

Railroad Commission, Powers of. Storage Warehouses, for Fruits. Powers, of Railroad Commission to Compel Erection and Maintenance of Warehouses.

A railroad commission is without jurisdiction to order warehouses to be built by railway companies for the storage and accumulation of fruit for future shipments.

October 2, 1914.

Hon. Board of Railroad Commissioners,
Helena, Montana.

Gentlemen:

I am in receipt of your communication under date September 23rd, asking for my opinion

"as to the commission's jurisdiction to order the Great Northern Railroad company to erect, and maintain suitable warehouses at Kalispell and Somers for the handling of fruit being assembled for shipment.

You state that the fruit from these points is of a highly perishable character and that the railroads take the position that they are not compelled under the laws of this state, to furnish shippers with storage facilities at shipping points, to enable them to accumulate and consolidate fruit for shipment. You state that your position is that the railway company can lawfully be required to provide such facilities as are necessary to properly take care of the business offered to it for transportation.

The railroads of this state are subject to the police power.

Art. XV, Sec. 5 of the constitution, providing in part as follows:

"All railroads shall be public highways, and all railroad, transportation and express companies shall be common carriers, and subject to legislative control * * *"

Pursuant to the constitutional provision just quoted, the legislature has enacted Section 4343, Revised Codes of Montana, 1907:

"It is hereby made the duty of every person, corporation, and association, operating a railroad in the state of Montana, to maintain facilities for shipment and delivery of freight, and to ship and deliver freight, and accommodate passengers at any point upon the line of such railway, where there is a plat-

ted townsite of record, having not less than one hundred inhabitants.'

And Section 4382, makes it the duty of the railroad commission to compel railways to provide adequate accommodations and service:

"The board shall have the power, and it shall be its duty to compel any and all railroads subject hereto, to provide, maintain and operate sufficient train service, both freight and passenger for the proper and reasonable accommodation of the public, and to provide and maintain suitable waiting rooms for passengers, and suitable rooms for freight and baggage at all stations."

The power of the board to compel railways to render adequate service and maintain facilities for giving such service seems to be plenary, and the courts have generally upheld the power of Boards to make orders of this kind. Examples of this, are cases where railroads have been compelled to put in track scales or cattle yards. So long as the facility ordered to be furnished is properly included in, and necessary to the business of a common carrier, little question can be raised as to the authority of the board to order such facilities, if the traffic at the particular point justifies such expense. This was clearly stated in a North Carolina case, where the question of the power of the commission to order in track scales was involved, under a statute which gave the corporation commission "such general control and supervision of all railroad companies or corporations engaged in the carrying of freight or passengers, necessary to carry out the provisions of the act," and which empowered and directed the commission "to make just and reasonable rules and regulations for the handling of freight and baggage at all stations." The court held that the commission had power to order in track scales where the traffic justified it.

North Carolina Corp. Com. v. Atlantic Coast Line Railroad Co., 129 N. C. 126.

It remains to be determined, then, whether a fruit warehouse, for the purpose of accumulating and consolidating fruit for shipment, comes within the duties of a common carrier to furnish suitable rooms for freight and baggage at all stations, or "facilities for shipment and delivery of freight." As has been seen above from the quotation from the Constitution, Art. XV., Sec. 5, railways are common carriers of freight. The business of a common carrier is the carrying of freight, and its duties and liabilities as such, do not begin until freight is delivered to it for the purpose of shipment, with directions for shipping. The general rule is that a railroad company does not assume control as "and it is not subject to the liabilities of a common carrier in regard to goods until their delivery to it with directions for shipping, and for the purpose of being shipped."

Moses vs. Boston M. Ry. Co., 24 N. Ham. 71;

Wade vs. Wheeler, 55 Am. Decisions, 222;

Rogers vs. Wheeler, 52 N. Y. 262.

The Supreme Court of the United States in passing upon the duty of a railroad company to furnish stock yards for the loading of live-stock, said:

"The transportation of livestock begins with their delivery to the carrier to be loaded upon its cars * * *"

Covington Stock Yards Co. vs. Keath, 129 U. S. 128.

It is to be noted that in this case the court held that it was the duty of the railway company to furnish loading facilities for livestock, but upon the ground that such facilities were necessary for the protection of the public where such livestock was being loaded. It must be further noted that a carrier's liability in regard to livestock differs from its liability in regard to inanimate freight. The storage of fruit so that a sufficient quantity can be stored to make a profitable shipment, is not one of the duties of a carrier, since, as we have seen above, the relation of common carrier does not begin until freight is delivered for shipment with directions as to where it must be shipped, that is, the carrier's duties do not begin until the shipment is ready to be transported. The storage and accumulation of goods previous to that time, is in the nature of a warehouse or elevator business. One writer has used the following language upon this subject:

"Under the rule that it is the duty of railroad companies to duly provide and properly use facilities for the transportation of goods, it is held to be under an obligation to furnish what has been called stational facilities. This duty does not extend so far as to require a railroad company to provide warehouses for the storage of goods to be transported at some future time, since the duty of a railroad company in its capacity as a common carrier is to accept and transport goods tendered it for transportation, and not to take charge of goods intended for transportation at a future day, but not offered for the purpose of transportation."

Elliott, Railroads, Sec. 1497.

For the reasons above stated, you are advised that your Commission is without jurisdiction to order warehouses to be built by the railway companies for the storage and accumulation of fruit for future shipment.

Yours very truly,

D. M. KEELY,
Attorney General