

STATE OF WASHINGTON

REPORT

OF THE


ATTORNEY GENERAL

W. V. TANNER

Attorney General

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ATTORNEY GENERAL

from contagious disease, and that you have the power to make reasonable rules to that end. It is our understanding that the Wasserman blood test is a test for a contagious blood disease. If as a matter of fact the test is an established scientific method of ascertaining the presence of a contagious blood disease and is not harmful to the person to whom it is applied, we are of the opinion that you may legally adopt a regulation for the government of the schools requiring pupils therein to submit to such test at reasonable times.

Yours respectfully,
HOWARD WATERMAN,
Assistant Attorney General.

OLYMPIA, Wn., May 8, 1916.

Public Service Commission, Olympia, Wn.

GENTLEMEN: You have submitted to us the following inquiry submitted to you by Dr. J. B. Anderson, health officer of the city of Spokane:

"Would you kindly indicate to me whether you consider cities of the first class have a right to regulate sanitary conditions of street cars in the method and manner of cleanliness; that is whether we are able to force them to scrub their cars out if necessary, and in the matter of ventilation, whether we can force them to open up their windows and give the people fresh air, or whether it is necessary for your commission to rule on these important problems."

Accompanying the letter is a copy of an ordinance of the city of Spokane, two sections of which are as follows:

"Section 88. No person shall expectorate on the floor of any street railway car or other public conveyance, or public building, or on any sidewalk in the city of Spokane.

"Section 89. Every closed street railway passenger car operated in Spokane shall be properly ventilated while in operation and shall be properly aired at the end of each round trip. It shall also be cleaned at the end of each day's run and disinfected at least once each week in such manner as the health officer may direct or approve. The dry sweeping or dusting of any street car while it is on any street is strictly prohibited. The president of the board of health, the health officer, or any of his deputies may order any street railway passenger car operated

in violation of any provision of this section to the car barns, and the company shall immediately comply with the said order. All street cars shall be adequately heated in cold weather."

By the provisions of the constitution cities and towns are authorized to make and enforce local police, sanitary and other regulations, section 11 of article XI being as follows:

"Any county, city, town, or township, may make and enforce within its limits all such local, police, sanitary, and other regulations as are not in conflict with general laws."

By the provisions of section 10, article XI, a city of the class to which Spokane belongs may "frame a charter for its own government consistent with and subject to the constitution and laws of this state."

Section 9 of chapter 117, of the Laws of 1911, being the public service commission law of this state, provides:

"Every common carrier shall construct, furnish, maintain and provide safe, adequate and sufficient service facilities, trackage, sidings, railroad connections, industrial and commercial spurs and equipment to enable it to promptly, expeditiously, safely and properly receive, transport and deliver all persons or property offered to or received by it for transportation, and to promote the safety, health, comfort and convenience of its patrons, employees and the public.

"All rules and regulations issued by any common carrier affecting or pertaining to the transportation of persons or property shall be just and reasonable."

Section 53 of chapter 117, *supra*, provides:

"Whenever the commission shall find, after such hearing, that the rules, regulations, practices, equipment, appliances, facilities or service of any such common carrier in respect to the transportation of persons or property are unjust, unreasonable, unsafe, improper, inadequate or insufficient, the commission shall determine the just, reasonable, safe, adequate, sufficient and proper rules, regulations, practices, equipment, appliances, facilities or service to be observed, furnished, constructed or enforced and be used in the transportation of persons and property by such common carrier, and fix the same by its order or rule as hereinafter provided."

By the provisions of said chapter 117, street railroads and street railroad companies are included within the term "common carrier." It will be observed that in the above quotations the provisions of the law are directed to the "rules and regulations

* * * pertaining to the transportation of persons or property" or "rules, regulations, practices, equipment, appliances, facilities or service of any such common carrier in respect to the transportation of persons or property."

In the case of *State ex rel. Webster v. Superior Court*, 67 Wash. 37, it was held that the public service commission had exclusive jurisdiction to deal with the rates of a public utility within the corporate limits of the city of Seattle.

In the case of *Seattle Electric Co. v. Seattle*, 78 Wash. 203, it was held that the public service commission had exclusive jurisdiction concerning the operation of street cars in accordance with schedules, and to prescribe rules relative to the prevention of overcrowding of cars, and that since the enactment of the public service commission law the city had no jurisdiction over such matters.

It will be observed that both of these cases refer to rates or rules and regulations in respect to the transportation of persons, and it is apparent therefore that insofar as any regulations relate to the transportation of persons or property, such regulations are exclusively within the jurisdiction of the public service commission.

Insofar as the regulation relates to the prohibiting of such acts of the utility as may be detrimental to the peace, health, safety or general welfare of the community the utility may be subjected to the police power of the city in the same manner as any other corporation or person. It may be prohibited from maintaining any public nuisance irrespective of the jurisdiction of the commission.

The determination of the question of whether or not the regulation is one in respect to the "transportation of persons or property," as distinguished from that which may be in the interest of public peace, health, safety or general welfare, is not free from difficulty.

It is our opinion that the mere incidental affecting of the transportation is not sufficient of itself to remove the utility from the jurisdiction of the municipal authorities. For instance,

we have no doubt that until the state acts by general law the municipality may regulate the speed of cars within the corporate limits, such regulation being for the safety of the traffic on the streets, as well as for the safety of the passengers. The city may prevent the operation on the streets of cars in a condition calculated to injuriously affect the health, safety or welfare of the inhabitants of the city, as for example, cars loaded with explosives or carrying property which gives off offensive odors.

Considering the ordinance in question, we are of the opinion that the provisions prohibiting expectorating on the floor of cars and prohibiting dry sweeping or dusting of any car while it is on any street, are valid in the exercise of the police power of the city. The provisions relative to ventilation and cleaning may not be as free from doubt and may depend on the establishing of facts, concerning which we have not sufficient information to enable us to express a positive opinion.

If it can be established as a fact that a poorly ventilated car, or a car not cleaned as provided in the ordinance, is a nuisance or is detrimental to the general health of the community, as distinguished from the convenience of the passengers, the city may properly prevent the use of such a car within the city limits. This last statement is applicable to a car which has not been fumigated.

For the reason that we doubt if the necessary facts can be established to meet the conditions referred to in the preceding paragraph, we are of the opinion that with the exception of the prohibitions against expectorating and dry sweeping or dusting, the attempted regulations are "in respect to the transportation of persons," and therefore exclusively within the jurisdiction of the public service commission.

In our opinion the question concerning adequate heating of cars in cold weather is one entirely within the jurisdiction of the public service commission and the city may not regulate in this respect.

Yours respectfully,

SCOTT Z. HENDERSON,
Assistant Attorney General.