receipt of your letter of March 26th, inclosing copy of letter signed by Mr. J. T. McGaughey, requesting my official opinion as to whether or not property may be transported by railway com-

panies at free or reduced rates to national, state, or municipal governments, or for fairs or expositions, or for charitable purposes, etc.

Sections 4385 and 4386, Revised Codes, prohibits any railroad from charging or receiving from any person, firm or corporation a greater or less compensation for any service in the transportation of property than that fixed by the board of railroad commissioners for such service.

Section 5334 prohibits a common carrier from giving preference in time, price or otherwise to one person over another.

Section 5335 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. Chapter 108, Laws of 1911, provides that nothing in the laws of Montana shall be construed so as to prevent the carrying of property at free or reduced rates for the government of the United States, or the State of Montana, or for fish hatcheries, or angling associations, when such property is being used for the exclusive purpose of stocking with fish the waters of this state.

Section 7, Art. XV of the State Constitution, provides that 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; and that 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.

The foregoing are the only statutory or constitutional provisions in our laws affecting the questions here involved.

It is plain from the above provisions of our law that railroad companies may carry at free or reduced rates property of the state, or the United States.

With reference to the right of transportation companies to carry at free or reduced rates property for a municipal corporation, I will say, that in an opinion addressed to you under date of August 25th, 1911, I held that a railway company cannot transport property at free or reduced rates to a municipal corporation without extending the same privilege to all municipal corporations, and I am fully convinced that my views expressed in that opinion are correct.

With reference to the right of a railway company to transport free or at reduced rates property to public fairs for exhibition purposes, I will say that I can see no legal objection to this. In the first place, it is not the fair that pays the freight but the individual owning the property and making the shipment for purposes of exhibition. It is apparent that such a tariff would be open to the entire public and there could therefore be no discrimination. In the second place, the exhibition of the property is for the benefit of the general public and not for the private gain of any particular individual, and therefore, would not come within the policy of the law which is designed to prevent discrimination between individuals of the same class.

With reference to the right of transportation companies to transport property at free or reduced rates for charitable purposes: In the case of *John v. Northern Pacific*, reported in 42 Mont. 18, the supreme

court on rehearing stated that "no reason exists why children, and persons, who by reason of physical defects, injury, or deformities, or other misfortune are unable to compete with mankind in general, should not be placed in classes by themselves and carried free or at reduced rates." It is true that the supreme court, by the language above quoted, had reference only to the transportation of persons, but no good reason seems to exist why the same principle of law should not apply to the property of such persons. If persons by reason of misfortune or a calamity of some kind are rendered unable to compete with their fellows, I can see no valid reason why a transportation company should not be permitted to authorize a tariff and file the same with your board designating such persons as of a particular class and carry their property at free or reduced rates. In my opinion Chap. 108, Laws of 1911, simply enunciates a rule of construction of our statutes so far as transporting property for the government of the United States, or of this state, or for fish purposes is concerned, and would not prevent railroad companies from making proper classifications for the transportation of property or persons in other cases. If this were not a fact a railway company could not transport free or at reduced rates property to persons rendered destitute by reason of floods, fires, or other calamities, and this was certainly not the intention of the legislature. The intention of our statutory provisions is to prevent discrimination between persons of the same class and not to prevent the transportation company from making reasonable and proper classification for the transportation of persons and property.

Yours very truly,

ALBERT J. GALEN,

Attorney General.