

PUBLIC SERVICE COMMISSION:

Commission does not have jurisdiction to discontinue train service where such action would burden interstate commerce.

Sec 5167 R S Mo 1929

February 3, 1933



Honorable Elliott M. Dampf
Prosecuting Attorney
Jefferson City, Missouri

Dear Mr. Dampf:

Your letter dated February 2, 1933, makes inquiry as follows:

"Will you kindly give me your opinion as to whether the Public Service Department of Missouri has the authority to authorize the discontinuation of service on the Bagnell Branch of the Missouri Pacific Railroad and the further authority to permit them to take up their tracks after such hearing".

We assume that the Bagnell Branch referred to is situated wholly within the state. Whatever power the Public Service Commission of the State of Missouri has with reference to the discontinuance of service of railroads, where the Public Service Commission has jurisdiction, is found in Section 5167, Revised Statutes Missouri, 1929. The authority therein delegated to the Public Service Commission by the legislature has been construed in *State ex rel v. Public Service Commission*, 270 Mo.429.

If, upon a hearing before the Public Service Commission, on application of the Missouri Pacific Railroad Company to discontinue its train service on the Bagnell Branch of such railroad, it appears that such branch of the railroad is being operated at a clear loss to the Company but if it should further appear that a continued operation of such branch road would be a burden on the interstate business of the railroad, in that the loss on such branch would have to be taken care of out of income collected from interstate business, then the Public Service Commission of Missouri would not have jurisdiction; the jurisdiction would be in the Interstate Commerce Commission since there was a

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showing made that interstate commerce had been burdened by a continued operation of the road. We take notice that the Missouri Pacific Railroad Company is engaged in interstate commerce. See, State of Texas, et al, v. R. R. Co. 258 U.S. 204, 66 L.Ed. 566, State of Colorado v. United States, 271 U.S. 153, 70 L.Ed. 878, Transit Commission, et al, v. United States, et al, 284 U.S. 360, 76 L.Ed. 342.

Assuming that the Bagnell Branch of the Missouri Pacific Railroad Company is wholly within this state and assuming that the Missouri Pacific Railroad Company is engaged in interstate commerce, and assuming that on a hearing it appeared that Bagnell Branch was being operated at a clear loss and that there was no public necessity for the maintenance or operation of service on the branch, and if it appeared from the evidence that the loss caused by the operation of the branch was reflected in or taken up by earnings of the Company gained from engaging in interstate commerce, then in our opinion the Public Service Commission of Missouri, under the cases above cited, would not have authority or jurisdiction to grant a certificate or make an order in the premises.

Very truly yours,

GILBERT LAMB
Assistant Attorney General.

APPROVED:

Attorney General.

GL:LC