

**Railroads, Rates of. Railroad Commission, Authority of
Over Free or Reduced Rates.**

Common carriers are not required to file with the railroad commission schedules of free or reduced rates for the carrier of exhibits or property of the United States, state or municipal governments mentioned under Chapter 53 of the Session Laws of the Thirteenth Legislative Assembly.

March 28th, 1914.

Honorable Railroad and Public Service Commission,
Helena, Montana.

Gentlemen:

I am in receipt of your communication under date of the 21st instant, submitting for my consideration the question of

“Whether or not a common carrier must secure the authority of this commission to establish free or reduced rates to municipal governments for the carriage of exhibits, and file its tariffs with your department?”

Secs. 4385 and 4386, Revised Codes of Montana, 1907, prohibits rebates and discrimination and extortion, and provide penalties for the punishment thereof. These two sections prohibit the demanding or receiving by any common carrier a greater or less compensation for any services rendered than that fixed by the board of railroad commissioners. Chap. 53, Session Laws of the Thirteenth Legislative Assembly, is, according to its title,

“An act to permit common carriers to carry free or at reduced rates persons and property in certain cases.”

The act is broad in its terms, in as much as it provides:

“That nothing in the provisions of Chaps. 4 and 5, Title 8, of the Political Code, Revised Statutes of Montana, 1907, or in any other provisions of the laws of the state of Montana, shall be construed to prevent or shall prevent any person, association, company or corporation engaged as a common carrier of persons or property in the State of Montana from carrying, storing or handling free or at reduced rates”

For certain governments, institutions, etc. Sec. 2 of the act provides that the carrying free or at reduced rates in the cases named in the act “shall be held to be a reasonable classification by railroad companies for such purposes, and not to be unjust discrimination.” This section further provides that such acts shall not subject said railroad to any penalty therefor. The effect of Chap. 53 is to amend Sec. 4385 and 4386, and to make them inapplicable to the class of persons and property described in Chap. 53 of the Session Laws of the Thirteenth Legislative Assembly. The effect of said chapter is to leave the matter of free or reduced transportation for the classes of persons and property mentioned therein to the choice of the carriers. In other words, the act takes such carrier without the jurisdiction of the board of railroad commissioners in relation to the matters covered by it.

I am, therefore, of the opinion that carriers are not required under the law to file with your commission schedules of the reduced rates charged by them for the carriage of the property of the United States, state or municipal governments, etc., mentioned in Chap. 53 of the Session Laws of the Thirteenth Legislative Assembly, and that carriers would not, in making such reduced rates or carrying

free in the cases mentioned, subject themselves to the penalties named in Secs. 4385 and 4386, Session Laws of the Thirteenth Legislative Assembly.

Yours very truly,

D. M. KELLY,
Attorney General.