

**Railroad, Freight Rates. Rates, on Freight. Freight, Rates. Railroad Commission, Power of. Constitution, Construction of. Discrimination, in Charges, Construed.**

The word "discrimination," as used in the Constitution, is defined by the statute, and the statutory definition governs.

Sections 7 and 20, Article XV of the State Constitution are not self-executing, but require action on the part of the legislature in the definition of terms and the fixing of penalties.

Freight rates are not illegal, or unreasonable, because the charge for carriage between the same points in opposite directions is not the same.

June 24, 1914.

Hon. Board of Railroad Commissioners,  
Helena, Montana.

Gentlemen:

I am in receipt of your letter submitting the question:

"Can one city or town in the state enjoy a lower freight rate on outbound business than is charged for the same service, and moving over the same rails inbound?"

The statements contained in your letter indicate that the principle involved is rather broader than the specific question submitted. Section 7, Article XV of the State Constitution, among other things, provides:

"No discrimination in charges \* \* \* for transportation of freight \* \* \* of the same class, shall be made by any railroad \* \* \* company, between persons or places within this state. \* \* \* No railroad or transportation \* \* \* company shall be allowed to charge \* \* \*, under penalties which the legislative assembly shall prescribe, any greater charge or toll for the transportation of freight \* \* \* to any place or station upon its route or line than it charges for the transportation of the same class of freight \* \* \* to any more distant place or station upon its route or line within this state."

Section 20 of the same Article, contains a provision prohibiting combinations or trusts, and requires the legislative assembly to pass laws for the enforcement by adequate penalties of the provisions of the section.

Both these sections by express terms, require action on the part of the legislature. The clause "No discrimination in charges \* \* \* for transportation of freight \* \* \* Shall be made," if standing alone would literally mean that no difference or discrimination could lawfully be made, although it might be just and reasonable.

Sections 15 and 22 of the Constitution of the State of Washington are very similar to the above sections of the Montana constitution, and contain the same language and the same direction to the legislature. The Supreme Court of Washington, in construing these sections, after quoting the same, and the statute enacted in pursuance thereof, said:

"The statute was evidently intended to give force to the constitutional provisions. It cannot be said that the makers of the constitution understood Section 22, above quoted, to be self-executing, since they expressly provided that the legislature shall pass laws for its enforcement. Since the constitutional convention itself so interpreted the section, it is the manifest duty of the courts to adopt that interpretation. While Section 15, above quoted, does not in terms expressly state that the legislature shall pass laws to enforce it, yet it relates somewhat to the same general subject matter as Section 22."

N. W. Co. v. Oregon Ry. Co. 32 Wash., 218.

It will be noted that Section 15, Article XII of the Washington constitution does not make any reference to the legislature, while Section 7 of Article XV of the Montana state constitution does by express terms require action on the part of the legislative assembly. The court in the Washington case held that the legislature by enacting legislation had rightfully construed the sections of the constitution "as not being self-executing" and that it was the function of the legislature to define the phrase "discrimination in charges or facilities for transportation."

The Washington statute avoided the use of the word "discrimination," and used the phrase "unequal or unreasonable preference," and "unequal or unreasonable prejudices." The court held that it could not "enlarge upon the statutory provisions." Hence, the statute enacted pursuant to the constitution must govern.

The legislature of Montana, under authority given in said Sections 7 and 20, Article XV of the state constitution, has enacted laws relating to the business of railroads (Sec. 4323, et seq. R. C.), has fixed the rate for passenger service (Sec. 4349 has created a railroad commission (Sec. 4363) et seq.), and it is made the duty of such commission to "adopt \* \* \* all necessary rates", "prevent unjust discriminations," to "fix different rates \* \* \* for different points on the same line if found necessary to do justice," and the court is empowered to set aside rates that are found to be "unjust and unreasonable." The word "discrimination" is not used in the statute except in the modified sense.

To determine whether a rate is "unjust and unreasonable," and to "prevent unjust discrimination," necessarily implies latitude of discretion and power of action. In the practical application and carrying out of the authority vested in railroad commissions, various rates have been established, and various names applied thereto.

"Group rates," have been maintained, although they resulted in charging the same for a short haul as for a long haul, and were held not to violate the terms of a statute which specifically provided that no unjust discrimination should be made against any person or places.

4 Elliott on Railroads, Sec. 1683;

Texas & C. R. Co. v. Kuteman, 54 Fed., 547;

Beale & Wyman Rate Regulation, Secs. 635 et seq. 844 et seq. and 975 et seq.

"Equalizing rates" have also been sustained.

Beale and Wyman Rate Regulation, Sec. 844 et seq.

It has also been held that a discrimination may be sustained when founded upon a reasonable difference in the conditions attending different shipments.

6 Cyc. 498-99;

4 Elliott on Railroads, Sec. 1677.

It is also well established that rates are not illegal or unreasonable "because the charge for carriage between the same points in opposite directions is not the same."

Mac Loon v. Boston & C. R. Co. 9 I. C. C. 642;

4 Elliott on Railroads, Sec. 1677.

If distance only can be considered, the upgrade haul must be the same as the down grade haul, for the distance is the same, and the moment the grade, or facilities, or quantity, or any other conditions whatsoever, are considered, a new factor is introduced that requires the exercise of discriminatory judgment.

All these considerations merely show that the railroad commission is vested with discretionary power and authority in the fixing of rates. A question of fact is thus presented to it, and in deciding the question, the rule to be observed is that which is just and reasonable, under existing conditions, and so far as possible, uniformity commensurate with the public welfare under similar conditions. The name applied to the rates is immaterial. The commission, therefore, have the authority, when in its judgment conditions justify it, to establish one rate for outgoing business and another rate in inbound business.

Yours very truly,

D. M. KELLY,  
Attorney General.