

INDIGENT PERSONS:) Consent of the Public Service Commission
RAILROADS:) obtained, railroads may issue a special
PUBLIC SERVICE COMMISSION:) rate to indigent and destitute persons
who are charges of the Missouri Relief
Commission, and same would not be
discriminatory or unlawful.

January 20, 1936.



Hon. Jas. E. Maxwell
Transient Director
Missouri Relief and Reconstruction Commission
412 East High Street
Jefferson City, Missouri

Dear Mr. Maxwell:

This is to acknowledge your letter dated January 17, 1936, as follows:

"At the suggestion of the General Passenger Agent's Office of the Missouri Pacific Railway, I am asking for a legal opinion as to the right of the Missouri Pacific Railway to issue a charity rate to indigent and destitute persons who are charges of the Missouri Relief Commission administering Federal funds in Missouri, in accordance with the Tariff established between the common carriers and the Federal Emergency Relief Administration, Supplement No. 6 which I am including in this letter.

"Missouri, in common with all the other states in the Union, has been, from time to time, taking advantage of this reduced rate for the returning of indigent persons to their place of legal residence, or the care of friends or relatives. The point at issue seems to be whether this is in conflict with Section 10442 and 10444 of RS-1919 of

the Missouri statutes. The Railroad is perfectly willing, and indeed anxious to comply with our request for the F.E.R.A. rate, if it is possible to do so.

"I should like to have an opinion on this matter from your office."

Section 10442, R. S. Mo. 1919, was carried forth in the revision of 1929 as Section 5153, R. S. Mo. 1929, and Section 10444, R. S. Mo. 1919, is found in Revised Statutes of Missouri, 1929, as Section 5155, R. S. Mo. 1929. Hereafter when we refer to any statutes we designate them as the section numbers found in the Revised Statutes of 1929.

Article 2, Chapter 33, R. S. Mo. 1929, pertains to "Railroads, Street Railroads and Common Carriers," and section 5146 of said article and chapter provides as follows:

"The provisions of this article shall apply to the transportation of passengers or property from one point to another within this state, and to any common carrier performing such service."

Section 5149 provides in part as follows:

"Every common carrier shall file with the commission and shall print and keep open to public inspection schedules showing the rates, fares and charges for the transportation of passengers and property within this state between each point upon its route and all other points thereon; * * *"

Section 5151 provides in part as follows:

"Unless the commission otherwise orders no change shall be made in any rate, fare or charge, or joint rate,

fare or charge, which shall have been filed and published by a common carrier in compliance with the requirements of this chapter except after thirty days' notice to the commission and publication for thirty days as required by this chapter, which shall plainly state the changes proposed to be made in the schedule then in force, and the time when the changed rate, fare or charge will go into effect; * * * * *"

Sections 5153 and 5155, R. S. Mo. 1929 (referred to in your letter as Sections 10442 and 10444, R. S. Mo. 1919, respectively) prohibit a "common carrier" from unjustly discriminating against persons "for doing a like and contemporaneous service in the transportation of a like kind of traffic under the same or substantially similar circumstances and conditions."

It is to be kept in mind that the Public Service Commission of Missouri is charged with the duty of supervising "common carriers" for the welfare of the public.

"The power of the public service commission is an exercise of the police power of the state granted by the law-making power to that tribunal and overrides all contracts, privileges, franchises, charters, or city ordinances. The exercise of such police powers are by the statutes granting same made subject to review and control by the courts as to being unreasonable or unlawful. The only question for the circuit court on the writ of review, and by this court on appeal, is whether the orders made by the commission subserve the public welfare in manner and to an extent reasonable and lawful, and this question is to be solved regardless of contract rights or obligations, except as such enter into the reasonableness or lawfulness of the orders made."--

State ex rel. City of Kirwood v. Public Service Commission et al., 50 S. W. (2d) 114, 1. c. 118 (Mo. Sup.)

You state that the Missouri Pacific Railway desires to give a charity rate for indigent and destitute persons who are charges of the Missouri Relief Commission administering Federal funds in Missouri, as was done under Supplement No. 6 between common carriers and the Federal Emergency Relief Administration. You desire to know if railway companies issue such a rate, if it would be violative of our statutes.

Supplement No. 6, attached to your letter, shows a reduced rate for F.E.R.A. tickets and certain conditions were attached concerning the use of said tickets, that is, same being good only for passage in coaches from starting point to destination and were not validated or honored on certain limited trains. Other exceptions were also contained as to the use of said tickets. In other words, the use of the F.E.R.A. tickets by certain indigent persons took away from said users certain rights and privileges enjoyed by persons traveling on higher rate tickets. The only question presented, then, is as to whether or not there is any discrimination in the use of these tickets such as to constitute a violation of Sections 5153 or 5155, supra.

In our opinion, if the Missouri Pacific Railway Company obtains the consent of the Public Service Commission of Missouri, it may issue a charity rate to indigent and destitute persons who are charges of the Missouri Relief Commission, in accordance with the Tariff established between the common carriers and the Federal Emergency Relief, i.e., Supplement No. 6. If such a rate is approved by the Public Service Commission, we do not believe that it would be discriminatory or violative of Sections 5153 and 5155, supra, in view of State ex rel. v. Public Service Commission, 10 S. W. (2d) 946, wherein the Supreme Court of Missouri, l. c. 951, held:

"It is settled by the decisions of both state and federal courts that the mere fact a rate fixed is discriminatory is not conclusive that such discrimination is unjust, and therefore unlawful and

invalid. (Cases cited.) * * * * *
In State v. M., K. & T. Ry. supra,
this court said (loc. cit. 525 of 262
Mo. (172 S. W. 40)):

"Arbitrary discriminations alone
are unjust if the difference in rates
be based upon a reasonable and fair
difference in conditions which equitably
and logically justify a different rate,
it is not an unjust discrimination."

* * * * *

"But neither at common law nor under the
statutes, state or federal, is the
carrier prohibited from giving a prefer-
ence or advantage, or from discriminating
between localities, provided such prefer-
ence, advantage, or discrimination is
not unreasonable."

Yours very truly,

James L. HornBostel
Assistant Attorney-General

APPROVED:

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

JLH:EG