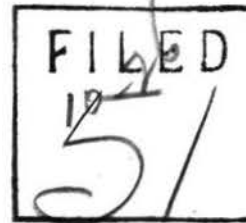


RAILROADS:  
RATES FOR SPECIAL  
ROAD DISTRICTS:

Railroads may make special rates for hauling road materials for special road districts.

October 19, 1938



Honorable Charles F. Lamkin, Jr.  
Prosecuting Attorney  
Chariton County  
Keytesville, Missouri

Dear Sir:

This is in reply to your request for an opinion from this department based upon the following statement:

"Certain townships in this county are about to engage in a system of gravel roads by contract, under a P. W. A. grant. The usual practice is to advertise for sealed bids, which are opened at a specified time, and the contract awarded to the lowest bidder. The material to be used on the several projects will be crushed limestone or gravel. In connection with the material used, it has been the practice of at least one contractor in this vicinity to be able to underbid his competitors by obtaining a private rate agreement for hauling road building material from the Wabash railroad. The details of this agreement are unknown to the other contractors and they are not advised as to whether or not they can obtain the same preferential treatment. As a result, the contractor concerned has an unfair advantage. After obtaining the contract, it is his practice to have the road building material such as gravel, consigned by the railroad to the township board. This is evidently done with the idea in mind that it will bring the transaction within Paragraph 3 of Section 5155, R. S. Mo. '29, which reads as follows: 'Nothing in this chapter shall prevent the carriage, storage, or handling

of properties, or road building materials at reduced rates for the United States, for the municipal government, or special road district.' It is my opinion that such a transaction is merely a subterfuge to evade the statutes, requiring the posting of rates by railroads and their uniform application to all shippers. The shipments contemplated will be entirely intrastate. Since the statutes provide various penalties, some of them penal in nature for railroads engaging in practices of this sort, I feel it proper to ask for an opinion upon the following questions:

"a. In your opinion, where road work is to be let by contract, the contractor to assume the responsibility of grading, procuring material, transporting it, and placing it on the road, the municipality having no concern in the methods used, may the law concerning the posting of rates and their uniform application be evaded by such a contractor by consigning road building material to a township, enabling the railroad to claim the protection of the paragraph of the statutes set out?

"b. Even if it should be announced in advance that a certain reduced rate would be available upon a certain railroad to all contractors, and that all contractors would be allowed to consign road building materials to the municipality, so as to come under the protection of the paragraph stated, but the contract documents made no reference to any such pre-arrangement and the entire responsibility under the proposed contract for obtaining and spreading and paying for the material used, rested upon the contractor, would such a consignment at the reduced rate for the successful contractor be lawful?"

Oct. 19, 1938

Your request refers to intrastate shipments of road materials for special road districts. It also appears that probably one contractor is able to underbid other contractors on road building jobs for your special road district because he gets a special freight rate from the railroad for this particular work.

Paragraph 3 of Section 5155, R. S. No. 1929, contains the following provision:

"Nothing in this chapter shall prevent the carriage, storage, or handling of properties or road building materials free or at reduced rates for the United States, state, municipal government or special road district."

It is by virtue of this provision of the statute that the carrier is authorized to make a special freight rate for road building materials for special road districts.

While this clause does not provide that the contract for such road materials must be made with the special road district, yet if the materials are furnished under a contract for the special road district, and if such district receives the benefit of the reduced rates authorized by said clause, then the purposes of the law have been accomplished. However, if any other person than the special road district benefits in any degree on account of such reduced freight rate, then such reduction is unauthorized and the carrier is subjected to the provisions of Section 5155, R. S. No. 1929, which are in part as follows:

"No common carrier subject to the provisions of this chapter shall after the taking effect of this chapter engage or participate in the transportation of passengers or property, between points within this state, until its schedules of rates, fares and charges shall have been filed and published in accordance with the provisions of this chapter. Any railroad corporation, or common carrier, which shall undertake to perform any service or furnish any product or commodity unless or until the rates, tolls, fares, charges,

Oct. 19, 1938

classifications and rules and regulations relating thereto, applicable to such service, product or commodity, have been filed with the commission and published in accordance with the provisions of this article, shall forfeit to the state not less than one hundred dollars nor more than five hundred dollars. No common carrier shall charge, demand, collect or receive a greater or less or different compensation for transportation of passengers or property, or for any service in connection therewith, than the rates, fares and charges applicable to such transportation as specified in its schedules filed and in effect at the time; nor shall any such carrier refund or remit in any manner or by any device any portion of the rates, fares, or charges so specified, nor extend to any shipper or person any privileges or facilities in the transportation of passengers or property except such as are regularly and uniformly extended to all persons and corporations under like circumstances.

\* \* \* \* \*

"3. \* \* \* Provided, further, that nothing in this chapter shall prevent the carriage, storage, or handling of properties or road building materials free or at reduced rates for the United States, state, municipal government or special road districts. \* \* \*."

The provisions of this section cannot be evaded by the carrier consigning the road materials to a special road district for the contractor who is constructing the road. Such consignments are not prohibited, but the special road district must receive the full benefit of the reduced rates before the carrier is authorized to make such a rate, and we think under the statute the burden is on the carrier to be certain that the special road district is receiving the full benefit of such reduced rate before it is authorized to make the rate.

October 19, 1938

CONCLUSION

Answering subsection (a) of your request, we are of the opinion that the law concerning posting of rates and their uniform application to all persons may not be evaded by a contractor who has road building materials consigned to the special road district, because under said clause of Section 5155, supra, the carrier, when making a special rate for the district, is required to see that such district receives the full benefit of the reduced rate. These rates may not be made for the contractor in any sense. The railroad is not relieved from the provisions of Section 5155, supra, if it makes a special rate to a district, not knowing the district is getting the full benefit of the rate, and in which the district does not receive all the benefits of such reduced rate.

Answering subsection (b) of your request, we are of the opinion that a consignment of road material for a special road district at a reduced rate to a contractor for the building of a road for the district would be lawful, providing the special road district receives the full benefit of the reduction in the rates; otherwise it would be discriminatory and contrary to the provisions of Section 5155, supra, and unauthorized.

Respectfully submitted

TYRE W. BURTON  
Assistant Attorney General

APPROVED:

---

J. E. TAYLOR  
(Acting) Attorney General

TWB:HR