

Chapter 760

Railroad Regulation Generally

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CASE CITATIONS: *Morgan v. Portland Traction Co.*, (1958) 222 Or 614, 331 P2d 344.

ATTY. GEN. OPINIONS: Availability for public inspection of commissioner's files concerning railroads, 1966-68, p 273.

LAW REVIEW CITATIONS: 1 WLJ 203.

760.005

NOTES OF DECISIONS

A common carrier is one who, by virtue of his calling, undertakes to transport persons or commodities from place to place, offering his services to all such as choose to employ him. *Anderson v. Smith-Powers Logging Co.*, (1914) 71 Or 276, 139 P 736, LRA 1916B, 1089.

A railroad built by the Federal Government for war purposes did not become a common carrier on its purchase by a private corporation to transport its own lumber, even though it was operated for the public service in the interim under a permit from the federal agency in whom title was vested. *Pacific Spruce Corp. v. McCoy*, (1923) 294 Fed 711.

FURTHER CITATIONS: *Morgan v. Portland Traction Co.*, (1958) 222 Or 614, 331 P2d 344; *State v. Portland Traction Co.*, (1963) 236 Or 38, 386 P2d 435.

ATTY. GEN. OPINIONS: Commissioner's authority to compel Portland and Multnomah County to allow tracks across bridge, 1954-56, p 202.

760.015

NOTES OF DECISIONS

1. In general

A railroad company will not be permitted to evade the obligations imposed upon it by law by turning its road over to a lessee. *Lakin v. Willamette Valley & C.R. Co.*, (1886) 13 Or 436, 11 P 68, 57 Am Rep 25.

The duties referred to exist independently of statute. *Southern Pac. Co. v. R.R. Comm.*, (1911) 60 Or 400, 119 P 727.

The authority of a state to control the rates of fare charged by common carriers operating within its limits is unquestionable. *Portland Ry., Light & Power Co. v. R.R. Comm.*, (1912) 229 US 397, 33 S Ct 820, 57 L Ed 1248.

The power to compel railroads to render adequate service and charge reasonable rates is legislative, and not judicial. *Hammond Lbr. Co. v. Pub. Serv. Comm.*, (1920) 96 Or 595, 189 P 639, 9 ALR 1223.

2. Rates and services

The standard of reasonable compensation fluctuates with changing conditions. *Portland Ry., Light & Power Co. v. R.R. Comm.*, (1910) 56 Or 468, 105 P 709, 109 P 273.

The word "adequate," as used in this section does not

refer only to existing facilities. *Southern Pac. Co. v. R.R. Comm.*, (1911) 60 Or 400, 119 P 727.

The powers of the commission should be used to facilitate existing business, and not speculatively to create business where none exists. *Id.*

The carrier is entitled to earn enough, not only to meet the expenses of current repairs, but also to afford means of replacing the plant as it wears out. *Hammond Lbr. Co. v. Pub. Serv. Comm.*, (1920) 96 Or 595, 189 P 639, 9 ALR 1223.

The only distinction between this section and ORS 760.135 is that the former applies to rates of individual companies, and the latter to joint rates. *Oregon-Wash. R. & Nav. Co. v. McColloch*, (1936) 153 Or 32, 55 P2d 1133.

FURTHER CITATIONS: *Southern Pac. Co. v. Heltzel*, (1954) 201 Or 1, 268 P2d 605; *McPherson v. Pac. Power & Light Co.*, (1956) 207 Or 433, 296 P2d 932.

ATTY. GEN. OPINIONS: Commissioner's authority to compel Portland and Multnomah County to allow tracks across bridge, 1954-56, p 202.

760.050

NOTES OF DECISIONS

This statute operates as a repeal of all ordinances in cities of less than 100,000 population relating to the speed of trains. *Southern Pac. Co. v. Consol. Freightways*, (1955) 203 Or 657, 281 P2d 693.

FURTHER CITATIONS: *Brown v. Spokane, Portland and Seattle Ry.*, (1967) 248 Or 110, 431 P2d 817.

ATTY. GEN. OPINIONS: Authority to regulate noise of railroads, 1966-68, p 457.

760.105

NOTES OF DECISIONS

A recital in a rate schedule that "rates named herein... will apply to directly intermediate points" did not obligate the carrier to deliver freight at points between the stations mentioned in the schedule. *Schanen-Blair Co. v. So. Pac. Co.*, (1913) 68 Or 106, 136 P 886.

The right to fix rates is lodged in the carrier in the first instance. *Hammond Lbr. Co. v. Pub. Serv. Comm.*, (1920) 96 Or 595, 189 P 639, 9 ALR 1223.

FURTHER CITATIONS: *Southern Pac. Co. v. Heltzel*, (1954) 201 Or 1, 268 P2d 605.

760.120

CASE CITATIONS: *Service Lbr. Co. v. Sumpter Valley R. Co.*, (1913) 67 Or 63, 135 P 539.

760.130

NOTES OF DECISIONS

A commodity imported into Oregon ceases to be an article of interstate commerce when it reaches its destination, and any subsequent transportation within the state is intrastate. *Oregon Ry. & Nav. Co. v. Campbell*, (1910) 180 Fed 253.

An order that relates solely to intrastate commerce will not be invalidated on the theory that it constitutes a regulation of interstate commerce. *Southern Pac. Co. v. Campbell*, (1912) 230 US 537, 33 S Ct 1027, 57 L Ed 1610.

The commissioner may suspend only rates he is authorized to investigate, that is, new rates established or existing rates increased; he has no authority to suspend proposed reduced rates pending investigation of their reasonableness. *Union Pac. R. Co. v. Bean*, (1941) 167 Or 535, 119 P2d 575.

The legislature has not given the commissioner power to establish minimum rates. *Southern Pac. Co. v. Heltzel*, (1954) 201 Or 1, 268 P2d 605.

760.135

NOTES OF DECISIONS

Use of the phrase "between points in this state" indicates a purpose to limit the power of the commission to intrastate commerce. *Oregon Ry. & Nav. Co. v. Campbell*, (1909) 173 Fed 957.

FURTHER CITATIONS: *McPherson v. Pac. Power & Light Co.*, (1956) 207 Or 433, 296 P2d 932.

760.170

CASE CITATIONS: *Portland Ry., Light & Power Co. v. R.R. Comm.*, (1910) 56 Or 468, 105 P 709, 109 P 273; *Service Lbr. Co. v. Sumpter Valley R. Co.*, (1913) 67 Or 63, 135 P 539.

760.175

NOTES OF DECISIONS

Paragraph (1)(d) was enacted in order to remove all doubt of the power of a municipal corporation to complain of discrimination. *Portland Ry., Light & Power Co. v. R.R. Comm.*, (1910) 56 Or 468, 105 P 709, 109 P 273.

A state may prohibit unjust discrimination against particular localities. *Portland Ry., Light & Power Co. v. R.R. Comm.*, (1912) 229 US 397, 33 S Ct 820, 57 L Ed 1248.

A former similar section did not make unlawful the grant to a particular transfer company of the sole privilege of soliciting the patronage of passengers; it was designed to prohibit a railroad from showing preference as between its patrons. *Baggage & Omnibus Transfer Co. v. Portland*, (1917) 84 Or 343, 164 P 570.

Giving advantage to a particular classification of traffic is not unjust discrimination. *Southern Pac. Co. v. Heltzel*, (1954) 201 Or 1, 268 P2d 605.

FURTHER CITATIONS: *Ex parte Koehler*, (1885) 23 Fed 529; *Oregon Ry. & Nav. Co. v. Campbell*, (1909) 173 Fed 957.

760.180

LAW REVIEW CITATIONS: 1 WLJ 221.

760.205 to 760.255

CASE CITATIONS: *Portland Traction Co. v. Hill*, (1962) 231 Or 354, 372 P2d 501; *State v. Portland Traction Co.*, (1963) 236 Or 38, 386 P2d 435.

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CASE CITATIONS: *Portland Traction Co. v. Hill*, (1962) 231 Or 354, 372 P2d 501.

760.215

CASE CITATIONS: *Portland Traction Co. v. Hill*, (1962) 231 Or 354, 372 P2d 501.

760.225

CASE CITATIONS: *Portland Traction Co. v. Hill*, (1962) 231 Or 354, 372 P2d 501.

760.235

NOTES OF DECISIONS

Reduction or discontinuance of service requires consideration of (1) the cost of providing the present service, (2) the use by the public of the present service, and (3) availability and adequacy of other transportation facilities. *Portland Traction Co. v. Hill*, (1962) 231 Or 354, 372 P2d 501.

LAW REVIEW CITATIONS: 1 WLJ 211.

760.305

CASE CITATIONS: *Oregon R. & Nav. Co. v. Campbell*, (1909) 173 Fed 957.

ATTY. GEN. OPINIONS: Whether logging or other private railroads not doing business as a common carrier are required to file the annual report required by this section, 1944-46, p 63.

760.535

NOTES OF DECISIONS

The legislative intent, in enacting this section, was to authorize the commissioner to award reparation whenever, in the course of a rate investigation, he finds that shippers have been damaged by the application of unjust and unreasonable rates. *Oregon-Wash. R. & Nav. Co. v. McColloch*, (1936) 153 Or 32, 55 P2d 1133.

This section limits the authority of the commissioner to award reparation to cases involving exercise of an administrative function or discretion, and does not include cases wherein the courts may give relief without a prior rate ruling on the part of the commissioner. *Id.*

Overcharges, that is, charges in excess of those fixed by the commissioner or appearing in the published schedule, are not within the purview of the statute. *Id.*

The shipper is not by this section given the right to elect whether he will file a complaint with the commissioner or institute an action in court. *Id.*

FURTHER CITATIONS: *McPherson v. Pac. Power & Light Co.*, (1956) 207 Or 433, 296 P2d 932.

760.540

NOTES OF DECISIONS

An order awarding reparation is not final, and no execution can issue on it. *Oregon-Wash. R. & Nav. Co. v. McColloch*, (1936) 153 Or 32, 55 P2d 1133.

A court of equity has no jurisdiction to set aside an order awarding reparation to a shipper. *Id.*

FURTHER CITATIONS: *Kinzua Lbr. Co. v. Daggett*, (1955) 203 Or 585, 593, 281 P2d 221.