

Opinion No. 19-2448

December 16, 1919

BY: HARRY S. BOWMAN, Assistant Attorney General

TO: State Corporation Commission, Santa Fe, New Mexico.

Fixing Rates By Corporation Commission.

OPINION

We have your letter of the 15th instant, requesting an opinion from this office regarding the right of the Commission to determine upon a rate to be charged, other than that requested by the petitioner, or alleged to be justifiable by the respondent, in the matter of Kinney vs. New Mexico Midland Railway Company, Cause No. 21, in your office.

The formal order in this Cause provides for a hearing upon the matters contained in the petition, answer and reply of the respective parties, for the purpose of ascertaining whether or not the rate of eighty-five cents per ton charged by the respondent is excessive, unjustifiable, unduly compensatory or discriminatory, and the evidence adduced in that hearing covered every feature of transportation by the said company, in so far as it affected the products mentioned in the petition and in the said order.

All of the information obtainable was presented to the Commission, and it now has before it evidence upon which to base an order, such as it may deem proper.

If in the consideration of the evidence before it, the Commission concludes that the old rate of fifty cents per ton does not produce a fair rate to the respondent company on coal, and also concludes that the new rate of eighty-five cents per ton is excessive, unjustifiable or unduly compensatory or discriminatory, then it is our opinion that the Commission is legally authorized to determine upon a rate which will not be subject to any of the criticisms above mentioned, but one that should be fair both to the petitioner and the respondent in all respects.

It is therefore our opinion, that the Commission is not limited under the power conferred by the Constitution, to determine the cause upon the minimum or maximum rate as contended for by parties to this cause.

We believe that the powers and the authority granted to the Commission by the Constitution authorize it to determine upon such rate as may be reasonable and just, aside from the rates that may be demanded by the petitioner or respondent.