

provides: "It shall be unlawful for any corporation or person, its or their officers, agents, employees, or servants, to operate any motor vehicle for the transportation of persons and/or property for hire on any public highway in this state except in accordance with the provisions of this act."

This sub-section brings all classes under the act. Part of Section 3 applies to all classes, and parts to classes A and B only. The parts that apply to all classes, including C, are as follows: "(a) The board of railroad commissioners is hereby vested with power and authority, and it is hereby made its duty to supervise and regulate **every** motor carrier in this state; * * *" (The paragraph omitted here is specifically restricted in its application to classes A and B); (b) to regulate the properties, facilities, operations, accounts, service, practices, affairs and safety of operations of all motor carriers; (c) to require the filing of annual and other reports; schedules, or other data by such motor carriers in all matters affecting the relationship between such motor carriers and the traveling and shipping public; (d) the board shall have power and authority by general order or otherwise to prescribe rules and regulations in conformity with this act applicable to any and all motor carriers; (e) all rules and regulations in relation to schedules, service, tariffs, rates, facilities, accounts and reports shall have due regard for the differences existing between Class A, Class B, and Class C, motor carriers as herein defined, and shall be just, fair and reasonable to said class of motor carriers in their relations to each other and to the public * * *."

April 18, 1933.

You request an opinion of this office on the following question: "I would like to get an opinion as to whether or not we have the right to fix the rates of Class A, B and C motor carriers. I have marked some parts of the motor carrier act. I believe we have the right to say what the rates shall be."

Chapter 184, Laws of 1931, repeals all previous acts relative to regulation of motor carriers. Said chapter divides motor carriers into three classes: A, B and C. The power to regulate classes A and B are specific and there can be no question of power of the board of railroad commissioners to fix the rates charged by both of these classes of motor carriers (sub-section b of Section 2; and Section 3) and such rates shall not be changed or altered without the written consent of the board. (Section 4.)

But there is no doubt about the power of the board to fix and regulate the rates charged by motor carriers of class C. Sub-section b of Section 2

Sections 8, 9 and 10 relate to Class A, Class B and Class C, respectively, in regard to obtaining a certificate from the board before engaging in the business of a carrier. Subdivision 5 of Section 8 and subdivision 4 of Section 9, relating to Class A and Class B, both require these two classes to set out in their respective applications the following: "A schedule of the tariff or rates desired to be charged for the transportation of freight and for passengers." This subsection is not required to be in Class C's application for certificate. (Section 10).

Sub-section e of Section 3, hereinbefore quoted contemplates, in our opinion, regulation to only a limited extent of Class C carriers. Class C carriers, we would say, means transfermen and similar carriers whose business is largely of a local nature and whose operation will not require the same attention in the public interest that Class A and Class B carriers require. It is our opinion that when the legislative assembly said: "All rules and regulations in relation to schedules, service, tariffs, rates, facilities, accounts and reports shall have due regard for the differences existing between Class A, Class B and Class C motor carriers as herein defined, and shall be just, fair and reasonable to the said classes * * *", that the assembly had in mind that there would be but little necessity for any very exacting regulation of Class C carriers. This view is further supported by the fact that the clause relative to tariffs or rates required to be in Class A and Class B applications for certificates is omitted from the statutory application for Class C carriers. And again, Class C carriers are described in the act to be "Carriers operating motor vehicles for distributing, delivery or collecting wares, merchandise, or commodities, or transporting persons, where the remuneration is fixed in and the transportation service furnished under a contract, charter, agreement, or undertaking."

Carriers of all other classes have a fixed rate for carrier service, and the passenger or shipper has nothing to say about the charge exacted, while the regulations applying to Class C under the act assumes that this class of carrier will fix the cost of service by agreement with the party to whom the service is rendered.

One of the principal purposes that led to the creation of the Railroad Commission in Montana and other states was to protect a passive public and particularly small shippers against unfair exactions of transportation concerns where such exactions were attempted to be justified under ex parte agreements. No such reasons exist for the strict regulation of Motor Carriers who come under Class C of the Act, in so far as fixing rates is concerned.

It is therefore the opinion of this

office that the act grants you full power to regulate the rates charged by Class A and Class B motor carriers, and that the rates charged by Class C carriers shall be fixed by agreement between the carrier and the party who hires or employs such carrier.