

**COMMON CARRIER** - If widow of former employee who died in service of common carrier be officer of state, county or municipal government, the common carrier is prohibited from issuing passes, either gratis or at a discount.

February 4, 1935.



Crane & Mersereau,  
Attorneys at Law,  
The A T & SF Railway Co.,  
1900 Fidelity Bank Bldg.,  
Kansas City, Missouri.

Gentlemen:

This department is in receipt of your letter of January 30 requesting an opinion as to the following state of facts:

"Officials of our company are inquiring whether there is any state, county, city or commission regulation in Missouri which would prohibit the issuance of free transportation to the widows of former employes who died in railroad service, in instances where the widows are employed by state, county or city governments.

We know of no such limitations on the authority conferred by R.S. Mo. 1929, Section 5155 (3), but shall greatly appreciate your advice in regard thereto."

The general section of the Public Service Commission Act having to do with the issuance of free transportation by common carriers is to be found in Section 5155 (3), which section provides in part as follows:

"Nothing in this chapter shall be construed to prohibit the interchange of free or reduced transportation between common carriers of or for their officers, agents, employes, attorneys and surgeons,

and the dependent members of their families, nor to prohibit any common carrier from carrying passengers or property free, with the object of providing relief in cases of general epidemic, pestilence or other calamitous visitation; \*\*\*\*."

The term "families" as used in the above statute is defined in a later portion of the same section to include "the families of those persons named in this proviso, also the families of persons killed, and the widows during widowhood, and minor children during minority, of persons who died while in the service of any such common carrier."

Thus, it would seem by reason of the above that a railroad corporation might very well render free transportation, or what is its equivalent, issue passes entitling the holder thereof to such free transportation to the widows of former employees who died in railroad service whatever might be the present position or occupation of these women.

However, Section 4360, R.S. Mo. 1929 is a further limitation on common carriers with respect to the right of rendering free transportation. That section provides:

"No railroad or other transportation company shall grant or issue free passes or tickets, or passes or tickets at a discount, to members of the general assembly of the state of Missouri, or members of the state board of equalization, or any state, county or municipal officer. Any railroad or other transportation company violating the provisions of this section shall forfeit and pay for each offense the sum of two hundred dollars, which may be recovered in the name of the state in any court of competent jurisdiction, and shall be prosecuted by the prosecuting attorney of the county where the offense was committed, or the attorney general, and the amount recovered shall be paid into the county school fund of said county."

While unnecessary for the disposition of this problem, nevertheless, in order to fully complete the picture as painted by

our Legislature, we respectfully call attention to Section 4361, R.S. Mo. 1929, which provides:

"Any officer, agent or employe of any railroad or other transportation company who shall send or deliver any free passes or tickets, or passes or tickets at a discount, to any member of the general assembly of the State of Missouri, or any member of the State Board of Equalization, or any state, judicial, county or municipal officer, shall be deemed guilty of a misdemeanor, and punished by a fine of not less than fifty dollars nor more than five hundred dollars."

Section 4362, R.S. Mo. 1929 need not be here noticed as it has only to do with the penalties provided for those who, responding to human impulse, commit the crime (mayhap through surprise or by reason of the novelty of the situation) of accepting free transportation from a common carrier.

The latest enunciation by the Supreme Court of Missouri with respect to the interpretation of what constitutes a "public office" is to be found in an opinion rendered by Judge Atwood in the recent case of State v. Truman, 64 S.W. (2d) 105, l.c. 106, wherein it was said:

"In Mechem on Public Officers, pp. 1 and 2, sec. 1, it is said: 'A public office is the right, authority and duty, created and conferred by law, by which for a given period, either fixed by law or enduring at the pleasure of the creating power, an individual is invested with some portion of the sovereign functions of the government, to be exercised by him for the benefit of the public. The individual so invested is a public officer.' We have approved this definition in State ex rel. Walker v. Bus, 135 Mo. 325, 331, 332, 36 S.W. 636, 33 L.R.A. 616, State ex rel. v. Hackmann, 300 Mo. 59, 254 S.W. 53, 55, and Hasting v. Jasper County, 314 Mo. 144, 282 S.W. 700, 701; and it appears to be in harmony with the great weight of authority."

Feb. 4, 1935.

CONCLUSION

In view of the foregoing, it is the opinion of this department that if a widow of a former employee who died while in the service of a common carrier be an officer of the State, County or municipal government, the common carrier would, by reason of Section 4360, supra, be prohibited from granting or issuing to her passes or tickets, whether these be issued gratis or at a discount.

Respectfully submitted,

JOHN W. HOFFMAN, Jr.,  
Assistant Attorney General.

APPROVED:

---

ROY McKITTRICK,  
Attorney General

JWH:AH