

CHAPTER 216

RAILROAD AND WAREHOUSE COMMISSION

216.01 ELECTION; VACANCIES.

Legislative history and right to appeal. *Railway Transfer v Railroad and Warehouse Com.* 39 M 231, 39 NW 150; *State v St. P. M. & Man.* 40 M 353, 42 NW 21.

The railroad and warehouse commission was subject to the reorganization bill, L. 1925, c. 426. *State v Chase*, 165 M 268, 206 NW 396.

"Next general election" means one occurring after there is sufficient time after the vacancy to give the notice required by law that the vacant office is to be filled at the election. One who has no certificate of election to a state office from the state canvassing board is not entitled to quo warranto to test the title of an incumbent appointee thereto. *State ex rel v Atwood*, 202 M 50, 277 NW 357.

"Appointive term expires on the date the certificate of election is issued to the appointee's successor." OAG Oct. 21, 1944 (371-5).

216.04 REMOVAL; QUORUM.

The chairman of the railroad and warehouse commission, the other two commissioners being absent, on May 12, 1947, under the belief that an emergency existed, communicated with one of the absent commissioners by telephone and issued an order authorizing the street car company to proceed with the new method of the sale of tokens. The order was subsequently signed by two commissioners. The order was of no effect until signed by a member of the commission, to become valid when so signed. OAG May 22, 1947 (371-a).

216.05 SECRETARY; EMPLOYEES.

Under the reorganization act, the commissioner of administration is responsible for the operation of the allotment system. The railroad and warehouse commission must submit in such detail as requested, estimates of the number of and salary allowed to employees in the grain inspection department. OAG June 18, 1947 (215-a-3).

216.06 COMMON CARRIERS.

Defendant, a forwarding agent, was a private and not a common carrier, and so free to contract for its compensation unhampered by existing railroad tariffs. But when it accepted property for shipment by rail subject to such "classification and tariffs" it contracted for no additional compensation and was bound to perform its services for the compensation so fixed. Plaintiff may recover the overcharge. *Northwest Tablet Co. v Universal Carload Co.* 189 M 582, 250 NW 456.

A motor carrier engaged in transportation by motor vehicle over the public highways between designated depots, stations, and sidings of freight tendered to it by a railroad which has undertaken to carry such freight as a common carrier by rail is a common carrier between fixed termini or over a regular route, whose operation is authorized only under a certificate of public convenience and necessity under L. 1925, c. 185, and is not authorized either as a contract or common carrier under L. 1933, c. 170. *Railroad and Warehouse Com. v Rock Island Motor Transit*, 209 M 105, 295 NW 519.

216.11 PROCEDURE; RULES; OFFICE.

Rate making for the future is an inherently legislative act, whether done by the legislature directly or by an administrative body to which is delegated the duty

of fixing rates in detail, and the orders of such tribunals are subject to the same tests and command the same regard as enactments of the legislature. *State v Tri State Telephone*, 204 M 516, 284 NW 294.

In determining whether a rate is confiscatory the judicial scrutiny must of necessity take into account the entire legislative process, including the reasoning and findings upon which legislative action rests; the court will not interfere with the exercise of rate-making power unless confiscation is clearly established. In the instant case the findings of the commission and of the trial court are not arbitrary, and the prescribed rates are not confiscatory. *State v Tri State Tel. Co.* 204 M 518, 284 NW 294.

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Participation in railroad and warehouse commission proceedings as basis for right to appeal. 25 MLR 938.

216.12 DUTIES OF COMMISSION.

Power of public utility commissions to alter rates of public service corporations fixed by contract between the municipality and the public service corporation. 4 MLR 526.

Control of public utilities in Minnesota. 16 MLR 457.

216.13 PROCEEDINGS BEFORE COMMISSION; HOW COMMENCED.

Where Minnesota railroad and warehouse commission exercised its jurisdiction when question was squarely presented to it, and determined that a joint rate order applied over connecting railroads and there was no appeal from its orders, or any subsequent petition to review commission's finding, and shippers alike assumed that joint rates applied for over 25 years, a federal district court was without jurisdiction to review the commission's decision, or to determine whether defendant railroad and connecting railroad were a single line for rate-making purposes. *Watab Paper v Northern Pacific*, 58 F. Supp. 924.

The common law remedy of a shipper for recovery of unreasonable charges is not preserved by Minnesota Laws 1913, Chapter 344. Decision in 58 F. Supp. 923 is hereby affirmed. *Watab Paper v Northern Pacific*, 154 F(2d) 438.

216.16 HEARINGS BEFORE COMMISSION.

Speculative benefits, standing alone, will not justify an interference with existing rates, otherwise reasonable, by the railroad and warehouse commission in fixing rates for the hauling of manure from South St. Paul for a distance of 30 miles. *No. Hennepin Producers v Chgo. St. P. & O.* 160 M 506, 200 NW 808.

In a proceeding initiated before the railroad and warehouse commission for a lower telephone rate, by a mere informal letter, the commission did not acquire jurisdiction because of failure to comply with provisions of section 216.13 et seq. *Dayton Rural Tel. Co. v Northwestern Bell Co.* 188 M 547, 248 NW 218.

Section 237.08 impliedly authorizes the commission to sanction new rates proposed by the telephone company without formal notice of hearings and taking of testimony if satisfied the rates are just and reasonable; and as to users of services, the order of May 2, 1939, appears to have adequate findings. *Lenihan v Tri-State Tel.* 208 M 172, 293 NW 601.

216.19 RATE UNREASONABLE; COMPLAINT; DUTY OF COMMISSION.

To become a complainant in a proceeding before the railroad and warehouse commission under L. 1925, c. 185, the motor vehicle transportation act, so as to have

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an appeal from the commission's order go to the district court of the county of the person's residence, a verified complaint, with the parties designated as prescribed in sections 216.13 and 216.19, must be filed with the commission. *Murphy Motor Freight v Weiss*, 191 M 49, 253 NW 1.

The money required to be paid or credited to subscribers by the defendant, under the order of the commission, with interest at six per cent, the penalties collected by the defendant are not a part of "excess sums" required to be refunded by the judgment and supplemental decree. *State v Tri-State Co.* 209 M 86, 295 NW 511.

The statute providing that a tariff made by the railroad and warehouse commission shall be deemed prima facie reasonable does not, in view of other applicable statutory provisions, limit the discretionary power of the court to order stay of commission's orders fixing maximum freight rates pending appeal therefrom, if evidence before the court warrants conclusion that a multiplicity of suits might follow in event stay were denied. *State v Northern Pacific*, 221 M 400, 22 NW(2d) 564.

The rule expressed in *American Toll Bridge Co. v Railroad Commission*, 307 US 486, 59 SC 948, that rates fixed by authorized rate-making bodies are presumed to be reasonable and that the burden of establishing otherwise rests upon the carriers affected, relates to presumption and procedure applicable at the final hearing on the appeal, and not to the proceedings applicable at the hearing on the motion to stay such order pending appeal. *State v Northern Pacific Ry.* 221 M 400, 22 NW(2d) 569.

Valuation in rate cases. 9-MLR 211.

Going concern value of public service companies. 11 MLR 642.

Cost of reproduction new less depreciation as the rate base. 11 MLR 674.

216.20 RATE UNREASONABLE; COMPLAINT BY ATTORNEY GENERAL; DUTY OF COMMISSION.

Suits against state officers. 13 MLR 135.

216.21 INVESTIGATION WITHOUT COMPLAINT; NEW RATES; NOTICE.

Where a proceeding was instituted by the commission and while pending in court, section 237.08 impliedly authorizes the commission to sanction new rates proposed by the telephone company without formal notice of hearings and taking of testimony if satisfied the rates are just and reasonable; and, as to users of services, the order of May 2, 1939, contains adequate findings. *Lenihan v Tri-State Telephone*, 208 M-172, 293 NW 601.

216.24 APPEALS TO DISTRICT COURT FROM ORDERS OF COMMISSION; PROCEDURE.

By virtue of section 216.25, the district court, upon examination of an order of the commission fixing maximum freight rates, and the return made on appeal therefrom, and after giving complainants notice and opportunity to be heard, is authorized to direct a stay of such order pending appeal therefrom. Language of said section imposing duty upon carrier "to adopt and publish rates and classifications therein prescribed" indicates applicability of said section to rate orders such as here involved. *State and Port Authority v Northern Pacific Ry.* 221 M 400, 22 NW(2d) 569.

Control of public utilities. 16 MLR 457.

Participation in railroad and warehouse commission proceeding as a basis for repeal. 25 MLR 938.

216.25 APPEAL; ORDERS NOT APPEALED; PROCEEDINGS.

Order of railroad and warehouse commission fixing maximum rates which defendants might charge for freight switching in a specified district and directing them to make and publish tariffs in accordance therewith is not a tariff of rates, fares, charges, and classifications made by the commission. District court upon

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compliance with section 216.25 may stay enforcement of such an order pending an appeal therefrom, notwithstanding section 216.19. State and Port Authority v Northern Pacific, 221 M 400, 22 NW(2d) 569.

216.29 INTERSTATE COMMERCE COMMISSION; STATE COMMISSION TO COOPERATE WITH.

Regulation of railroad rates by the federal government. 2 MLR 163.

Gas and electricity in interstate commerce. 18 MLR 611.

Validity of state regulations which affect interstate commerce. 27 MLR 468.

216.42 WEIGHING COAL; TRACK SCALES; POWERS OF COMMISSION.

The state is not entitled to recover fees for weighing coal loaded in carload lots at dock of shipper at Duluth, carried to and loaded at shipper's retail yard in Minneapolis or St. Paul for the shippers own use or consumption. State v Inland Coal Co. 208 M 216, 293 NW 611.

216.44 COAL; WEIGHERS; FEES.

A weighing fee is required to be charged in carload lots of coal moving in interstate commerce and sold in other states as well as in Minnesota. OAG Sept. 13, 1945 (495-E).

216.46 SCALES IN STOCKYARDS; POWERS OF COMMISSION.

An order of the Minnesota state railroad commission requiring a railroad to install weighing scales at a station similar to those installed at some of its stations in order to abate discrimination, is an arbitrary and unreasonable order, as it did not give the company the alternative right of discontinuing the scales at those stations where they were installed, and abating discrimination in that manner, as the scales while a convenience to the public had no direct part in the railroads authorized business which is that of transportation. This reverses the decision of the Minnesota supreme court, State ex rel v Great Northern, 122 M 56, 141 NW 1102. The taking by the state is without due process of law and in violation of the fourteenth amendment. Great Northern v Minnesota, 238 US 340; 35 SC 753.

216.54 RATES; SCHEDULE OF; POWERS OF COMMISSION.

Where difference in length between alternate routes over lines of several carriers is more than 137 per cent greater than the "natural and customary route" over line of original carrier between point of original destination, both located on said railway, the longer route being more burdensome to the carriers, the shipper who chose the longer route must bear the established tariff over such route. Scandrett v Higgins, 209 M 303, 296 NW 26.

Where owner of goods shipped them in interstate commerce under bill of lading designating himself both as consignor and consignee, he was liable to carrier for legal freight charges since the law implies an agreement to pay such charges in full, and part payment does not release him from the duty of paying the balance. Scandrett v Higgins, 209 M 303, 296 NW 26.

216.56 RAILROADS; CONNECTION WITH MANUFACTORIES.

Where a city ordinance provides generally for the depression of a certain line of railroad "tracks," without specific mention of side tracks, the proprietors of business plants served by the tracks are not entitled to an injunction restraining the railroad from depressing its main line, consisting of a single track, on the ground that depression of the main track involves an abandonment of side tracks without application to and order from the commission. Their remedy is by direct proceedings to enforce their rights after, or in view of, the depression of the main track. Twin City Separators v Chgo. Milwaukee, 118 M 491, 137 NW 193.

216.62 PASSENGER TRAINS; DISCONTINUED ONLY WITH CONSENT OF COMMISSION.

Amended by L. 1947 c. 3 s. 1.