Opinion No. 13-1096

August 27, 1913

BY: IRA L. GRIMSHAW, Assistant Attorney General

TO: State Corporation Commission, Santa Fe, N. M.

RAILROADS.

State Corporation Commission cannot regulate the hours of employes engaged upon railroads not common carriers.

OPINION

*{*269}* Your letter of the 31st ult. addressed to the Attorney General in reference to the regulation of safety appliances on railways within the state which are engaged in a private business and as to the regulation of hours of labor of employes thereof, has been referred to me for attention.

The State Corporation Commission has no power or authority over the subject of safety appliances on lines of railroad not affected with a public interest but engaged exclusively in a private business.

If the State Corporation Commission could exercise any power or control over a privately-owned and operated railroad it could only be exercised, so far as safety appliances are concerned, by virtue of Article XI, Section 7, of the Constitution.

FIRST. To regulate, control and fix all charges and rates of railway -- and other transportation companies within the state.

As a privately-owned and operated railroad, not doing a public business charges no rates, nor makes any charges, it can safely be said that this portion of the section applies exclusively to that class of railways doing a public business -- affected with a public trust, as distinguished from a railroad doing simply a private business not of a public nature.

SECOND: To require railroad companies to provide and maintain adequate depots, stock pens, station buildings, agents and facilities for the accommodation of passengers and for the receiving and delivering of freight and express.

It is very apparent that this portion of the section likewise applies only to railroads affected with a public trust.

THIRD. To provide and maintain necessary crossings, culverts and sidings when public interest demands same.

This portion of the section may appropriately apply to either class of railways.

FOURTH. Power and duty to make rules requiring the proper supply of cars and equipment for use of shippers and passengers.

This cannot refer to a privately-owned and operated railway, but does refer to a public one.

FIFTH. To require all intrastate railways, transportation companies or common carriers to provide such reasonable safety appliances in connection with all the equipment as may be proper and necessary for the safety of its employes and the public, and as are now or may be required by the federal laws governing interstate commerce.

The question is were the words "intrastate railways" intended to *{*270}* include a railway company privately owned and operated and not engaged in a public business.

It must be said that the members of the constitutional convention had in mind only railway corporations or companies engaged in a public business and charged with a public trust. This seems very probable when you consider that the last-mentioned portion of the section is included within and is a part and parcel of a section which deals exclusively with classes of organizations and companies engaged in a business of a public nature. The above portion of the section also uses the words "such reasonable safety appliances -- as may be proper and necessary for the safety of its employes and the PUBLIC." The public has no particular interest or concern in the appliances of a privately-owned and operated railway engaged only in a private business. Also, the fact that this portion of the section likens the standard of safety appliances within the state with the standard set for interstate railways by federal laws, has a tendency to indicate that this refers only to railways engaged in a public business. The federal government, of course, has no power or control over the appliances of an intrastate railway, and this provision takes the subject of such regulation into account and makes the standard the same as that of interstate railways.

These analogies are not conclusive, but are useful in determining the construction of the section, and, I believe, it would do violence to the meaning of the section, as gathered from the words used, to construe the portion of the section given above as applying to other than a railway company engaged in a public business and affected with a public trust.

Therefore, in my opinion, the State Corporation Commission, under the present state law, has no power or control over the standard of safety appliances used on a railway within the state engaged in a private business and not affected with a public trust.

Chapter 62 of the Laws of 1912, entitled "An Act to safeguard the traveling public and employes upon railroads by limiting the hours of service of employes thereon," refers to railway employes of a railroad company engaged in a public business and not to a privately-owned and operated railroad not engaged in a public business.

The title of the act gives one the impression that the act was passed for the purpose of providing for the safety of the traveling public, and that such result was sought to be effected by limiting the hours of labor of the employes.

No other state statute of like or similar phraseology can be found. Some of the state statutes use the words, "railroad companies or corporations," "lines of railway operated by a company or corporation or a receiver within the state," while others use the words "receivers or corporations or persons operating a line of railroad within the state." In many of the acts the words "railroad company" are defined to mean only certain things.

The act in question uses only the words "railway company within the State of New Mexico."

The act excepts sleeping car companies, wrecking and relief train crews, and train crews in certain contingencies. The State Corporation Commission is charged with the duty of lodging complaints *{*271}* with the district attorney where violations of the act occur which come to its knowledge.

The object of the act is no doubt to protect the traveling public. Therefore, the words "railway company within the state of New Mexico," in order to carry into effect the obvious intention and object of the legislature, may properly be restricted and qualified to mean those classes of railway companies doing a public business and not those engaged in a private business and not coming into constant contact with the general traveling public. This is in accord with the general intention of the act as gathered from all its parts.

Therefore, in my opinion, the State Corporation Commission, under the law as it now exists, cannot regulate nor complain of the hours of labor employes of railroad companies within the state engaged only in a private business. If it is ascertained that the particular companies referred to by you hold themselves out for the carriage of passengers or freight for hire, indiscriminately, then they would come within the purview of "Common Carriers" and would fall within the provisions of the act, but I understand from the contents of your letter that these companies are not engaged in such business.