

Opinion No. [30-69]

February 21, 1930

TO: Office of the Attorney General of New Mexico

RAILWAYS -- Order of cars in mixed trains. § 116-311, Code 1929.

OPINION

Reference is made to yours of the 17th inst. in which you call attention to the act of the A. T. & S. F. Ry. Co. in replacing a steam train between Albuquerque and El Paso with a gas electric train in which the car containing the motor is the vehicle which carries passengers and behind which is a trailer or car carrying baggage and express. You also call attention to section 4710 of the Codification of 1915, which is section 116-311 of the Compilation of 1929, as follows:

"Order of cars in mixed trains. It shall be unlawful for any railroad corporation, in making up its trains, to place mail, express, baggage or freight cars in the rear of passenger cars. . . ."

The section of which a part is quoted was paragraph 6 of chapter 8 of the Laws of 1878. A violation of this statute is made a misdemeanor and penalty is visited upon the officer or agent by whom the same was done or suffered to be done.

Inasmuch as this statute was passed fifty-two years ago it is obvious that the legislature could not have had in mind present day conditions and methods of transportation. The section is designated under the heading "Order of cars in mixed trains." Mixed trains, it appears, were the usual thing in railway transportation in New Mexico at that time. The passage of this act was probably intended to lessen danger to passengers in case of collision or accident to the locomotive. Passengers in coaches near such locomotive, in the case of collision or accident, were frequently scalded by steam escaping from the boiler and also endangered by a heavy train behind such passenger coach being carried forward by its momentum to crush the coach or pile up on top of it, conditions which, of course, do not exist in the operation of the gas electric train to which reference is made.

In your letter you make reference to communications from General Manager J. R. Hitchcock and Superintendent West of the A. T. & S. F. Ry. Company, from which it appears that their intent and desire is to comply with all requirements of the law. It just happened that while this matter lay on my desk, Mr. W. C. Reid, solicitor for the A. T. & S. F. Ry. Company in New Mexico, came into the office and I discussed the matter somewhat with him. He assures me that it is the desire of this company to comply in all respects. That study is now being made and plans being worked out for the changing of equipment to be used in this gas electric service, which equipment will permit compliance with the letter of the law as well as with the spirit. Mr. Reid also assures me

that if it should turn out that new equipment cannot be provided within a comparatively short time a return will be made to the old style steam locomotive until such time as new equipment can be provided.

I think it quite probable that a court would hold that the statute to which reference is above made being yet in force is applicable to all trains no matter what form of motor power is employed, and yet in view of the intent and purpose of the statute, so far as we are able to know the same, it would seem to have but little application to the present day conditions.

I am compelled to give it as my opinion that the operating of such a train with the baggage and express carried in a car in the rear of a passenger car is a violation of the letter of the law since the legislature has not seen fit to provide any exception or in any way limit the application. The Commission however, will no doubt, in its requirements as to compliance, take into account the manifest purpose and object to be accomplished and will exercise such discretion as appeals to the judgment of the several members of your commission as to the time or lack of time to be given within which special equipment, meeting all the requirements of the statute, can be obtained and put into use.