

Railroad Commission, Authority to Authorize Retroactive Application of Tariffs. Tariffs, Retroactive Application of. Rebates, Authorized by Railroad Commission. Railroad Commission, Authority to Authorize Rebates and Compromises of Freight Charges.

The railroad commission being familiar with all the facts and circumstances may authorize a reduction in tariffs to become effective at a date prior to its promulgation with the consent of all carriers affected.

The board of railroad commissioners has authority, when all the facts are presented to it, to authorize a compromise between the carrier and shipper and permit the carrier to refund a portion of a freight charge, when it is apparent that neither the carrier or shipper are attempting to violate the provisions of the statute prohibiting rebating and discrimination.

December 13, 1912.

State Board of Railroad Commissioners,
Helena, Montana.

Gentlemen:

I am in receipt of your letter of the 5th inst., submitting for my official opinion the following questions:

"1. Has your commission authority to authorize retroactive application of a commodity tariff?

"2. Can your commission authorize a railroad company to make refund of a portion of a freight charge which has been assessed in accordance with the tariff in effect at the time the shipments moved, by issuing special authority to such carrier, after having made an investigation of the merits and reasons for the reparation?"

Sections 4375-6-7, Revised Codes, which give the board power to fix rates, schedules and classifications, among other things, provide that when any schedule of rates has been made and revised, it is the duty of the commission to cause notice thereof to be published for two successive weeks in some newspaper published in the city of Helena, stating the date of taking effect of such schedule. All classi-

fications and rates fixed and established by the board shall become effective twenty days after the railroad affected thereby shall have received certified copies thereof from said board.

The purpose of Sec. 4376 is to give to the carrier and shipper notice of any proposed change in rates which may in any way affect them, and to give them the opportunity to be heard. This section is mandatory, and in order to make a valid classification or rate its provisions must be followed. However, if a classification or rate is reduced, the interests of the shipper are not adversely affected, and if the carrier affected thereby should consent that it be made retroactive in its application, the board, being familiar with the facts and circumstances, could permit it to become effective at a date prior to its promulgation. In such a case, the carrier would be estopped from questioning the retroactive feature of the schedule, because it had consented to it, and the public would be estopped because it would be benefited thereby. However, before making any rate or schedule retroactive, the commission should be perfectly familiar with all of the facts and circumstances in order that rebating may not be resorted to, or the intent of the law violated.

Sec. 4385 and 4386, Revised Codes, prohibit any railroad directly or indirectly charging or receiving from any person a greater or less compensation for any service rendered in the transportation of property than that fixed by the railroad commission for such service. These sections were enacted to prevent rebating and discrimination, and should be strictly and rigidly enforced. However, it was not the intention of the Legislature in enacting these sections to prevent the board of railroad commissioners after being fully advised of all the facts and circumstances, from effecting a compromise between the carrier and shipper where it is apparent that neither party is attempting to violate the law. When the carrier has made its charge in accordance with the tariff in effect at the time when the shipment moved, and agrees that the charge is too high, and is willing to refund a portion thereof to the shipper, after having submitted all the facts to the railroad commission, the commission, being familiar with all the facts, certainly has power to permit and order the refund to be made.

Very truly yours,

ALBERT J. GALEN,

Attorney General.