

RAILROADS: Railroad Company may eject an intoxicated person on train.

3-5

March 2, 1934.



Hon. John S. Phillips,  
Prosecuting Attorney,  
Poplar Bluff, Missouri.

Dear Sir:

This department is in receipt of your request for an opinion dated February 12, 1934 upon the following state of facts:

"I have an inquiry from a railroad company in regard to handling intoxicated persons on their trains. In the Revised Statutes of Missouri for the year 1919, Sections 3495 to Section 3497, there was a provision made by which the railroad companies could handle intoxicated persons. The penalty for entering the train was a misdemeanor. I notice in the 1929 Statutes that this section was dropped.

I would like to know whether or not there has been any section or sections passed since that time which takes care of this condition, or in what manner the railroad may proceed in taking care of persons of this kind."

I.

An intoxicated person may be ejected by railroad company.

Sections 3495-3497, R.S. Mo. 1919 dealing with the power of railroad companies over intoxicated persons have been dropped; however, Section 4708, R.S. Mo. 1929 provides:

"If any passenger shall refuse to pay his fare, or shall be have in an offensive manner, or be guilty of repeated violations of the rules of the company, it shall be lawful for the conductor of the train and the servants of the corporation to put him and his baggage out of the cars, using no unnecessary force, at any usual stopping place, or near any dwelling house, as the conductors shall elect, on stopping the train."

The early case of *Eads v. Metropolitan Street Ry. Co.*, 43 Mo. App. 536 clearly sets out the relationship between passenger and carrier. Ellison, J., said (l.c. 542, 546):

"It is everywhere agreed that carriers must treat their passengers with respect and must endeavor to protect them from injury or insult, not only by their employes but from strangers and fellow passengers. *Spohn v. Railroad*, 87 Mo. 74.

\* \* \* \* \*

The testimony for defendant tends to show that plaintiff occupied the relation of passenger which he afterwards forfeited by his misbehavior, and thence, on to the close of the difficulty, occupied the relation of a stranger. So when plaintiff, by his conduct, unfitted himself to be a passenger in defendant's car, it became the duty of defendant, a duty it owed to other passengers, to remove him."

In the case of *Parris v. Deering Southwestern Ry. Co.*, 208 S.W. 97, the Court said (l.c. 98):

"The law is well settled in this state, as held in numerous opinions cited by both appellant and respondent, that it is not only the right, but the duty,

of the agents and servants in charge of a train to put a stop to disorderly and violent conduct of passengers on trains who transgress the rules of the company and interfere and disturb the peace of other passengers. The only remedy, however, which we have been able to find applicable to such conduct is the right to expel or eject such passenger from the train, and in doing this the conductor and servants have a right to use only such force as is necessary to make the ejection, and with this necessarily goes the right of such servant in performing this duty to use such means as are necessary in the defense of his person against the attacks and unlawful acts of a disorderly passenger in resisting ejection."

#### CONCLUSION

In view of the foregoing, it is the opinion of this department that by reason of the authority granted in Section 4708, R.S. Mo. 1929 a railroad company may eject any passenger intoxicated to such a degree as to be guilty of behaving "in an offensive manner" or violating "the rules of the company".

Respectfully submitted,

JOHN W. HOFFMAN, Jr.,  
Assistant Attorney General

APPROVED:

---

ROY MCKITTRICK,  
Attorney General