

FILE

Subject

*Kansas Transportation  
Railroads, General*



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STATE OF KANSAS

*Office of the Attorney General*

State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

VERN MILLER  
*Attorney General*

February 22, 1974

Opinion No. 74- 72

Honorable T. D. Saar, Jr.  
State Senator  
State Capitol  
Topeka, Kansas 66612

Dear Senator Saar:

You advise that several recent instances may have occurred in which rail carriers operating within the State of Kansas have unilaterally made changes "in practice pertaining to the service" provided by such carriers in intrastate commerce in this state. You question whether the consent of the Kansas Corporation Commission must first be obtained before such changes are instituted.

K.S.A. 66-117 requires in the first instance that whenever any common carrier or public utility subject to the Kansas act desire to make any change in

"any rate, joint rate, toll, charge or classification or schedule of charges, or in any rule or regulation or practice pertaining to the service or rates of any such public utility or common carrier,"

the utility or carrier shall first file with the corporation commission a schedule showing the changes desired to be made and put in force. The section continues thus:

"No change shall be made . . . without the consent of the commission, and within thirty days after such changes have been authorized by said corporation commission, then copies of all tariffs, schedules, . . . shall be filed in every station, office or depot of every such public utility and every common carrier in this state for public inspection." [Emphasis supplied.]

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This section was enacted in 1911 as § 20 of the Kansas Public Utilities Act. In State ex rel. Caster v. Postal Telegraph Co., 96 Kan. 298 (1915), the court upheld this provision and elaborated on its importance:

"Section 20 also is quite pertinent. It provides that if a public utility desires to change any rule, regulation, or practice, it shall apply to the commission for leave to change such practice, etc. And no change in such practice, etc., shall be made without the sanction of the commission.

"In view of all these, can there be any doubt of the duty of the defendant, before dismantling its station at Syracuse or abandoning its business thereat, to secure the approval of the commission for such an important change in its mode of service? How is the public utilities commission to discharge its important duties if the public service companies may quit business here, there, or anywhere in the state without an opportunity for the commission to determine the propriety of such a course?

"It is clear that if the defendant may forego its business in Syracuse without the sanction of the commission, it can close its office in Topeka, Wichita or Kansas City without the consent of the commission. If this public utility, a telegraph company, can close one of its offices and quit business without the consent of the commission, any other public utility, like the Santa Fe railway for example, could close its depot at Dodge City, Hutchinson or Emporia without the consent of the commission. Where would this end? If these utility corporations may abandon this particular service without consent of the commission, may they not take off their passenger trains, take up and abandon unprofitable branch lines, change the fares and rates of transportation for passengers and freight or raise the charge for telegraph messages without the consent of the commission? These questions answer themselves. To yield approval to the contention of the defendant is to concede that the state's program for the regulation and control of public service corporations is ineffective; that the public utilities act has been enacted in vain." 96 Kan. at 305.

Clearly, if the changes involve intrastate service subject to the Kansas act, after the filing of a schedule showing the proposed changes desired to be made and put in force, the commission must first consent thereto before the changes may be implemented. Within thirty days after commission authorization is granted,

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copies of the amended schedules, tariffs and the like must be filed in the office, station, or depot of the public utility or carrier involved.

Yours very truly,



VERN MILLER  
Attorney General

VM:JRM:jsm

cc: Dale Saffels, Chairman  
Kansas Corporation Commission  
State Office Building  
Topeka, Kansas 66612