

**OPINION
47-199**

August 4, 1947 (OPINION)

RAILROAD

RE: Full Crew Law - Mixed Train

This will acknowledge the receipt of your letter of August 2, 1947, in which you request the opinion of this office as to whether, under the so-called full crew law of North Dakota, a baggage man or express messenger must be employed by the Northern Pacific Railroad on a mixed train, which carries baggage and express, operated daily from Mandan, North Dakota to Linton, North Dakota and return, the work ordinarily performed by an express messenger, being done by the conductor of the train who receives extra compensation for this service.

Section 49-1311 of the North Dakota Revised Code of 1943 is applicable to the train referred to in your letter. It reads as follows:

"No railroad corporation doing business in this state which operates more than four trains in any twenty-four consecutive hours shall operate over any of its lines or any part thereof outside of the yard limits any passenger train consisting of more than four passenger or other cars with less than a full train crew consisting of five persons:

1. One conductor;
2. One engineer;
3. One fireman;
4. One brakeman; and
5. One flagman, such flagman to have at least one year's experience in train service.

"Said conductor, flagman, or brakeman shall not be required to perform any of the duties of train baggagemaster, express messenger, porter, or electrician".

You will note that under the provisions of said section, neither the conductor, flagman, or brakeman is required to perform the duties of baggagemaster, express messenger, porter, or electrician. In other words--the railroad company cannot, as a condition of employment, require a conductor to perform the duties of an express messenger or baggagemaster. But the language of said section does not indicate or imply that a conductor may not agree to perform such additional services provided he receives compensation therefor and such compensation is extra--that is to say--in addition to the salary or wages which would be paid to him if a baggagemaster or express messenger were employed.

The language of section 49-1311 is plain and unambiguous. There is no room for construction or interpretation. The legislative intent must be ascertained by applying the statutory rule that words are to be understood in their ordinary sense.

Section 1-0202 of the 1943 Revised Code provides:

"Words used in any statute are to be understood in their ordinary sense, unless a contrary intention plainly appears, but any words explained in this code are to be understood as thus explained."

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Attorney General