

MINNESOTA STATUTES 1953 ANNOTATIONS

615

RAILROAD AND WAREHOUSE COMMISSION 216.01

Where the proper number of freeholders requested examination of the city's books the examination is not unauthorized and should be paid for by the city and council members and have no personal liability. OAG April 6, 1951 (355-A-3).

Where the public examiner makes an audit of the village records, the village is liable for the cost thereof. OAG Jan. 14, 1953 (353-A-3).

If the school board finds it necessary, the Brainerd special school district has power to employ a firm of consultants in public administration and finance to make a general survey of the operation of the school system and furnish its recommendations and without advertising for bids. The expense of such employment and the implementation of its recommendations is subject to the statutory control of the public examiner. OAG Dec. 18, 1947 (707-A-12).

215.24 STATE AUDITOR TO CERTIFY AMOUNT DUE

If the village fails to pay the fees of the public examiner for costs of an examination made by him, machinery is provided under section 215.24 compelling auditor to spread the state's levy for the expenses of such examination regardless of and in addition to other levies, and such levy is not limited by per capita tax law, section 275.11. OAG Oct. 27, 1947 (353-A-3).

The legislature, by enacting section 275.44, at a session later than the one enacting section 215.24, did not manifestly intend to repeal section 215.24 but effect must be given to both sections, and the special provision in section 215.24 must be considered as an exception to the general provisions of section 275.44 so that an examination being made by the public examiner the cost thereof may be spread as a special levy over and above the \$50 per capita limitation. OAG May 12, 1948 (353-A-3).

Interest paid by a municipality on a public examiner's claim for reimbursable audit is allocated to the revolving fund created by Laws 1947, Chapter 634, Section 24. OAG Oct. 8, 1951 (454-H).

215.26 POST AUDIT; TAX LEVY

HISTORY. 1951 c 189 s 1; 1953 c 338 s 1.

Laws 1951, Chapter 189, authorizes the city of Virginia to levy taxes to pay a post audit made by the public examiner and this includes the audit of the water and light department of the city. OAG June 16, 1951 (353-A-3).

When the state auditor issues a draft as a medium of collecting the cost of an audit this cost includes the interest earned on the draft. OAG Aug. 11, 1952 (353-A-3).

Where the state auditor issues a draft as a medium of collecting the costs of an audit, the cost of the audit includes the interest earned on the draft notwithstanding the levy of the municipality to cover the cost of the audit under section 215.26. OAG Aug. 11, 1952 (353-A-3).

RAILROADS, WAREHOUSES, UTILITIES, GRAIN, LIVESTOCK

CHAPTER 216

RAILROAD AND WAREHOUSE COMMISSION

216.01 ELECTION; VACANCIES

HISTORY. 1871 c 22 s 1; 1874 c 26 s 1; 1875 c 103 s 1; GS 1878 c 6 s 67; 1885 c 188 s 1; 1887 c 10 s 9; GS 1878 Vol 2 (1888 Supp) c 6 s 771; GS 1894 s 387(a)-387(c); 1895 c 152 s 1, 2; 1899 c 39 s 1, 3; RL 1905 s 1953, 1954; 1911 c 140 s 1; GS 1913 s 4171, 4172; GS 1923 s 4628, 4629; MS 1927 s 4628, 4629.

MINNESOTA STATUTES 1953 ANNOTATIONS

216.02 RAILROAD AND WAREHOUSE COMMISSION

616

The term of an appointee to fill a vacancy does not expire until a certificate of election is issued to his successor. OAG June 2, 1949 (28-B-1).

216.02 QUALIFICATIONS

Where the party nominated for the office of commissioner died, the State Central Committee of the party by which the deceased had been nominated may appoint a candidate who cannot be an employee of a railroad company or a grain warehouse company or any one owning stocks or bonds in either of those companies. OAG Sept. 22, 1948 (28-B-1).

The duties of the canvassing board are purely ministerial. The board is not empowered to determine that the death of a party nominee, who dies after the primary election and before the meeting of the canvassing board, results in the nomination of the party candidate receiving the next highest number of votes. The state canvassing board has no other alternative than to certify the person receiving the highest number of votes to be the nominee notwithstanding the death. Section 202.23 provides that in the instant case the state central committee of the party of which the deceased candidate was a nominee is empowered to select a candidate to fill the vacancy in question. OAG Sept. 22, 1948 (28-B-1).

216.08 Renumbered 219.815.

216.09 Renumbered 219.695.

216.11 PROCEDURE; RULES; OFFICE

An order issued as of May 12, 1947, by the one member of the commission available, where the commissioner present obtained authority from the commissioner out of state, who, upon his return also signed the order, is a valid order. OAG May 22, 1947 (317-A).

The railroad and warehouse commission, under provision of section 15.17, may furnish certified copies of its public records. OAG Jan. 26, 1948 (371-A).

216.12 DUTIES

HISTORY. Amended, 1951 c 402 s 1.

Restrictive provisions of Laws 1933, Chapter 170, which forbid issuance of a permit thereunder to railroads or wholly owned subsidiaries thereof, does not relate to common carriers by motor vehicle between fixed termini or over regular routes, and governed by Laws 1925, Chapter 185, and containing no such restrictions. *Rock Island Motor Transit Co. v Murphy Motor Freight Lines*, 229 M 291, 40 NW(2d) 896.

The state asked for an order directing the resident partner of a brokerage firm to comply with a subpoena duces tecum for production of the firm's books, records, and documents relating to the names of persons holding stock in the Twin City Rapid Transit Company standing in the name of the brokerage firm. Towey filed a complaint in intervention to dismiss the proceedings and quash the subpoena. The trial court dismissed Towey's petition and the order was affirmed on appeal. The statutory provisions, requiring one of the railroad and warehouse commissioners to visit carriers' stations regularly and personally inquire into their management and permitting commission to require reports from carriers, do not provide exclusive means of satisfying commission's statutory duty to inquire into management of carriers' business, keep informed as to manner in which it is conducted, and obtain from carriers all information necessary for performance of commission's duties, but merely state minimum inspection necessary. *State ex rel v Mees*, 235 M 42, 49 NW(2d) 386.

The railroad and warehouse commission has authority to curtail agency service on Saturdays. OAG Aug. 24, 1949 (371-B-9).

216.16 HEARINGS BEFORE COMMISSION

HISTORY. 1885 c 188 s 23; 1887 c 10 s 13, 14; GS 1878 Vol 2 (1888 Supp) c 6 s 77m(b), 77n(a), 77n(b); 1891 c 106 s 2; GS 1894 s 391(b), 392(a), 392(b); RL 1905 s 1966; 1907 c 305; GS 1913 s 4182; 1921 c 159 s 1; GS 1923 s 4641; MS 1927 s 4641.

The district court cannot exercise legislative power of rate making with respect to rates of carriers. The power to investigate and regulate railroad rates involves a legislative and administrative function exclusively vested by statute in the railroad and warehouse commission. *State v Northern Pacific Railway*, 229 M 312, 39 NW(2d) 752.

Where the population of Rush City was located equally on both sides of the railroad tracks, and the village officers and businessmen testified and the general layout of the adjacent streets indicated that the closing of a diagonal grade crossing was not a necessity and would seriously impair normal operation of business and interfere with traffic of the village, the order of the railroad and warehouse commission closing the crossing was unlawful and unreasonable. *Northern Pacific v Village of Rush City*, 230 M 144, 40 NW(2d) 886.

Demeanor evidence is of little consequence in rate cases. Statutory provisions and the rules of the commission do not require the members of the railroad and warehouse commission to hear personally all the testimony in rate cases which they are required to decide. It is the duty of the commission to see that the rates fixed are fair both to the public and to the public utility. In fixing the rates the commission acts as an administrative body regardless of the personnel comprising the body. Where one of the three commissioners who heard the testimony died before a decision was rendered, the successor appointee may render his decision on the pending rate case from the records of the proceedings even though he has not heard the testimony of the witnesses personally. OAG July 26, 1949 (371-A-5).

Litigation involving the commission's order having been in litigation for 15 years and where enforcement of the order would be impractical, the commission had jurisdiction to order a new hearing for the consideration of a new application conditioned upon a dismissal of the federal litigation. OAG April 1, 1948 (371-B-8).

216.17 NOTICES AND ORDERS; SERVICE

The railroad and warehouse commission has legal authority to grant the secretary of the commission leave of absence without pay upon making the findings required by state civil service Rule 13.14 and the commission may appoint an acting secretary who, upon qualifying, may exercise the powers and perform the duties of the secretary during the secretary's absence. OAG July 8, 1948 (644-D).

216.18 WITNESSES

HISTORY. 1885 c 188 s 23; 1887 c 10 s 13, 19; GS 1878 Vol 2 (1888 Supp) c 6 s 77m(b), 77s; 1891 c 106 s 2; GS 1894 s 391(b), 397; RL 1905 s 1968; GS 1913 s 4184; GS 1923 s 4643; MS 1927 s 4643.

The railroad and warehouse commission's use of subpoena power against persons not subject to its regulation in other than quasi-judicial proceedings, as in administrative investigations, is not unconstitutional as violating due process of law, particularly where business affected with public interest is subject of investigation, so long as investigation is for lawfully authorized purpose and information sought by subpoena is relevant and material to investigation. *State ex rel v Mees*, 235 M 42, 49 NW(2d) 386.

216.19 RATE UNREASONABLE OR UNDULY PREJUDICIAL AND UNJUSTLY DISCRIMINATORY

Rate regulation; criterion of confiscation in judicial review. 32 MLR 60.

The district court cannot exercise legislative power of rate making with respect to rates of carriers. The power to investigate and regulate railroad rates involves a legislative and administrative function exclusively vested by statute in the railroad and warehouse commission. *State v Northern Pacific Railway*, 229 M 312, 39 NW(2d) 752.

In discharging its purely judicial functions of determining whether rates and regulations established by the railroad and warehouse commission are lawful and reasonable, the district court is governed by the statutory rule that the commission's

216.21 RAILROAD AND WAREHOUSE COMMISSION

618

findings of fact shall be prima facie evidence of matters therein stated, that its order shall be prima facie reasonable, and that the burden of proof upon all issues raised by the appeal shall be on the appellant. *State v Northern Pacific*, 229 M 312, 39 NW(2d) 753.

An application of a rule that statutory presumption of reasonableness of the full hearing by the railroad and warehouse commission, may be rebutted only by clear and convincing evidence does not impair the constitutional right to due process through an independent judicial review, pursuant to which the reviewing court, after affording parties opportunity to present material additional evidence, determines for itself whether the commission's order is lawful or reasonable and whether it is reasonably supported by the evidence at the time of its making. *State v Northern Pacific*, 229 M 312, 39 NW(2d) 752.

The railroad and warehouse commission has authority to order a student fare at less than the rate of fare established for the transportation of regular passengers. In the transportation of school children there exists such a difference in weight, the space occupied, the regularity of travel, the time of travel, coupled with the policy of the state to promote education, as would justify placing them in a separate class. OAG Oct. 4, 1949 (493-F-2).

216.21 INVESTIGATION WITHOUT COMPLAINT; NEW RATES; NOTICE

Rate regulation; criterion of confiscation in judicial review. 32 MLR 60.

The railroad and warehouse commission's use of subpoena power against persons not subject to its regulation in other than quasi-judicial proceedings, as in administrative investigations, is not unconstitutional as violating due process of law, particularly where business affected with public interest is subject of investigation, so long as investigation is for lawfully authorized purpose and information sought by subpoena is relevant and material to investigation. *State ex rel v Mees*, 235 M 42, 49 NW(2d) 387.

216.24 APPEALS TO DISTRICT COURT FROM ORDERS OF COMMISSION; PROCEDURE

A writ of prohibition is a preventive not available to correct errors or reverse illegal proceedings; and on appeal from orders of the railroad and warehouse commission the court may exercise judicial, but not legislative or administrative powers. It may not direct the commission as to what orders it must make. *Arrowhead Bus v Black & White Cab*, 226 M 327, 32 NW(2d) 590.

When the district court on appeal from the railroad and warehouse commission assumes to direct action which the attorney general regards as in excess of the court's jurisdiction, the state has sufficient interest in the litigation to justify it in asking, through the attorney general, for a writ of prohibition. *Arrowhead Bus v Black & White Cab*, 226 M 327, 32 NW(2d) 590.

Where the population of Rush City was located equally on both sides of the railroad tracks, and the village officers and businessmen testified and the general layout of the adjacent streets indicated that the closing of a diagonal grade crossing was not a necessity and would seriously impair normal operation of business and interfere with traffic of the village, the order of the railroad and warehouse commission closing the crossing was unlawful and unreasonable. *Northern Pacific v Village of Rush City*, 230 M 144, 40 NW(2d) 886.

An order of the railroad and warehouse commission denying an application of a street railway company, pursuant to MSA, Chapter 220, for a temporary increase in fare, has the effect of fixing the rate during the period such rate is operative and is an appealable order under section 220.15. *St. Paul City Railway v City of St. Paul*, 235 M 223, 50 NW(2d) 483.

On an appeal from an order of the Minnesota state railroad and warehouse commission, there is no trial de novo in the state court. *Rock Island Transit Co. v Murphy Motor Freight Lines*, 101 F.Supp 978.

Parties to certain proceedings before the railroad and warehouse commission are authorized to appeal decisions of the commission to the district court in conformity with sections 216.24 and 216.25. Where the commission files the "return on appeal," consisting of a certified copy of the order appealed from, together with the findings of fact on which the same is based, with the clerk of the district court, the return is an official public duty imposed by law upon the commission and it is the duty of the clerk to accept the filing. Both the commission and the clerk are required to perform these duties without compensation and without payment. OAG June 2, 1953 (144-B-14).

The railroad and warehouse commission has legal authority to grant the secretary of the commission leave of absence without pay upon making the findings required by state civil service Rule 13.14 and the commission may appoint an acting secretary who, upon qualifying, may exercise the powers and perform the duties of the secretary during the secretary's absence. OAG July 8, 1948 (644-D).

216.25 APPEAL; ORDERS NOT APPEALED; PROCEEDINGS

Criterion of confiscation in judicial review of rate regulation. 32 MLR 60.

Rate regulation; criterion of confiscation in judicial review. 32 MLR 60.

Judicial review by means of extraordinary remedies. 33 MLR 570, 608.

A district court may not assume the functions of the railroad and warehouse commission, as to do so would be unconstitutional assumption of legislative powers. The court may in a proper case determine the sufficiency of the evidence to support the commission's findings and may examine the law arising and applying to those findings. *Arrowhead Bus v Black & White*, 226 M 327, 32 NW(2d) 590.

On appeal from an order of the railroad and warehouse commission the district court may not substitute its findings and judgment for those of the commission if there is evidence reasonably sustaining the latter. The district court may receive additional evidence but only for the purpose of determining whether in the light thereof the commission's order is illegal or unlawful as unsupported by the evidence at the time of its making. In the instant case where the evidence before the commission clearly established the need for bus service covered by its order of convenience and necessity, and the commission in making its order gave reasonable consideration to the factors prescribed in section 221.08, the district court erred in vacating the commission's order and substituting its own findings and conclusions for those of the commission. *Twin City Motor Bus v Rechtzigel*, 229 M 196, 38 NW(2d) 825.

In discharging its purely judicial functions of determining whether rates and regulations established by the railroad and warehouse commission are lawful and reasonable, the district court is governed by the statutory rule that the commission's findings of fact shall be prima facie evidence of matters therein stated, that its order shall be prima facie reasonable, and that the burden of proof upon all issues raised by the appeal shall be on the appellant. *State v Northern Pacific*, 229 M 312, 39 NW(2d) 753.

The district court, on appeal from a rate order of the railroad and warehouse commission, has no power of revision but must affirm or vacate the entire order, and upon a finding that the commission's order established rates unreasonable and unlawful, the court must vacate the order in its entirety. *State v Northern Pacific*, 229 M 312, 39 NW(2d) 752.

An application of a rule that statutory presumption of reasonableness of the full hearing by the railroad and warehouse commission may be rebutted only by clear and convincing evidence does not impair the constitutional right to due process through an independent judicial review, pursuant to which the reviewing court, after affording parties opportunity to present material additional evidence, determines for itself whether the commission's order is lawful or reasonable and whether it is reasonably supported by the evidence at the time of its making. *State v Northern Pacific*, 229 M 312, 39 NW(2d) 752.

MINNESOTA STATUTES 1953 ANNOTATIONS

216.30 RAILROAD AND WAREHOUSE COMMISSION

620

On an appeal to the district court over an order of the railroad and warehouse commission closing a diagonal grade crossing over the petitioner's railroad tracks, the rule is not whether the evidence reasonably suspends the district court's findings, but whether all of the evidence presented, including the evidence submitted to the commission and to the district court, reasonably sustains the district court's findings that the commission's order was unlawful and unreasonable. In the instant case a review of all the evidence reasonably sustains the district court's finding that the commission's order was unlawful and unreasonable. *Northern Pacific v Village of Rush City*, 230 M 144; 40 NW(2d) 886.

On appeal from a decision of railroad and warehouse commission to district court, order of commission must be affirmed, if court determines that it is lawful and reasonable, but if court determines that order is unlawful or unreasonable, it must be vacated and set aside. The peremptory writ of mandamus is granted. *State ex rel v Murphy Motor Lines*, 230 M 560, 42 NW(2d) 426.

When an order of the railroad and warehouse commission is vacated by the district court, on appeal, the matter stands before the commission as if no order had been made; and with or without an order remanding the case to the commissioner, the commission may take such further action as it deems necessary, consistent with the law as it has been determined by the court, to dispose of the application pending before it. Pending an appeal, the commission retains jurisdiction of the subject matter for regulatory purposes. *Rock Island Motor Transit Co. v Murphy Motor Freight Lines*, M, 58 NW(2d) 723.

216.30 INTERSTATE COMMERCE COMMISSION; JOINT HEARINGS

The railroad and warehouse commission is without authority to hold a rate hearing in North Dakota relating to Minnesota intrastate rates. OAG May 31, 1950 (371-B-8).

The railroad and warehouse commission is not authorized to hold joint hearings with the interstate commerce commission except where the interstate commerce commission is authorized to hold a joint hearing with the state under 49 USCA, section 13 (3). OAG May 31, 1950 (371-B-8).

216.43 COAL; CARLOAD LOTS; DUTY OF COMMISSION

The state weigher, in weighing coal, must verify the scale readings and see that the correct weight is recorded. OAG Nov. 5, 1947 (495).

The Federal Defense Production Act of 1950 and the ceiling price regulation No. 34 do not require the commission to petition the Office of Price Stabilization for approval of any adjustment or increase in weighing fees established for weighing coal in carload lots. OAG Jan. 31, 1951 (495-C).

216.55 RATES; RAILROADS; COMMISSION TO INVESTIGATE

Rate regulation; criterion of confiscation in judicial review. 32 MLR 60.

216.56 RAILROADS; CONNECTION WITH MANUFACTORIES

The railroad and warehouse commission has no jurisdiction over leases covering property not used for railroad purposes. OAG April 3, 1950 (365-B-5).

216.57 BIENNIAL REPORT; DUTY OF COMMISSION

In actions by driver and passenger in an automobile for injuries sustained when the automobile collided with a train on a crossing, negative testimony by the passenger and driver of the automobile that they heard no whistle or bell would not be permitted to prevail against testimony of six disinterested witnesses who were in a position to know whether the whistle was blown and who testified that the horn was sounded for a considerable time before the collision occurred. The law imposes no greater degree of care upon operators of diesel engines than is required of operators of steam locomotives even though there is a difference between the

MINNESOTA STATUTES 1953 ANNOTATIONS

621

CARRIERS, GENERAL PROVISIONS 217.01

amount of noise made. *Jorgenson v Minneapolis-St. Paul & Soo Railway Co.*, 231 M 121, 42 NW(2d) 540.

216.62 PASSENGER TRAINS; DISCONTINUED ONLY WITH CONSENT OF COMMISSION

The railroad and warehouse commission possesses only the authority given to it by the legislature and cannot exceed the bounds as fixed. The legislature did not intend by section 216.62 to give the commission jurisdiction over the discontinuance of interstate passenger trains. The state in the exercise of its police power may require railroad carriers to provide reasonably adequate and suitable facilities for the convenience of the communities served by them. But this state power is subject to the limitation of the federal constitution against taking private property without just compensation or due process of law. The state may require just and reasonable passenger service for intrastate business only insofar as the requirement of the state is not inconsistent with the lawful orders of the interstate commerce commission. The commission has jurisdiction over the discontinuance of intrastate service rendered by trains Nos. 41 and 42 operating between Rochester, Minnesota, and McIntire, Iowa, and beyond. OAG March 21, 1949 (365-A-12).

This section does not confer upon the railroad and warehouse commission authority to permit an abandonment of an electric suburban railroad or any portion thereof. OAG Oct. 25, 1951 (365-B-12).

216.63, 216.64 Repealed, 1949 c 440 s 7.

216.67 LAWS; ENFORCEMENT; DUTY OF COMMISSION

HISTORY. 1905 c 208 s 3; 1907 c 202; 1909 c 173 s 2; 1909 c 377 s 3; 1909 c 488 s 10; 1921 c 244 s 3; MS 1927 s 4752, 4891, 4894, 4902, 4923.

216.68 FORFEITURES; VIOLATIONS; PENALTIES

HISTORY. 1871 c 22 s 7, 9; 1874 c 26 s 4, 16; 1875 c 103 s 5, 8, 10; GS 1878 c 6 s 71, 74, 76; 1885 c 188 s 14, 27; 1887 c 10 s 12; GS 1878 Vol 2 (1888 Supp) c 6 s 771; GS 1894 s 390; 1905 c 122 s 3; RL 1905 s 1987; 1911 c 317 s 2; 1913 c 125 s 3; MS 1927 s 4648, 4706, 4714.

CHAPTER 217

CARRIERS, GENERAL PROVISIONS

217.01 COMMON LAW LIABILITY NOT TO BE LIMITED

Carriers, limitation of liability. 33 MLR 774.

Private carriers by motor vehicle as affected by the interstate commerce act. 35 MLR 596.

Bills of lading, duty of carrier to notify shipper of non-acceptance of goods. 37 MLR 204.

Evidence that goods were delivered to carrier for shipment in good condition; that they were not in like condition upon delivery by carrier to consignee; and that damages in an established amount were sustained by the shipper as a result, creates a presumption of negligence on the part of carrier and establishes shipper's prima facie case for damages by virtue thereof.

Evidence consisting of uniform express receipt for carton of merchandise issued by defendant carrier at the time of its delivery for shipment, upon which no nota-