

OPINION
52-141

May 19, 1952 (OPINION)

PUBLIC SERVICE COMMISSION

RE: May Not Act Where Conflict Occurs Between Citizens

This is directed to you in response to your request for an opinion construing section 49-0217 and 49-0218 of the N.D.R.C., 1943.

These sections read as follows: 49-0217. Unreasonable Rates, Rules, and Practices Affecting Interstate Commerce. Whenever it shall come to the knowledge of the commission, either from its own investigation or by complaint made to it in any manner whatsoever, that the rates charged by any common carrier on interstate business are unjust or unreasonable or that the rates, rules, or practices of such carrier:

1. Discriminate unjustly against the citizens, industries, or interests of this state;
2. Place any of the citizens, industries, or interests of this state at an unreasonable disadvantage as compared with those of other states; or
3. Are levied or laid in violation of the act to regulate commerce or regulations, of the Interstate Commerce Commission,

the commission immediately shall call the attention of the officials of such common carrier operating in this state to the fact and urge upon them the propriety of changing such rates, rules, or practices.

49-0218. Failure of Carrier to Adjust Rates; Action by Public Service Commission. Whenever discriminatory rates, rules, or practices are not changed or adjusted so as to remove or remedy the discrimination within a reasonable time, the commission, whenever it can be done legally, shall present the facts involved in such discrimination to the Interstate Commerce Commission and appeal to it for relief. If the commission deems it necessary, the attorney general, with such other assistance as may be provided by law, shall prosecute any charge growing out of any such discrimination.

The question which you have submitted is, "Where the Public Service Commission receives a complaint that the rates charged by common carrier on interstate business are discriminatory against the citizens and interests of one section or group of communities in this state as compared with another section or group of communities in this state, is that commission charged with the responsibility of acting on behalf of the complaining parties as outlined in section 49-0217 and 49-0218?"

This office is of the opinion that your question must be answered in the negative.

Subsection one of section 49-0217 refers to discrimination against the citizens, industries, or interests of the state. If the legislature intended to charge the commission with responsibility described in the foregoing question, I submit that it would have referred to discrimination between the citizens, industries, or interests of the state. The language of the statute as a whole charges the Public Service Commission with concern over the interests of North Dakota as against those of other states.

It is axiomatic that where one group enjoys a business advantage over another group, it will attempt to protect that advantage when the group suffering the disadvantage seeks to destroy it.

It is the opinion of this office, that the Public Service Commission as a quasi judicial body of the state must maintain a position of impartiality where a conflict occurs between citizens, industries, or interests of the state.

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