

PUBLIC SERVICE COMMISSION: May require safety appliances on
railroads.

April 22, 1936. 4-28



Hon. Delmar Dail,
Marceline, Missouri.

Dear Senator Dail:

Under date of April 20, 1936, you requested an oral
opinion from this Department on the following question:

"Can the Public Service Commission re-
quire safety appliances on railroads?"

Section 5163, R. S. Mo. 1929, sets out the powers
and duties in respect to railroads and provides in part
as follows:

"The commission shall have the general
supervision of all common carriers, rail-
roads, street railroads, railroad corpora-
tions and street railroad corporations as
hereinbefore defined, and shall have
power to and shall examine the same and
keep informed as to their general condi-
tion, their capitalization, their franchises
and the manner in which their lines and
property, owned, leased, controlled or
operated are managed, conducted and operated,
not only with respect to the adequacy,
security and accommodation afforded by
their service, but also with respect to
their compliance with all the provisions of
law, orders and decisions of the commission
and charter requirements."

In the case of State v. Missouri Southern R. Co.,
214 S. W. 381 (Mo.) l. c. 384, the court in holding that the
Public Service Commission's order requiring a railroad to
operate spur tracks which the railroad sought to abandon
was not necessarily invalid because it would result in some
financial loss to the railroad, said:

"In this state, as in that, the act provides a complete system for the regulation and control of public service corporations. State ex inf. v. Gas Co., 254 Mo. loc. cit. 534, 163 S. W. 854. The act adds to the powers expressly given to the commission all others necessary to the full and effectual exercise of those powers. All rates, fares, facilities, service and equipment, and changes therein, fall within the authority of the commission. Adequate service and facilities are expressly required to be furnished. Questions relative to these things are to be determined by the commission."

Section 5165, R. S. Mo. 1929, provides that the commission may investigate the cause of all accidents on any railroad, as follows:

"The commission shall investigate the cause of all accidents on any railroad or street railroad within this state which result in loss of life or injury to persons or property, and which in its judgment shall require investigation. Every common carrier, railroad corporation and street railroad corporation is hereby required to give immediate notice to the commission of every accident happening upon any line of railroad or street railroad owned, operated, controlled or leased by it, within this state, in such manner as the commission may direct. Such notice shall not be admitted as evidence or used for any purpose against such common carrier, railroad corporation or street railroad corporation giving such notice in any suit or action for damages growing out of any matter mentioned in said notice."

Section 5170, R. S. Mo. 1929, sets out the power of the commission to order repairs or changes in order to promote security of the public or employees, thus:

"If in the judgment of the commission, additional tracks, switches, terminals or terminal facilities, stations, motive power or any other property, construction, apparatus, equipment, facilities or device for use by any common carrier, railroad corporation or street railroad corporation in or in connection with the transportation

of passengers or property ought reasonably to be provided, or any repairs or improvements to or changes in any thereof in use ought reasonably to be made, or any additions or changes in construction should reasonably be made thereto in order to promote the security or convenience of the public or employes, or in order to secure adequate service or facilities for the transportation of passengers or property, the commission shall, after a hearing, either on its own motion or after complaint, make and serve an order directing such repairs, improvements, changes or additions to be made within a reasonable time and in a manner to be specified therein, and every common carrier, railroad corporation and street railroad corporation is hereby required and directed to make all repairs, improvements, changes and additions required of it by any order of the commission served upon it. If any repairs, improvements, changes or additions which the commission has determined to order require joint action by two or more of said corporations, the commission shall, before entry and service of order, notify the said corporations that such repairs, improvements, changes or additions will be required and that the same shall be made at their joint cost, and thereupon the said corporations shall have thirty days or such longer time as the commission may grant within which to agree upon the part or division of cost of such repairs, improvements, changes or additions which each shall bear. If at the expiration of such time such corporations shall fail to file with the commission a statement that an agreement has been made for a division or apportionment of such repairs, improvements, changes or additions, the commission shall have authority, after further hearing, to fix in its order the proportion of such cost or expense to be borne by each corporation and the manner in which the same shall be paid and secured."

Section 5239, R. S. Mo. 1929, grants the Public Service Commission power to require such equipment or performance of acts which the health or safety of the employees of the railroad or the public may demand, thus:

"The commission shall have power, after a hearing had upon its own motion or upon complaint, by general or special orders, rules or regulations, or otherwise, to require every person, corporation and public utility, to maintain and operate its line, plant, system, equipment, apparatus, tracks and premises in such manner as to promote and safeguard the health and safety of its employes, passengers, customers, and the public, and to this end to prescribe, among other things, the installation, use, maintenance and operation of appropriate safety and other devices or appliances, including interlocking and other protective devices at grade crossings or junctions and block and other systems of signaling, to establish uniform or other standards of equipment, and to require the performance of any other act which the health or safety of its employes, passengers, customers or the public may demand."

Section 5246, R. S. Mo. 1929, provides that all orders of the commission shall be deemed prima facie lawful and reasonable, as follows:

"All rates, tolls, charges, schedules and joint rates fixed by the commission shall be in force and shall be prima facie lawful, and all regulations, practices and services prescribed by the commission shall be in force and shall be prima facie lawful and reasonable until found otherwise in a suit brought for that purpose pursuant to the provisions of this chapter."

Section 5247, R. S. Mo. 1929, provides that in proceedings before the commission growing out of the exercise of the authority and powers granted to the commission, the burden of proof is on the adverse party, as follows:

"In all trials, action, suits and proceedings arising under the provisions of this chapter or growing out of the exercise of the authority and powers granted herein to the commission, the burden of proof shall be upon the party adverse to such commission or seeking to set aside any determination, requirement, direction or order of said commission, to show by clear and satisfactory evidence that the determination, requirement,

direction or order of the commission complained of is unreasonable or unlawful as the case may be."

The case of State v. Public Service Commission, 297 S. W. 47, (Mo.) l. c. 49, the court in holding that in reviewing orders of the commission the test was whether same was unreasonable and unlawful, said:

"It is true that the order of the commission may be reviewed, but it is provided that:

"The burden of proof shall be upon the party adverse to such commission, or seeking to set aside any determination, requirement, direction or order of said commission, to show by clear and satisfactory evidence that the determination, requirement, direction or order of the commission complained of is unreasonable or unlawful as the case may be.' Section 10535, R. S. 1919.

"The test is: Is the order of the commission unreasonable or unlawful? State ex rel. v. Busby (Mo. Sup.) 274 S. W. 1067; State ex rel. v. Public Service Commission, 271 Mo. 155, 196 S. W. 369; Chicago, B. & Q. R. Co. v. Public Service Comm., 266 Mo. 333, 341, 181 S. W. 61; State ex rel. v. Public Service Comm. (Mo. Sup.) 275 S. W. 940, 946.

"The order of the commission requiring the construction of the overhead crossing is in harmony with the declared public policy of the state. There is nothing in the evidence tending to prove that in the circumstances of this case the order is unreasonable or unlawful. Chicago, R. I. & P. R. Co. v. Public Service Comm. (Mo. Sup.) 287 S. W. 617, 619 (2) and cases cited."

Section 5251, R. S. Mo. 1929, provides as follows:

"A substantial compliance with the requirements of this chapter shall be sufficient to give effect to all the rules, orders, acts and regulation of the commission, and they

shall not be declared inoperative, illegal or void for any omission of a technical nature in respect thereto. The provisions of this chapter shall be liberally construed with a view to the public welfare, efficient facilities and substantial justice between patrons and public utilities."

The court in the case of State v. Kansas City Gas Co., 163 S. W. 854, 1. c. 858, in holding that this law is to be liberally construed, said:

"That there had been a vast increase in such utilities in the last decade or two, and that evils have grown up crying out lustily for a cure by the lawmaker, is writ larger in current history. The act, then, is a highly remedial one filling a manifest want, is worthy a hopeful future, and on well-settled legal principles is to be liberally construed to further its life and purpose by advancing the benefits in view, and retarding the mischiefs struck at--all pro bono publico. Besides all which the lawmaker himself has prescribed, it 'shall be liberally construed with a view to the public welfare, efficient facilities and substantial justice between patrons and public utilities.'"

An examination of the above cases and statutory provisions demonstrates a clear intention upon the part of the Legislature to require the Commission to look after the security of the public in the use of railroads, by examining the latter and keeping themselves informed as to their condition (Section 5163), investigating the causes of all accidents (Section 5165), and ordering any repairs or improvements, including safety devices reasonably necessary (Section 5170).

That the Public Service Commission may, after a hearing, order the installation, use, maintenance and operation of appropriate safety appliances in connection with the operation of railroads is set out in clear and unambiguous language in Section 5239, and it is declared that such orders by the Commission are prima facie lawful and reasonable until found otherwise in a suit brought for that purpose (Section 5246), the burden being upon the adverse party to show by clear and satisfactory evidence that the order is unreasonable and unlawful as the case may be (Section 5247).

April 22, 1936.

In view of the liberal construction to be given the above provisions (Section 5251), plus the fact that specific authority has been granted the Commission to order the installation of safety appliances, we are of the opinion that, after a hearing by the Public Service Commission on its own motion or upon complaint, the Commission may order installation, use, maintenance and operation of appropriate safety devices deemed by it to be reasonably necessary on railroads for the safety of the public and its employees.

Respectfully submitted,

WM. ORR SAWYERS,
Assistant Attorney General.

APPROVED:

JOHN W. HOFFMAN, Jr.,
(Acting) Attorney General.

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