

**Railroad Commission, Power to Alter or Revise Rates.
Rates, Power of Commission Over.**

Amended, altered or new classification of rates may be put into effect by the Railroad Commission by a publication of notice for two successive weeks, as provided for in Section 4376, Revised Codes of 1907, without notice and formal hearing.

October 22, 1915.

Hon. Board of Railroad Commissioners,
Helena, Montana.
Gentlemen:

I am in receipt of your communication under recent date, submitting the following question:

"Will you kindly inform the Commission if, in your opinion, the Board of Railroad Commissioners of the State of Montana, has authority, upon the application of a common carrier, to approve any tariff, classification or toll, which would increase the rates, classification or tolls in effect prior thereto, without first publishing a notice for ten days in two daily papers, setting forth in such notice that at a certain time and place the commission will proceed to fix and determine such maximum rates and classification. In other words, has this Commission any authority to approve a proposed tariff or classification increasing the rates of the public without first calling a hearing where the attitude and desires of the shippers and public generally, can be heard and taken into consideration in the approval or rejection of the application,"

The provisions of the statute involved here are found in Sections 4376 and 4377, Revised Codes of Montana, 1907. The correct solution involves a construction of the clause "and such amended, altered or new classifications or rates shall be put into effect in the same manner as original classifications or rates." Does the phrase "in the same manner" refer solely to the two week's publication of notice, stating the time when such schedule shall become effective, or does it refer also, and include the proviso?"

"That before finally fixing and deciding what the original maximum rates and classifications shall be, it shall be the duty of the railroad commissioners to publish ten days notice in two daily papers, one of which is published in the city of Helena, setting forth in such notice that at a certain time and place they will proceed to fix and determine such maximum rates and classifications."

If the first construction be adopted, rates may be changed without a hearing, and made effective by publication for two weeks of notice of the change, and the date of its taking effect. Under the second construction no rates could be changed without a hearing was first had, as prescribed in the proviso above quoted.

The general rule is that a proviso in a statute extends only to the matter immediately preceding it, and not to a subsequent matter, unless a contrary intention is clearly shown:

"The operation of a proviso is usually and properly confined to the clause or provision immediately preceding; yet, where necessary to effectuate the legislative intent, it will be construed as applying also to other preceding or subsequent sections, or to the entire act."

36 Cyc. 1163.

It is also a cardinal rule of construction that all parts of an act are to be construed together. Courts have also often laid down the rule that the history and purpose of an act may be looked to, to ascertain the meaning and intent of the legislature.

In this connection it is well to observe that previous to the enactment of this law, and the creation of the commission, the only regulation of rates had been by occasional legislative act. This law was new and original legislation, and intended to cover the whole subject, and to place the entire matter in the hands of a separate tribunal. Previous to its enactment rates and classifications were largely what the railroads had seen fit to make them. Hence, we find the legislature making it the duty of the Commission to adopt as soon as practicable after the organization of the Board, all necessary rates, changes and regulations to govern and regulate freight and passenger tariffs, etc.

Section 4375, Revised Codes, 1907.

This was the first original classification of rates, and evidently the one referred to in the proviso above quoted. Manifestly the legislature recognized the right of parties to be heard before radical changes were made in a system long established and limited the power of the Commission to put such charges into effect until a hearing had been given. The publication of the notice for two successive weeks, prescribed in Section 4376, was made the general mode by which rates were to be put into effect. The proviso immediately following it was intended as a limitation of its exercise in the case of the first or original classifications, and rates made by the commission.

This leads to the conclusion that the clause "and such amended, altered or new classifications or rates shall be put into effect in the same manner as original classifications or rates," means that revised rates shall be put into effect by a publication of two week's notice as in the case of the original classifications; and the omission of the proviso, or any limitation as to a hearing in the section relating to, and giving power to the Board to, change, alter, amend or abolish any classification or rate, would indicate that the legislature did not intend such limitation.

There is one argument against this construction, and that is, that rates and classifications might be changed ex parte at the caprice of the Commission. And if this is the effect of the language it would doubtless have to be held invalid, for it would leave the public in much the same condition as to the changing of rates, that they were in before the creation of the Commission, except as to the agency by which

the rates were changed. Formerly they were changed at the will of the carriers. Under this construction, if this criticism be good, they would be changed by the mere order of the Commission. Further than this such an effect would probably make the legislation void on constitutional grounds. It is evident, however, that the legislature did not intend such changes to rest entirely on the ex parte judgment of the Commission, for by the last sentence of Section 4377, which provides for the changing and alteration of rates and classification, an investigation is provided for upon complaint of any person feeling aggrieved by such order.

"The said Board must within forty days after the filing with such Board of a complaint by a shipper, or other person interested, proceed to investigate and determine the justness and reasonableness of any classification, rate, charge, toll, regulation or order made by said Board."

This provision coupled with the legal remedies provided for by Section 4390 and 4391, Revised Codes, would give ample protection to all persons concerned.

I am of the opinion, therefore, that the provision that "such amended, altered or new classification or rates shall be put into effect in the same manner as original classifications or rates," refers only to the publication of the notice for two successive weeks, provided for in Section 4376, and that, therefore, rates may be changed, altered, amended or abolished when deemed necessary by the commission, without a notice and hearing. It is to be borne in mind, however, that no revision of rates or change in classifications can become effective until notice thereof has been published for two successive weeks, as provided in Section 7376:

"When any schedule shall have been made or revised, it shall be the duty of said commissioners to cause notice thereof to be published for two successive weeks in some newspaper published in the city of Helena, which notice shall set the date of taking effect of said schedule, and said schedule shall take effect at the time so stated in such notice."

Another limitation in this regard is that:

"All classifications 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."

Yours very truly,

J. B. POINDEXTER,

Attorney General.