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STATE OF WASHINGTON

G. W. HAMILTON  
ATTORNEY GENERAL

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October 20, 1939.

Mr. Ferd J. Schaaf  
Director of Public Service  
Olympia, Washington

Dear Sir:

A. H. G.  
Supv. Pub. Serv.

By your recent letter you have called our attention to certain sections of the public service law relative to common carriers and now found in Rem. Rev. Stat. and asked us for our opinion relative to the interpretation and application of such statutes in so far as they relate to common carriers transporting goods for the United States, State of Washington, counties and cities and towns located therein at free or reduced rates. Your questions are stated as follows:

"In view of these statutes the Department has consistently taken the position that the quoted provision of Section 18 applies only when the governmental agency is paying the transportation charge, as such. We have held that it does not apply when the transportation charge is being paid indirectly by the governmental agency. Is our position correct?"

"We have also held that no matter what rate is charged to and paid by the governmental agency such rate must be incorporated in a tariff, in view of Section 14 of the Act, which tariff must be filed in accordance with the rules and regulations established by the Department. Are we correct in this holding?"

"Assuming that we are correct in the positions taken, as above mentioned, we are now confronted with a situation which requires further interpretation of the statutes. We are advised that some governmental agencies, particularly one of our state departments, regularly contracts for the purchase of materials f.o.b. at the point from which they are shipped. The regular procedure then is for the contractor to go ahead and pay the transportation charges and bill the governmental agency in lump sums periodically during the life of the contract or at the conclusion thereof. We are strongly urged to rule that under such circumstances the property is really being hauled for the governmental agency within the meaning of R.R.S. 10354, and that the carrier may transport such property at any rate he sees fit. Please advise us what is the correct ruling.

"We also have situations presented to us for consideration in which purchases of property are made by a governmental agency and the freight movement involves solely the transportation

Attachment A

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of the property being acquired by the governmental agency. Frequently, in such cases the property is purchased f.o.b. destination; that is, the purchase price includes whatever transportation cost the seller may have to incur. It is contended that in such cases whatever reduction the carrier may give in transportation charges is solely for the benefit of the governmental agency, and for that reason is within the spirit, if not the letter of R.R.S. 10354. Please advise us what is the correct position to be taken in such a case."

Turning now to the various sections of the public service law, Laws of 1911, Chapter 117, as amended and supplemented, we find that Section 9 thereof (Rem. Rev. Stat. 10345) is, in part, as follows:

"All charges made for any service rendered or to be rendered in the transportation of persons or property, or in connection therewith, by any common carrier, or by any two or more common carriers, shall be just, fair, reasonable and sufficient.

\* \* \* \* \*

"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 14 of the public service act, Rem. Rev. Stat. 10350, requires every common carrier to make and file and keep on file with the department of public service and in their various offices printed tariffs of their charges, rates, etc., which written tariff the carrier must produce for inspection upon the request of any person. It also requires the form of the schedule of such tariff rates and charges to be prescribed by the department of public service, which department is directed that such schedules, tariffs, rates and charges be, as near as practical, in the form used by the I.C.C. Act of 1887, as amended.

Section 15 of the act, Rem. Rev. Stat. 10351, requires that no changes shall be made in the schedule of tariff rates, charges, etc. except upon thirty days' written notice to the department of public service and the filing of a new amended or supplemental tariff plainly showing the changes, the department being given authority to permit such changes on less than statutory notice for good cause.

Section 18, as subsequently amended, Rem. Rev. Stat. 10354, is in part as follows:

"No common carrier shall charge, demand, collect or receive a greater or less or different compensation for transportation of persons or property, or for any service in connection therewith, than the rates, fares and charges applicable to such transportation as specified in its schedules filed and in effect at that time; nor shall any such carrier refund or remit in any manner or by any device any portion of the rates, fares, or charges so specified excepting upon order of the Commission as hereinafter provided; nor extend to any shipper or person any privileges or facilities in the transportation of passengers or property except such as are regularly and uniformly extended to all persons and corporations under like circumstances. No common carrier shall, directly or indirectly, issue or give any free ticket, free pass or free or reduced transportation for passengers between points within this state, except its employees and their families, surgeons and physicians and their families, its officers, agents and attorneys at law;\*\*\*"

The statute then continues with a long list of persons who may be allowed free or reduced fares or rates, after which is contained the following paragraph:

"\* \* Common carriers subject to the provision of this act may carry, store or handle, free or at reduced rates, property for the United States, state, county or municipal governments, or for charitable purposes, or to or from fairs and exhibitions for exhibition thereat, and may carry, store or handle, free or at reduced rates, the household goods and personal effects of its employees and those entering or leaving its service and those killed or dying while in its service."

Section 20 of the act, Rem. Rev. Stat. 10356, is as follows:

"No common carrier shall, directly or indirectly, by any special rate, rebate, drawback, or other device or method, charge, demand, collect or receive from any person or corporation a greater or less compensation for any service rendered or to be rendered in the transportation of persons or property except as authorized in this act, than it charges, demands, collects or receives from any person or corporation for doing a like and contemporaneous service in the transportation of a like kind of traffic under the same or substantially similar circumstances and conditions."

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The next section of the act, Rem. Rev. Stat. 10357, is in following language:

"No common carrier shall make or give any undue or unreasonable preference or advantage to any person or corporation or to any locality or to any particular description of traffic in any respect whatsoever, or subject any particular person or corporation or locality or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever."

These statutes, generally, and the hereinbefore quoted portions of Rem. Rev. Stat. 10354 in particular require the common carrier to charge only such rates as are stated in his schedule or tariff, neither more nor less.

The public service laws are as much for the prevention of discriminations between localities as for prevention of overcharging or undercharging any particular person or class of persons. The plain inference of the statutes is that if common carriers desire to haul goods for the United States, the State, counties, cities or towns, it must file a tariff under the above cited sections with the department of public service and also keep the same open to inspection in the carrier's own offices, plainly stating the rate to be charged to each class of governmental agencies above mentioned and between what points such carriage is to be made. By filing such a tariff it may carry property for the above agencies without compensation or at a reduced rate, but such rates or free transportation we believe must be stated in the filed and published tariff or schedule.

We know of no case from the Supreme Court of our state directly in point in so far as hauling for governmental agencies is concerned, but in *Pacific Fruit & Produce Company vs. N. P. Railway Company*, 109 Wash. 481, it was held that a carrier must charge according to its published tariffs and not otherwise. In the course of the opinion, at page 487, the court stated:

" \* \* \* A carrier in interstate commerce can enter into no contract of transportation for which there is not express authority in its filed and published tariffs."  
Texas & Pacific R. Co. v. American Tie & Timber Co.,  
254 U.S. 138."

Other cases from the Supreme Court of this state holding the published and filed schedule or tariff to control the charges to

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be made by the carrier are: Oregon-Washington Railroad & Navigation Company vs. Seattle Grain Company, 106 Wash. 1, which was a suit for recovery of a rebate, but did not involve a governmental shipment; Wolverton Auto Bus Company vs. Robinson, 151 Wash. 67, which also held that oral evidence was not admissible to show a change in rates from those of the filed tariffs and that no part of the published tariff could be waived, and Puget Sound Navigation Co. vs. Department of Public Works, 157 Wash. 557, which involved a common carrier, a ferry hauling buses of another common carrier on their ships.

Allowing the carrier to carry free or at reduced rates for governmental agencies when and how it sees fit, changing its charges whenever it sees fit, regardless of its filed and published tariffs, would destroy all restraint upon discrimination between public agencies and between localities and commodities where such agencies are concerned. We cannot believe that such was the intent of the above cited statutes and we are of the opinion that any common carrier desiring to haul at reduced rates or free for any of the governmental agencies mentioned in Rem. Rev. Stat., Sec. 10354, must file a schedule or tariff stating such reduced or waived rates, charges, etc.

In the absence of such a tariff it would be the duty of the carrier to charge the full rate to all governmental agencies and between all localities the same as if the carrier was dealing with private individuals. Such tariff of reduced rates or free hauling can only apply when the hauling is done directly for the governmental agency. We think this disposes of your first and second questions.

Your third and fourth questions require our opinion as to what would constitute a carrying for the governmental agencies mentioned in Rem. Rev. Stat., Sec. 10354, supra.

In this connection you are advised that where goods are bought by the state or other governmental agency at a certain price, f.c.b. shipping point, the hauling would presumptively be for the state and the reduced rates according to the schedule filed in accordance herewith would have to be charged when the state receives the goods at the point of destination and in such case the freight should be paid directly by the state. The carrier would not be justified in assuming the state to be making payment when in fact it is being made by a third party, in the absence of a rule by your department authorizing such procedure and prescribing the details thereof.

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OFFICE OF ATTORNEY GENERAL  
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Where goods are sold to the state, or other governmental agency, f.o.b. point of destination, it is, of course, the seller's duty to pay the freight on the goods, and he, like any other private shipper, must pay the unreduced full tariff rates according to the carrier's published tariffs for all private shippers. The fact that goods are consigned to a governmental agency can have no effect upon the rates that the private shipper is required to pay when he has contracted to deliver those goods f.o.b. at the point of destination.

Yours very truly,

G. W. HAMILTON  
Attorney General

BY: *G. G. Hannan*

GEO. G. HANNAN  
Assistant Attorney  
General

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