

Railroad and Public Service Commission, Authority of. Inspection, of Certain Boats. Captains and Pilots, License of. License, of Captains and Pilots.

It is within the power of the state to regulate ferries even though they be upon navigable streams, and the railroad commission has the power to impose regulations on the captains or masters of such boats.

August 7, 1915.

Hon. Railroad & Public Service Commission,
Helena, Montana.

Gentlemen:

I am in receipt of your communication under date the 23rd ultimo, inquiring as to your authority

“to inspect boats and issue certificates therefor, and to license captains and pilots on the waters of the Missouri and Yellowstone rivers.”

You state further that the Federal government is inspecting boats on these waters, but that it does not appear that the federal government is exercising any control or jurisdiction over the captains or pilots. It appears that there are a number of ferry boats on these rivers attached to cables, and that boats which are not so attached, while having access to other states are engaged exclusively in carrying within the state of Montana. I note in the correspondence enclosed with your letter some of the regulations of the treasury department relative to the inspection of vessels upon navigable waters. It would seem from a reading of these regulations that all boats over five tons net, plying upon waters having navigable outlets into a river or lake upon which commerce with foreign nations, or the states, or with the Indian tribes, can be carried on, must, if not registered, be duly enrolled and licensed by the Federal government. Notwithstanding the general theory that upon subjects delegated to the federal governments, the acts of Congress are exclusive, the weight of authority seems to be that ferries are proper subjects for state regulation within certain limits. The Supreme Court of the United States in two recent cases, has recognized this authority in the states.

“The question is whether, with regard to rates, there is any inherent necessity for a single regulatory power over these boundary streams; whether, in view of the character of the subject, and the variety of regulation required, it is one which demands the exclusion of local authority. Upon this question, we can entertain no doubt. It is true that in the case

of a given ferry between two states there might be a difference in the charge for ferriage from one side as compared with ferries from the other. But this does not alter the aspect of the subject. The question is still one with respect to a *ferry*, which necessarily implies transportation for a short distance, almost invariably from two points only, and unrelated to other transportation * * *. The practical advantages of having the matter dealt with by the states are obvious, and are illustrated by the practice of one hundred and twenty-five years. And in view of the character of the subject, we find no sound objection to its continuance."

Port Richmond Ferry vs. Hudson Co., 234 U. S. 317.

After pointing out that authority is denied to the states in all cases demanding a general or national regulation, the same court, in the case of Wilmington Transportation Co. vs. Railroad Commission of California, decided February 1, 1915, say:

"And on the other hand, as to those matters which are distinctively local in character, although embraced within the Federal authority, the rule recognizes the propriety of the reasonable exercise of the power of the states in order to meet the needs of local protection until Congress intervenes."

Numerous state courts have had similar questions before them, and have almost unanimously recognized the right of the state to impose regulations or licenses upon ferries. A few quotations from these authorities will suffice to show their view.

"The power to establish and regulate ferries, is reserved to the states."

Conway v. Taylor, 1 Black, 603; 17 Lawyers Ed. 191.

"The grant of a ferry franchise belongs exclusively to the state government, and is among the forms of reserve powers never granted by the states to the general government.

Elizabeth Port & N. Y. Ferry Co., v. U. S., 5 Blatch, 198.

"The right to control ferries, although operating between different states, is a matter of state jurisdiction, and is not included in the right of the Federal Government to regulate commerce between the states."

St. Louis v. Waterloo, etc., Co., 14 Mo. App. 216.

"The power to grant ferry leases or licenses belongs to the police power of the state, and may be exercised upon navigable rivers subject to the power of Congress to supersede the subordinate control."

Nixen v. Reid, 8 S. D. 507; 67 N. W. 57.

"The power of the State of Illinois to authorize a municipal corporation to impose a license if upon each ferry boat operated between the city and the opposite shore of the Mississippi river is not impaired because such boats are steam ferry boats, and have been inspected under an Act of Congress requiring all steam ferry boats to be inspected. Such inspection laws are in no sense to be regarded as a regulation of commerce,—but are a police regulation for the safety of persons. Neither is such license fee a towage tax, or its imposition a tax by a state to regulate interstate commerce."

Wiggins Ferry Co. v. East St. Louis, 102 Ill. 560.

An examination of the above authorities and numerous others seems to indicate that it is within the power of the state to regulate ferries, even though they be upon navigable streams, and I am of the opinion that your commission has authority to impose regulations upon the captains or masters of such boats. The right of your commission to regulate boats not engaged exclusively in ferriage, is not so clear. Probably as to boats engaged exclusively in intrastate traffic, your authority would not be questioned. Whether such boats are so engaged is, of course, a matter of fact to be determined in each particular case, and you should govern yourselves accordingly.

Yours very truly,

J. B. POINDEXTER,

Attorney General.