

Opinion No. 15-1440

February 20, 1915

BY: FRANK W. CLANCY, Attorney General

TO: Hon. A. A. Sena, House of Representatives, Santa Fe, New Mexico.

As to the power of State Corporation Commission to fix a uniform three cent passenger rate within the state.

OPINION

{*29} I have just received your letter of yesterday in which, after quoting that portion of Section 7 of Article XI of the Constitution which, among other things, gives to the State Corporation Commission the power and charges it with the duty of fixing, determining, supervising, regulating and controlling all charges and rates of railway companies, you ask whether the Corporation Commission has the power to order railway companies in New Mexico to change their passenger rates from what they now are to the uniform rate of three cents a mile for all classes of passengers between all points within the state, and if it has that power, as you believe it has, whether it is not the duty of the Commission to order the lowering of such rates when it is demanded that it do so.

To the first part of your question I have to say that it is within the power of the Corporation Commission to order the railway companies in New Mexico to change their passenger rates to the uniform rate of three cents a mile for all classes of passengers between all points within the state, but while it is within the power of the Commission to make such an order, that order would undoubtedly be subject to review and possible change by the courts, and there would be much room for argument that a uniform three-cent rate upon all railroads within the state would not be fair to the railway companies. As to those railways where there is but little passenger business and where the receipts from the passenger traffic are small, it might be argued that a higher rate should be permitted than upon the lines where the travel is great and passenger receipts larger.

In answer to the second part of your question, I am not prepared to say that it is the duty of the Corporation Commission to order the lowering of passenger rates when called upon to do so. For me to undertake to say that it is the duty of the Corporation Commission to fix a uniform three-cent rate throughout the state would involve a usurpation on my part of the power and authority given to the Commission. The Commission should act upon any matter of this kind presented to it, but only after investigation and the taking of evidence to be presented both for and against the proposed change and after full hearing not only to the persons asking for the change, but to the railroad companies affected. {*30} Until such an investigation is had, I feel that it would be improper for me to express my opinion as to the action which the corporation Commission ought to take.