

CHAPTER 220

RAILWAYS; STREET, SUBURBAN, INTERURBAN

220.01 DEFINITIONS

In fixing a rate, based upon the facts as disclosed, the commission has the power to fix it in such an amount as will produce revenue not only necessary to meet fixed charges and operating expenses but also sufficient to yield a reasonable return on the fair value of the property devoted to the use of the utility. Application of Minneapolis Street Railway Co., 228 M 435, 37 NW(2d) 533.

An exercise by the railroad and warehouse commission of its power under section 220.13 to find the value of street railway property and fix a rate of fare based thereon is a legislative function involving exercise of police power of a continuing nature and is not exhausted by a single exercise thereof. The fact that the commission made within a year a temporary rate order and provided in the order "after the expiration of one year" an application to modify it might be made, does not bar an application within the year. Application of Minneapolis Street Railway Co., 228 M 435, 37 NW(2d) 533.

The Brooks-Coleman Act, Laws 1921, Chapter 278, (coded as sections 220.01 to 221.19), is a remedial measure and must be construed to effect its purpose of making available, to all municipal street railway systems within its scope, the advantage of both state and local control. Minneapolis Street Ry. Co. v City of Minneapolis, 229 M 502, 40 NW(2d) 353.

Where a 17-year-old boy knew that the street was slippery but ran into the street in front of an approaching streetcar and, upon realizing that the car was not going to stop, he turned to the left and attempted to cross in front of the car by a longer route and was struck, the boy was contributorily negligent as a matter of law. McGuigan v St. Paul City Ry. Co., 229 M 534, 40 NW(2d) 435.

220.02 Renumbered 220.01, subdivision 3.

220.03 Renumbered 220.01, subdivision 4.

220.04 Renumbered 220.01, subdivision 5.

220.05 Renumbered 220.01, subdivision 6.

220.06 Renumbered 220.01, subdivision 7.

220.07 FRANCHISES, INDETERMINATE PERMITS; TERMS

A municipality though operating under a home rule charter is merely a department of the state, a political subdivision created as a convenient agency for the exercise of such governmental powers as may be entrusted to it; and pursuant to Minnesota Constitution, Article IV, Section 36, the legislature may, by the enactment of general laws, modify or withdraw any powers entrusted to a city with a home rule charter. Minneapolis Street Ry. v City of Minneapolis, 229 M 502, 40 NW(2d) 353.

220.09 COUNCILS TO HAVE POWER TO GRANT FRANCHISES

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

The Brooks-Coleman Act, providing for conversion of every grant by a city of a street railway franchise into an indeterminate permit, preserves the continuing right of the city to make the usual and necessary police regulations concerning the opera-

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tion and management of the street railway and the city is not deprived of its right to issue licenses and impose a reasonable license fee. The act simply defines the field of local regulation and not the manner of its exercise. *Minneapolis Street Ry. Co. v City of Minneapolis*, 229 M 502, 40 NW(2d) 355.

By an ordinance adopted in 1890, the city council imposed upon the Minneapolis Street Railway Company a license of \$25 per year per streetcar for the average number of cars operated during the preceding year. In 1946, an amendatory ordinance was adopted, raising the license fee to \$100 per year per car. The fee imposed by the amendatory ordinance is excessive, invalid, illegal, and void. *Minneapolis Street Ry. Co. v City of Minneapolis*, 236 M 109, 52 NW(2d) 120.

Regulation by Minneapolis city council of street railway operation and service is based on reasonableness. *State ex rel v Minneapolis Street Ry.*, M, 56 NW(2d) 564.

220.10 COMMISSION TO FIX RATES

The principal power which was taken from the cities and villages by the Brooks-Coleman Act and given to the railroad and warehouse commission was the power of determining passenger rates. *Minneapolis Street Ry. v City of Minneapolis*, 229 M 502, 40 NW(2d) 353.

The railroad and warehouse commission is granted initial and exclusive power to fix and establish rates of fare and charges by a streetcar company for carrying passengers. Classification of passengers for rate making purposes is permitted. The classification must be based upon a substantial or logical difference between the classes as to whether or not blind persons or disabled veterans may be classified differently from other citizens is a fact question for the commission to determine. The willingness of the streetcar company to adopt such practice may be considered in passing upon the discretion of the commission. OAG Dec. 5, 1949 (493-F-2).

220.13 APPLICATION TO FIX RATES

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220.14 PROCEDURE

While the city may not charge for services rendered by the city attorney or members of his staff, in rate proceedings the fees and expenses of attorneys, especially employed by the state, are of proper charge for reimbursement by the street railway company. OAG Sept. 10, 1948 (493).

220.15 APPEALS

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 226, 50 NW(2d) 483.

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Where the railroad and warehouse commission is not a party to a rate proceeding it has no right to appeal from a district court decision. OAG March 14, 1952 (371-B-11).

220.19 PERMITS, TO WHOM GRANTED

An exercise by the railroad and warehouse commission of its power under section 220.13 to find the value of street railway property and fix a rate of fare based thereon is a legislative function involving exercise of police power of a continuing nature and is not exhausted by a single exercise thereof. The fact that the commission made within a year a temporary rate order and provided in the order "after the expiration of one year" an application to modify it might be made, does not bar an application within the year. Application of Minneapolis Street Ry. Co., 228 M 435, 37 NW(2d) 533.

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COMMON CARRIERS; CONTRACT CARRIERS

221.01 DEFINITIONS

HISTORY. 1925 c 185 s 1, 2; Mason's 1927 s 5015-1, 5015-2; 1933 c 170 s 1; 1937 c 411 s 1; 1937 c 431 s 3; 1939 c 433 s 1; Mason's Supp s 5015-2, 5015-20, 5015-47; 1943 c 100 s 1; 1943 c 225 s 1; 1947 c 299 s 3; 1949 c 474 s 1.

Private carrier distinguished from common and contract carriers under the Interstate Commerce Act. 35 MLR 596.

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.

Railroad and warehouse commission has jurisdiction to hear an application for a certificate of public convenience and necessity to operate an automobile common carrier of less than carload lots of freight of a certain railway company between stations of the company, and to make determination in connection therewith, provided the order did not exceed the prescribed powers of the commission. *State ex rel v Railroad and Warehouse Commission*, 236 M 339, 52 NW(2d) 769.

Where the railroad and warehouse commission has authority to issue an unrestricted certificate of public convenience and necessity for a motor carrier, the commission may issue a restricted certificate if restriction is in conformity with law and does not exceed the commission's jurisdiction, and where the certificate of public convenience and necessity is set aside and vacated by the court on appeal, the manner in which the application should thereafter be disposed of is a procedural matter which rests with the commission as long as it does not proceed contrary to the statutory provision. *Rock Island Motor Transit Co. v Murphy Motor Freight Lines*, M, 58 NW(2d) 723.

A motor tractor to which a shovel or scoop is attached and which is equipped with rubber tires, and is capable of driving at slow speeds over the highways is a "motor vehicle" within the meaning of New Hampshire financial responsibility law and was therefor an "automobile" within a liability policy endorsement relating to