

## Opinion No. 13-1054

June 3, 1913

**BY:** FRANK W. CLANCY, Attorney General

**TO:** Mr. Tom Dean, Manager, Hotel Coombs, Albuquerque, N. M.

### **RAILROADS.**

As to right of railroads to allow the soliciting of business on station platforms by agents of hotels.

### **OPINION**

{\*224} Your letter of May 23 addressed to the State Corporation Commission has been by that body referred to me for reply, as you have already been informed, and I take the first moment I have had when I could answer you.

You show by your letter that you have something at least approaching a grievance on account of the action of the Santa Fe Railroad Company in permitting some hotels in Albuquerque to solicit business on the station platform and to exclude from that privilege other hotels, and you express the belief that this is in restraint of trade and a violation of the Sherman law. If it were a violation of the Sherman law it would be entirely beyond the jurisdiction of any state officers, and any remedy to be applied would be only through agencies of the federal government. It is, however, I believe a matter of purely local concern and a subject with which Congress would have no proper authority to deal. Your other suggestion that such action may be in restraint of trade is entitled to some consideration as it is possible the courts might hold that such conduct is in violation of Sections 1292 and 1293 of the Compiled Laws of 1897. I cannot, however, predict with confidence whether those sections, which are aimed at monopolies or attempts to monopolize "trade or commerce" would be held to extend to such a case as this.

I have made some examination of authorities and find that there have been in different states in the Union cases decided by the appellate courts where similar questions were involved, the greater part of them being as to hackmen or omnibus companies. Railroad companies have given to such persons or companies exclusive privileges at their stations, and when the matters have been brought into court the decisions have not been harmonious. In a number of cases the courts held against the railroad companies, but in most of those cases the decisions were based upon some constitutional or statutory provision requiring the railroad companies to "grant equal facilities for the transportation of passengers and freight to all persons, companies or corporations." We have no such statutory or constitutional provision in New Mexico, so that these decisions are not applicable, and even if we had such a provision I doubt if it would be applicable to soliciting business for hotels. There is, however, some reason to believe

that a railroad company is of such a public character that it ought not to be allowed to show favoritism in such a matter, although there is no doubt that the railroad must necessarily have control over its station and station grounds and can make reasonable rules and regulations for the conduct of business therein. It is quite plain, for {<sup>\*225</sup>} instance, that a railroad company might give a man the privilege of conducting a news stand or a stand for the sale of cigars and tobacco upon its grounds without being obliged to give any other person a similar privilege. It certainly could make rules to govern the methods of hackmen or hotel runners in soliciting business. Some courts, however, have held that the railroad companies have full and absolute control over their stations and grounds and can admit or exclude at pleasure any person or class of persons. I incline to the belief that this is a matter which could be properly regulated by city ordinance, and perhaps it may be well to make some effort in that direction. I do not believe it would be proper or desirable for the railroad company to throw open its station and grounds to all kinds of hotels, some of which might not be of a reputable character, but with that qualification there are many reasons to contend that it is unfair for a railroad company to lend itself to the establishment of a monopoly, in whole or in part, by any one hotel.