

Opinion No. 13-1104

September 8, 1913

BY: IRA L. GRIMSHAW, Assistant Attorney General

TO: State Corporation Commission, Santa Fe, New Mexico.

RAILROADS.

Corporation Commission cannot require railway companies to install scales for weighing livestock.

OPINION

{*278} Your letter dated April 10, requesting an opinion as to whether your Commission has power to order and enforce by law the installation of track scales at proper points on lines of railway in New Mexico, has been referred to me for reply.

In a recent conversation with your Mr. Seggerson, I learned that the track scales referred to in your communication are not the ordinary railway track scales used by railway companies for weighing shipments at destination, nor are they intended for such purposes, but are a different type of scales appropriately designed for weighing livestock and other like property, and to be used, primarily, for the individual use of the shipper.

I also understand that the tariff on both intrastate and interstate shipments provides transportation charges on livestock based on the weight at destination, and not the weight at point of departure. Section 7, Article XI of the Constitution, substantially provides that the Corporation Commission is empowered with the duty of requiring railway companies to provide and maintain adequate depots, stock-pens, station buildings, agents and facilities for the accommodation of passengers, and for receiving and delivering freight and express, and also making and enforcing reasonable and just rules for supplying cars and equipment to shippers for their use. Eliminating intervening words, not material to a discussion of the point raised, the constitution charges the Commission with the duty of requiring railway companies to provide and maintain adequate facilities for receiving and delivering freight, and making and enforcing just and reasonable rules requiring the supplying of cars and equipment for the use of shippers.

Adequate facilities for receiving freight cannot, by any proper construction, be said to include scales placed at the track only for the convenience of the shipper. The purpose and intent of those words is that the railway company is obliged to furnish platforms and houses for the storage of goods and like things for the proper receipt and custody of property confided to its care for shipment.

That portion of the section of the Constitution in regard to reasonable and just rules, requiring the supplying of equipment for use of shippers, also has no application. The railroad company has no beneficial or other interest, or concern, in the scales sought to be installed. The transaction concerns only the shipper and perhaps his consignee and is entirely a matter between them. It does not affect the facilities of the railroad company for the receipt or transportation of the shipments. The railroad company has no concern in the weight of shipments at point of departure for by their tariffs this matter is determined at point of destination.

{*279} An order compelling the installation of these scales, in effect, would simply cast upon the railroad company a duty which it is not bound to perform, and an obligation incumbent upon the shipper. If the shipper desires to weigh his shipment at point of departure, that is a question for him and not one affecting the railroad company. The rule otherwise would be unjust and unreasonable and in conflict with the constitution.

Therefore, it is my opinion that the object of the proposed action being outside of constitutional authority, it should not be taken.