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TAXATION AND REGULATION OF RAILWAYS IN
MISSOURI

by

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PREFACE

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For some years it has been the conviction of the author of this paper that persons working in institutions of learning, especially those working in the social sciences, should make the most of the local material at hand, and should connect their inquiries and investigations as is practicable with the life and problems of the society in which they are placed. The present paper has grown out of that deep-seated conviction, and is an effort to utilize certain records etc. of the State of Missouri that bear upon a set of problems in which the author has been interested for some time.

It is hoped that the present effort may serve, in some small degree, to induce others to undertake more work with the local material that has not before been utilized; though they may find, as has proven true in the present case, that the material is not all that could be desired for a proper treatment of the subject in hand.

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TAXATION AND REGULATION OF RAILWAYS IN MISSOURI.

Chapter I.

The System Outlined.

The state of Missouri is officially related to the railways of the State in two very distinct matters; that of taxation and that of regulation of rates of pay and quality of service of the roads. This paper will deal primarily with the former of these relations, though taking up more briefly the other relation in order to give a fairly complete picture of the work of the state government of Missouri in its dealings with the railways of the State.

The system of taxation of the railways of Missouri is based upon the intention of taxing the railroads in as nearly as possible the same manner that other property is taxed in the State. There is a general property tax levied on all property in the State, except such property as is by the Constitution exempt, and the railroads have always been subject to this tax since they were first built in this State. Though certain other forms of taxation are known to the system in vogue in the State, and though the Constitution expressly authorizes the General Assembly to tax railways on other bases than that of the value of their property, no such tax

has ever been levied upon them.

Under this system the point of vital importance is the assessed valuation upon which the tax rate is paid, and this is the phase of the matter that is given most attention in this paper. How this valuation is arrived at, what the theory, if any, that is applied to determine the value, how far the railways through their representatives determine the valuation themselves, are the matters immediately considered. There will be some effort, too, to point out defects where they have been discerned.

This valuation is determined at the hands of the State Board of Equalization, except for a small amount of purely local property that is assessed by the local assessors as other property is assessed. This will be taken up more at length later. This State Board of Equalization is provided for in the present constitution (that of 1875) Section 18 of Article X. The Board of Equalization, as its name indicates, is primarily a board for the equalization of values of property between the several counties as assessed for taxation; but in addition to this duty it is also a board of primary assessors for railroad property and such other property of public utility corporations as is by law specified for such assessment. In the assessment of all such property the State Board of Equalization receives certain reports from the owners direct and hears them in oral testimony, and this information is the evidence upon which the estimate of value is made. In the assessment of other property, the State Board of Equalization only reviews the valuations of the counties

and apportions and equalizes the values.

The regulation of the service, rates, etc. of the railroads of Missouri is effected through two distinct channels. The form of control of railways adopted in this state is that of legislative supervision supplemented by direct supervision of the roads. The chief agent of such supervision is the Board of Railroad and Warehouse Commissioners. The authority of this board varies with the succeeding sessions of the General Assembly, for one law after another has been passed enlarging or modifying its powers. Though the main purpose of the creation of such a board in Missouri seems to have been rather to regulate the service than the rates of payment of such service, there have been a number of efforts to make the Board of Railroad and Warehouse Commissioners a rate-making body; and the efforts have not ceased, the last session of the General Assembly enacting several such measures.

In addition to the work of this board, which is essentially administrative, the General Assembly itself has more than once passed measures definitely naming rates that could be charged for certain service in the State. In 1905 and again in 1907 such laws were enacted. The former, after long drawn out litigation, was set aside by the Federal Courts; and the latter is still under consideration by the Supreme Court of the United States. In fact, this work of the General Assembly in its efforts to regulate the rates that may be charged for the services of the railways has proved rather more a disturbance and hindrance to the prosperity and progress of the State than otherwise.

Chapter II.

State Board of Equalisation.

The State Board of Equalization is, in name and function, older than the present Constitution, having been established by act of the General Assembly in 1871 while the Constitution was not adopted until 1875. However, the original Board of Equalization was different in constitution from the present one. By the act of the General Assembly referred to above the State Senate was made an assessing board for the assessment of railway tracks, right of way, rolling stock, etc. However, this matter of Senate as Board of Equalization is of interest to us only in the fact that it is the historic predecessor of the present board with which we are primarily concerned.

In the Constitution of 1875 we find that Section 180 of Article X reads:

"State Board of Equalization -- Members.--
There shall be a State Board of Equalization, consisting of the Governor, State Auditor, State Treasurer, Secretary of State, and Attorney General. The duty of said board shall be to adjust and equalize the valuation of real and personal property among the several counties in the state, and it shall perform such other duties as are or may be prescribed by law."

The closing clause of the above article covers the work that we are chiefly interested in. This phrase, "and it shall perform such other duties as are or shall be prescribed by law", was interpreted by the courts as authorizing it without further legislation to assess the railroads for taxation.

The law under which the State Board of Equalization assesses the railroads at present is found in Section 11559 of the Revised Statutes of 1909 as follows:

" State Board of Equalization, How Composed-- Duties.- The State Board for the Assessment and equalization of railroad property shall be composed of the Governor, Secretary of State, State Auditor, State Treasurer, and Attorney General, and shall meet annually at the capital in the City of Jefferson on the third Monday of April of each year, for the purpose of assessing, adjusting and equalizing the valuation of such railroad property. The said board shall proceed to assess, adjust and equalize the aggregate valuation of the property of each of the railroad companies of this state specified in Section 11554. The Board shall have power to summon witnesses by process issued to any officer authorized to serve subpoenas, and shall have the power of a Circuit Court to compel the attendance of such witnesses, and to compel them to testify; they shall have the power, upon their knowledge, or such information as they can obtain, to increase or reduce the aggregate valuation of the property of any railroad company included in the statements and returns made by the railroad companies and the clerks of the county courts, and shall assess, adjust and equalize any other property belonging to said railroad companies, or property belonging to any railroad company in this state of the kind specified in Section 11554, upon which no returns have been made, which may be otherwise known to them, as they may deem just and right. In assessing, adjusting and equalizing any railroad property for any year or years, the state board may arrive at its findings, conclusion and judgement, upon its knowledge or such information as may be before it, and shall not be governed in its findings, conclusions and judgement by the testimony which may be adduced, further than to give to it such weight as the board may think it entitled to: Provided, that when any railroad shall extend beyond the limits of this state into another state in which a tax is levied and paid on the rolling stock of such road, then the said board shall assess, equalize and adjust only such proportion of the total value of the rolling stock of such railroad company as the number of miles of such road in this state bears to the total length of the road as owned or controlled by such company."

Note that the property of railroads is to be assessed by the State Board of Equalization without the aid of local assessors in any way, and that the board is specifically directed to reach its conclusions etc. upon such information as may be at hand or obtainable, and it is not bound by the returns of the company or the evidence it hears.

The courts have held that the State Board of Equalization when sitting as an assessing board in such matters as the assessment of railroad property acts as a judicial body, and there is no appeal from its decision etc. (See Section 11410 Revised Statutes 1909 for citation of court decisions in the matter).

By Section 11553 of the Revised Statutes of 1909 the property of

" all railroads now constructed, in course of construction, or which hereafter may be constructed in this state, and all other property, real, personal, or mixed, owned, hired, or leased by any railroad company or corporation in this state, shall be subject to taxation for state, county or other municipal or local purposes!"

However, Section 11554 of the Revised Statutes of 1909 describes more in detail the property that shall be assessed by the State Board and how the companies shall report etc.; and this section is so important that we must quote it in full. It is as follows:

"Railroad Companies to make Statements to State Auditor.- On or before the first day of January in each and every year, the president or other chief officer of every railroad company whose road is now or which shall hereafter become so far completed and in operation as to run locomotive engines, with freight or passenger cars thereon, shall furnish to the State Auditor a statement, duly subscribed and sworn to by said president or other chief officer, before some officer authorized to administer oaths, setting out in detail the total length of their road so far as completed, including branch or leased roads, the entire length in this state, and the length of double or side tracks, with depots, water tanks and turntables, the length of such road, double or side tracks in each county, municipal township, incorporated city, town or village through or in which it is located in this state; the total number of engines and the cars of every kind and description, including all palace or sleeping cars, passenger and freight cars, and all other movable property owned, used or leased by them, on the first day of June in each year, and the actual cash value thereof."

This article sets forth all the information that the roads are by law required to furnish to the State Board of

Equalization, and ~~reference~~ to it later will be necessary in discussing the work of the board in arriving at the valuation placed upon railroad property. Section 11555 of the Revised Statutes of 1909 requires the railroad companies to make duplicate statements of those described above to the clerks of the county courts of each and every county through which the road runs. Section 11556 of the Revised Statutes of 1909 requires the county courts to verify the statements sent to them by the railroads in compliance with Section 11555 just referred to and to send these verified statements to the State Auditor. There is no special authority given to the county courts in the matter of determining the value of the property in their respective counties etc., and these returns have, of necessity, become a matter of mere form that serves no useful purpose. Section 11558 of the revised Statutes of 1909 requires the State Auditor to lay all returns of the railroad companies and those received from all county clerks before the State Board of Equalisation on the third Monday of April in each year.

Section 11552 of the Revised Statutes of 1909 directs the State Board of Equalization in its assessment of the franchises of the railroads. It is as follows:

"Valuations, How fixed and by Whom:- The State Board of Equalization in cases of railroads, street railroads, bridges, telegraphs, telephone companies, and all other corporations whose property the State Board of Equalization is now or may hereafter be required to assess, and the county assessor, in case of the other quasi public corporations referred to in the preceding section, shall ascertain, fix and determine the total value for taxable purposes of the entire property of such corporations, tangible and intangible, in this state, and shall then assess the tangible property and deduct the amount of such assessment from the total valuation and enter the remainder upon the assessment list or in the assessors books, under the head of 'all other property'."

This instruction for finding the value of the intangible elements and the direction that the portion of the value of all rolling stock belonging to interstate roads that shall be apportioned to Missouri for taxation shall be found on the mileage basis (Section 11559, P. 5, Supra.) is all the explicit direction as to the determination of value that is given to the State Board of Equalization in the statutes.

Section 11411 of the Revised Statutes of 1909 fixes the date of meeting of the State Board of Equalization for the equalization and adjustment of property values between the several counties etc. as the last Wednesday of February of each year and the meeting place as the Capital city of Jefferson; and Section 11559, referred to above (P. 5 Supra.) requires that on the third Monday of April of each year the board shall meet in the same place for ~~the~~ assessing, adjusting and equalising the value of railroad property. It also provides that the

" Secretary of the board shall keep an accurate account of all their proceedings and orders, and file the same, together with all their papers, in the office of the State Auditor."

Section 11807 of the Revised Statutes of 1909 makes the State Auditor ex officio secretary of the State Board of Equalization as he has always been since the present organization of the board.

Section 11410 of the Revised Statutes of 1909, which has long been a part of the statutes, fixes the powers of the State Board of Equalization as follows:

" The State Board of Equalization shall have power to send for persons and papers, to administer oaths through its officers or agents, and to take all evidence it may deem necessary to ascertain the value of the property in the different counties in the State."

Section 11413 should be closely associated with this, since it amounts to a limitation upon the powers of the board, as it appears. It reads:

"The officers and members of said board shall receive the same pay per diem as officers and members of the General Assembly, but no mileage shall be allowed in any case in consequence of their duties as members of said board; and said board shall meet every year at such time as may be designated,"

The interesting thing in this article is that it seems to confirm Article 11411 in confining the meetings of the board to Jefferson City, first by designating no other place where meetings may be held, and second by expressly forbidding the members of the board to receive any mileage payment for services in connection with the board.

The newspapers report that the General Assembly at its recent session passed a bill raising the salary of the members of the State Board of Equalization to one thousand dollars per year, which the Governor has approved; but the Secretary of State has, up to this time, been unable to furnish a copy of this law. This is the only bill in any way modifying the laws regulating the State Board of Equalization that has been reported in the lists of bills passed by the recent session of the General Assembly as published in the newspapers of the State.

It will be necessary later to refer to several sections of the law that are quoted in this chapter, for the State Board of Equalization in performing its work seems in one or two instances which will be noticed almost, or quite, to have exceeded any authority conferred upon it by statute. Again, in the matter of records etc. that the board is required to keep, there seems to be ground for doubt as to the faithful discharge of the duty required by the statutes.

Chapter III.

The State Board's Assessment of Railway Property.

The State Board of Equalization meets annually in Jefferson City on the third Monday in April for the assessment of railway property. The Board proceeds to business by electing a president, vice-president, and acknowledging the State Auditor as secretary of the board. This is followed at once by the adoption of a resolution fixing dates for hearing testimony from the various railway companies of the state, this resolution regularly including the provision that any citizen who may be interested in the valuation placed upon the property in question shall be heard at the same time as other witnesses in regard to the same property. This resolution is followed regularly by another that is of such vital import to the matter in hand that we give it for the year 1910, setting it off in comparison with the similar resolution for the year 1898, the first year that such a resolution was introduced before the board.

For 1898 the resolution in question is as follows:

"Be it resolved by the State Board of Equalization, as follows: First -- All railroad companies having property subject to assessment by this board are hereby requested to supply this board with the following information on or before June 12th, 1898, viz.:

The capital stock of the entire road or system operated, controlled or owned by the company making the return to this board.
If branch lines are separately incorporated, the amount of capital stock of each branch.

The par value of each share of stock.

The market value of each share of stock.

The number of shares of stock.

The amount of the bonded indebtedness of the main lines and branches.

The gross earnings of the entire system, both within and without this state, including all branches, for the year beginning June the first 1896 and ending May 31st, 1897.

The gross earnings of the main lines and branches in the state for the same period.

The total expenses on main lines and branches for the same period.

The total expenses on main lines and branches in Missouri for the same period.

The rate of interest paid on all bonded indebtedness."

This resolution shows slight changes through the succeeding years, reaching by 1910 the following form:

"Resolved, that the companies operating lines of steam, electric or cable railroads, wholly or partly in this state, will be expected to present to the board, in writing, answers to the following interrogatories, viz.:

1. The corporate name of the company making the return required by the statute for the purpose of taxation.

2. The names of all branches, leased lines, lines controlled through ownership of stock or lines operated under other arrangements in this state.

3. The mileage of the entire road or system owned, used, leased or operated on June 1st, 1909. In case the entire road or system is not located in the state, give the mileage within the state, as well as the mileage of the entire road or system.

4. The capital stock of the entire road or system on June 1st, 1909. If that portion of the road or system within the state of Missouri, or any line controlled through ownership of stock or leased or operated in the state, is capitalized separately, give the amount of such capitalization.

5. The par value per share of capital stock.

6. The average market value per share of capital stock from June 1st, 1908, to June 1st, 1909.

7. The Amount of dividends paid on capital stock during the year 1909.

8. The amount of bonded indebtedness for the entire road or system on June 1st, 1909. If only a part of the road is in Missouri, give the bonded debt per mile of the portion in the state.

9. In case the operation of the road or system in the state is bonded separately, give the line or lines against which bonds have been issued and the amount thereof.

10. The average market value of the bonds of said road or system, between the 1st day of June 1908 and the 1st day of June 1909.

11. The total gross earnings per mile of the entire road or system for the year ending June 30th, 1909.

12. The total gross earnings per mile of that part of the entire road or system located within the state of Missouri for the year ending June 30th, 1909.

13. The net earnings per mile of the entire road or system for the year ending June 30th, 1909.

14. The net earnings per mile of that part of the entire road or system located within the state of Missouri for the year ending June 30th, 1909. (In computing the net earnings deduct from the gross earning only such items of expense as are specially enumerated on pages 61, 63, and 65 of the blank furnished by the Board of Railroad and Warehouse Commissioners for the annual statement of the year ending June 30th, 1909.)

15. The average cost of construction per mile of that part of the entire road or system located within the state of Missouri up to June 1st, 1909.

16. The total cost of construction per mile of that part of each line or branch located within the state of Missouri up to June 1st, 1909.

17. The actual cash value of the entire road or system on June 1st, 1909.

18. The actual cash value of each particular line or branch thereof in the state of Missouri on June 1st, 1909.

19. The total mileage of the tracks constituting a part of any terminal system, used, leased or operated upon June 1st, 1909.

20. The location of each of said terminals and the mileage thereof.

21. The cost of construction of said terminals.

22. The total mileage of all side tracks not reported as part of the terminals system.

23. The total cost of construction of such sidings."

The first thing worthy of notice about this set of questions is that they ask, in part, for information that the railroads are not required to furnish. As a result of this fact, some of the more important questions regularly remain practically unanswered, the representatives of the roads saying that the information is not at hand or other words to that effect. Notice that the railroads are required to report to the State Auditor on or before the first of January of each year (P. 6, Supra.) only the following:

"Total length of road, including branch lines etc.

Entire length in this state.

Length of double or side track.

Depots.

Watertanks.

Turntables.

(A similar report for each town, county, etc.)

Total number of engines and cars with a discription of same and the actual cabs value thereof."

This is the only report that the railroads are by law required to make, not being required to furnish any other information beyond this.

It is interesting to see the way that the railroad companies prepare answers to this set of questions for the

State Board of Equalization. The first questions that require much effort to answer are 6 and 10 relating to average market values of securities through the year, and these are often unanswered. However, some companies answer without giving any authority for their statements while certain others quote from the "Financial and Commercial Chronicle" and yet other roads say that they keep no record of the market value of securities. Of course, a clerk of the State Auditor's office could gather and tabulate all of this information from the same sources that the railways draw from, if such work were provided for by law.

The next questions that would require some effort to answer are 12 and 14 relating to gross and net earnings per mile of that part of the road located in Missouri. Very few roads answer these questions further than to say that the information is not obtainable. However, the Missouri, Kansas and Texas Railway Company is reported have installed lately an accounting system that affords this information; and it has been said that this company is prepared to furnish such information this year. This lends unusual interest to the report of this company to the board for the year 1911, a document that is not yet available.

But very few roads are able to answer questions 15 and 16, owing to the lack of records. Questions 21 and 23 are of this same general nature, though relating to terminals and side tracks; and these questions are often unanswered for the same reasons as are 15 and 16. It seems that the situation is such that these questions can never be answered in nearly all cases in Missouri, the companies cannot get such information.

Questions 17 and 18 are, perhaps, the most interesting, since they ask for the very matter that the board is trying to arrive at, viz. the actual cash value of the property. These questions are seldom answered in any way further than to say "Not known". Many of the companies do not answer these two questions at all. However, there are a few that give some sort of answers either setting down an estimated value without further comment or giving some reason for not making any estimate, though these last are rare. Perhaps the best of these answers for 1910 was that of the Chicago, Burlington and Quincy Railroad, which combined the answers to both questions into one statement as follows:

" Impossible to state. There are a number of different ways on which theoretically to arrive at value. The cost of replacement theory would be the merest guess owing to the impossibility of determining value of right of way, also because expenditures on a property which is brought to completion through a long series of years (while all legitimated are greater than if the property were built at one time and without delays incident to the necessity of moving traffic while the construction is in progress."

Perhaps it is as well to remark here that no instructions are sent to the railway companies to guide them in arriving at the value of their property, so that no uniformity could be expected if the companies were to furnish answers to these questions in regard to value.

This set of interrogatories seems, then, to give the board little information that is of consequence in determining the value of the property by any theory or method.

Another source of information for the board is the reports of the railroads gathered by the Railroad and Warehouse Commission, and this has long been used, the Commissioners in

early years appearing before the board as witnesses, the first case of this being recorded in the Journal of 1877. Beginning in 1878 the Journal of the Board shows that the Railroad and Warehouse Commissioners were asked by resolution to attend the sessions of the Board regularly while it was engaged in the assessment of railway property. This practice was continued for a number of years, but does not seem to be the practice in recent years. Beginning in 1884 the Board by resolution asked the State Railroad and Warehouse Commissioners to prepare and present to the Board estimates of the value of all Railway property in the state. Instructions as to how the value was to be arrived at were not given, but in some years the Commissioners were asked to state in their report how the value there given was arrived at. The value of this information is, at least, questionable when one remembers the limitation of the facts upon which the estimates of the Commissioners are based. This limitation of the facts before the Commissioners is very well shown in a letter from the Secretary of the Railroad and Warehouse Commissioners under date of April 5th, 1911, in which he says:

" Commissioners' track inspections, referred to, do not pertain to the value of the properties of the railroad companies. Commissioners make track inspections on their own motion, or on complaint, and the purpose of such inspection is to require the tracks to be kept in a reasonably safe condition. Commissioners have no authority over manner of keeping accounts by railroads."

However, the instructions for determining net earnings as set forth in the blank forms sent to the railway companies by the Railroad and Warehouse Commissioners become of interest here, since the State Board of Equalization expressly

adopts these instructions when they ask the railroads for a statement of net earnings (Question 14, P. 12 Supra.). These instructions set down the five following main heads:

- "Maintenance of Way and Structures.
- Maintenance of Equipment.
- Traffic Expenses.
- Transportation Expenses.
- General Expenses,"

Under these five heads are to be entered all operating expenses that are to be deducted from gross earnings in order to arrive at net earnings. These five main topics or headings are subdivided into one hundred-fourteen subheadings. These would scarcely interest us here, since four of the main heads have the list of sub-heads closed with "Other Expenses" with no instructions as to what may be entered under this head. It should be remembered, too, that this whole matter is to be viewed in the light of a suggestion from the Commissioners, since they "have no authority over the manner of keeping accounts by railroads", nor has the State Board of Equalization any authority to compel compliance with its suggestion in the matter.

The State Board of Equalization also hears witnesses in regard to the value of the various railroads in the state, the principal of these always being the representative of the road under consideration. The questions given in the interrogatories sent out to the railway companies by the State Board of Equalization (See pp. 13 and 14 Supra.) forming the general point of departure for the testimony. However, the representatives of the roads sometimes lead the testimony into lines hardly indicated by the interrogatories; and occasionally the

members of the State Board of Equalization do the same by their questions put to the witnesses. But through it all, the roads and the State Board of Equalization seem to keep fairly close to the notion, never clearly formulated, that only increased earnings or improved physical condition of the property can be a basis for increasing the assessed value of the roads. The representatives of the roads regularly ignore the increased value that comes to railroad property with the development of the country which it serves, in some cases going so far as to insist that there is no relation between the density of population of the territory served and the value of the road rendering the service; and the members of the State Board of Equalization seem to have but a very vaguely defined conception of the unearned increment of the property due to this source, if indeed they have any conception of it at all. This testimony is not a matter of record, though it is said that some notes of the testimony are taken and preserved for the use of the members of the State Board of Equalization.

The only other source of information regularly made use of by the State Board of Equalization, so far as the author of this paper is informed, is a sort of excursion-like trip over the roads by members of the board, usually accompanied by some representative of the company whose road is being "inspected". The first appearance of any effort to undertake such an inspection of railway property by the State Board of Equalization appears in the Journal of the Board for 1889 when a motion that the board view the terminal properties

in St. Louis, Kansas City, and St. Joseph was lost. The Journal of the State Board of Equalization shows no further effort to obtain, in this way, information as to the property of the railway companies until 1897 when a motion to view the terminal properties was introduced and carried. Since that time the State Board of Equalization has spent a few days each year in looking over the property of the roads. Last year the State Board of Equalization inspected the terminal properties in St. Louis, Kansas City, and St. Joseph (Journal 1910). This year they will run over the trunk lines of the state. This examination is, it can be, only the most cursory. The member of the State Board of Equalization travel over the roads in regular coaches as passengers, presumably as guests of the roads, since the Statutes forbid their receiving "any mileage in any case in consequence of their duties as members of said board" (P. 8, Supra.).

It is true, the State Board of Equalization receives reports, through the State Auditor, of the value of the railway property in each county as estimated by the county courts; but this estimate is ordinarily only a matter of form, the courts simply signing and forwarding the reports sent to them by the roads, and these reports are required by statute to be duplicates of the reports sent by the railways to the State Auditor, for the nature of which see page 13 of this paper. This, then, can scarcely be called a source of information for the State Board of Equalization.

This concludes the survey of sources of information on which the State Board of Equalization bases its determination

of the value of railway property for taxation. The next work set forth will be a study of the use the State Board of Equalization makes of its information and of the values that it arrives at.

Neither the Journal of the State Board of Equalization nor any of the records of the proceedings of the board as filed in the office of the State Auditor sets forth any theory or principle that shall guide the board in arriving at the value of railroad property; and the statutes are likewise silent on this important matter. The railway companies and their tax agents are said to be in much confusion as to any accepted principle or theory for determining the value of their property for taxation; yet, the members of the State Board of Equalization give no hint as to what is the proper principle to follow in the matter. While it is, at least, doubtful if any definite principle or method could be prescribed by statute that would be sustained by the courts when tested, it seems that the State Board of Equalization or the Statutes might set forth a statement of certain classes of facts that would be considered in certain ways as part of the evidence upon which the State Board of Equalization would determine the value of the property, though it should still retain its practice of hearing "all other evidence". However, the State Board of Equalization seems rather sensitive on this matter of guiding theory or principle for the determination of value. A representative of one of the prominent roads said some time ago that he had been told by a former member of the State Board of Equalization that they "guessed at it". However, this has been vigorously denied by certain member os the board.

The assessed values themselves for successive years are of some interest, both in this connection and for the effect that such assessed values may have upon the incidence of taxation and the effect of this, in turn, upon the industry of the state. The State Board of Equalization has from the first valued each main line or branch line of railroad as an individual property, setting a value on it at so much per mile with no official statement as to why this value is what it is; and in all of the early years of the existence of the State Board of Equalization the rolling stock was valued for each road or company in much the same way. But beginning in 1886 the Journal of the State Board of Equalization shows every year a list of the valuations of the different sorts of rolling stock that shall prevail generally over the state. It seems of interest here to set these lists side by side for comparison. Since the intervening years show nothing of interest, not indicated by the years given, it has seemed wise to take only certain years. So the years have been chosen at ten-year intervals since the beginning such a practice by the State Board of Equalization. The only development in the method of assessing rolling stock that is not indicated by the accompanying table is the practice, begun in 1902, of making a list of about a dozen small local roads whose rolling stock is assessed in accordance with a table of values prepared especially for such roads by the board. However, this is only a small detail in the assessment of rolling stock that calls for little comment. The effect of this change upon the values as set down in the main table should be a tendency to increase the values there set down, since it is the cheapest rolling stock that is removed from this list and assessed separately.

(Table 1)

Valuation per Unit of Rolling Stock.
(Compiled from the Journal of the State Board of Equalization)

For the year	1886	1896	1906	1910
Locomotives	\$4000	\$4000	\$4000	\$5000
Standard Sleeping Cars	\$6000	\$6500	6500	6500
Buffet Cars		4500	5000	5000
Parlor Cars		4500	5000	5000
Tourist Sleeping Cars				3500
Dining Cars		4500	5000	5000
Cafe Cars			5000	5000
Special Cars			5000	5000
Chair Cars	5000	4000	3500	3500
Passenger Cars	2250	2250	2250	2500
Pay & Business Cars	2500	2500	3500	3500
Official Cars	4000	4000	5000	5000
Postal Cars	2000	2000	2000	2000
Baggage Cars	1000	1000	1000	1500
Combination Cars	1500	1500	1500	1500
Express Cars	1000	1000	1500	2000
Box Cars	250	250	250	250
Stock Cars	250	250	250	250
Flat cars	200	200	200	200
Coal Cars	200	200	200	250
Caboose Cars		400	400	400
Cinder Cars			200	200
Ballast Cars			200	200
Refrigerator Cars	500	400	500	500
Oil Tank Cars	450	400	400	500
Water Tank Cars	300	300	400	250
Tool Cars			250	250
Boarding Cars	300	300	250	250
Pile Drivers	1000	1000	1000	1000
Derrick Cars	450	450	450	450
Wrecking Cars		450	450	450
Ditching Cars		650	650	650
Hand & Push Cars	25	25	20	10
Furniture Cars			250	250
Road & Water Cars			250	250
Plow Cars			500	500
Dump Cars		200	250	250
Steam Shovel Cars			1500	1500
Air Brake Instruction Cars				1000
Rail Saw Cars				500
Weed Burner Cars				600
Paint Cars				400
Snow Flanger and Plow Cars				250
All Other Cars		200	250	250
*Tie Spotter Cars	300	300		
Emigrant Cars	1500	1500	1500	
Fruit Cars	500	400		
Rubble Cars		20		
Velocipede Cars		25		
Steam Derrick Cars		1500		

*None below this mark found in list of 1910, taken as model.

This table seems to point to the inference that there is not any guiding principle or theory applied by the State Board of Equalization in arriving at the value at which railway property is assessed, or that if there is any theory or principle it is applied such a paucity of facts that the values which result are little other than guess work. There seems to get into the records of the board a set of figures, or an amount, as the value of a given sort of property; and that value, however it may have originated, seems to continue to be accepted by the board as the "Fair and just value" of the property in question. In this connection it is interesting to take a few of the standard forms of rolling stock and trace their values through the successive years. Locomotives, standard sleeping cars, chair cars, passenger cars, baggage cars, refrigerator cars, and pile drivers are good examples of this tendency to accept the traditional valuation; notice that they change but little through the twenty-four years and frequently none at all in twenty years. But the most unusual case of all is that of postal cars which shows no variation in the twenty-four years covered by the table.

Perhaps there is no better place to observe that this sort of evaluation takes no note of the difference in earning power or cost, therefore in profitableness, of one sort of car or other rolling stock of a certain general class over another sort of the same general class. For instance, all passenger cars are valued the same, whether they are light cheap cars that cost relatively little and bring in but little revenue or their cost and carrying capacity is twice as great.

A good example of this is found in locomotives. Through the years that are covered by the foregoing table there has been apparent to any one at all observant an almost fabulous development in size and carrying capacity of locomotives, accompanied by no slight increase in cost per locomotive of the new type over that of the old, yet the value as assessed by the State Board of Equalization has remained strikingly close to the low water mark of \$4000. In the early years of the board's existence a valuation of \$8000 per locomotive on the locomotives of certain roads was by no means rare, while \$6000 and \$7000 were frequent valuations. It is not contended here that the earnings due to each car or locomotive are ascertainable; the aim is to contrast the present practice with that of earlier years when the board valued the rolling stock of each road or company as a unity, considering and valuing it apart from that of any other road or company just as the tracks etc. are valued yet. In those days it was at least possible to average the value of the several sorts of locomotives, or other rolling stock of a general class, belonging to a given road so that each grade or quality of the class of rolling stock under consideration was given its proper weight in determining the average value to be placed upon the rolling stock of that general class belonging to the company whose property was being assessed. Nothing of that sort is possible under the present system. of a single valuation for the rolling stock of a general class belonging to all roads.

This neglect of the difference in value between the different sorts of rolling stock of a general class

results in placing a burden on the inferior sorts of rolling stock of each general class; for, if all locomotives are taxed the same and one sort costs and earns for its owners twice as much as an other sort, it will not require a very keen business man to see that he had better, to the extent of the tax per locomotive, own one of the costlier and more productive locomotives than two of the cheaper and less remunerative sort, since the increased cost and earning power of the greater locomotive goes entirely untaxed. Of course, this is, to the extent that its operation is felt, a premium placed by the state upon the introduction and continued use of the larger and more efficient locomotive or other rolling stock.

This matter of the variation in size, cost of construction, carrying capacity, and earning capacity of the different types of each general class of rolling stock is of such far-reaching importance that some effort should be made to present it forcefully to the reader. Perhaps there is no better example of this great variation than is represented by locomotives, as has been remarked above, despite the fact that the State Board of Equalization persists in valuing them alike year after year. However, it should be understood that locomotives are taken only as an example of a condition that prevails generally throughout the different classes of rolling stock. In order to bring this fact of variation in type and value of the rolling stock of a general class clearly before the reader, photographs of certain locomotives have been obtained and placed on the following pages.

A NEW GIANT OF THE RAIL

THE HUGE ATCHISON, TOPEKA, & SANTA FE FREIGHT-HAULER, WHICH WEIGHS 462,450 POUNDS (WITH THE TENDER 700,000 POUNDS) AND WHICH HAS A TANK-CAPACITY OF 12,000 GALLONS OF WATER AND 4,000 GALLONS OF OIL-FUEL

A locomotive used to haul mixed trains on the Wabash branch line railroad from Centralia to Columbia, Missouri.

A locomotive used to haul mixed trains on the branch line of the Missouri, Kansas and Texas railroad from McBaine to Columbia, Missouri. This locomotive weighs when equipped with tender etc. 51 tons.

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(Table 2)

Valuation of Roadbed and Superstructure per Mile.
(Compiled from the Journal of the State Board of Equalization)

For the Year	1876	1886	1896	1906	1910
Chicago, Rock Island & Pacif.	\$880	\$8500	\$12500	\$11000	\$12300
Achison, Topeka & Santa Fe				12500	15600
Kansas City, St. Louis & Chicago		12000	15000	12500	13750
Chicago, Burlington, & Kansas City		4500	4000	4500	6200
Hannibal and St. Joe	\$7500	12000	13000	11500	13000
Kansas City Belt		15000	75000	110000	110000
Kansas City, Topeka & Western		100000	150000		
Missouri Pacific		15000	16500	12750	13000
Missouri, Kansas, & Texas	3000	8500	12000	10250	11100
St. Louis, Iron Mountain & South	7500	11500	14000	12250	13000
St. Louis & San Francisco (E. Pierce)	8000		10500	9500	12150
St. Louis & San Francisco (W. Pierce)	5000		5500	9500	12130
Terminal Railway Association		40000	400 000	798000	1024000
Union Pacific		75000	400000	200065	380000
Wabash		10500	13500	12250	13000

This table seems to show in many cases a tendency to accept the valuation that tradition has established for a given road just as was pointed out in regard to the rolling stock represented in table 1 on an earlier page. However, there are some freak values, the Union Pacific being the most striking case of this. Notice that the value of this property is increased to more than five times the original value in the first ten years covered by the table, then in the next ten years the value is cut in half, and lastly it is doubled again in the last six years of the table.

Beginning in 1901 the State Board of Equalization was required by statute to assess the value of the franchise etc. of each railroad under the designation "All other property", a title which up to that date had not appeared in the lists prepared by the board. The only record of the State Board of Equalization in regard to the first assessment of "All other property" occurs in the following passage from the Journal of the board for 1901 (P. 32):

"On motion, the board proceeded to assess, adjust and equalize the value of the rolling stock, road bed and superstructure and 'all other property' mentioned in the laws of 1901, section 2, page 232, per mile, and the aggregate value of the buildings of the following railroad and railway companies on the first day of June, 1900, for the taxes of 1901, and having heard all the evidence in regard to the same, by unanimous vote fixes the distributable value per mile, of the rolling stock, road bed and superstructure, and 'all other property', and the aggregate value of buildings of said railroads and railways as follows:"

Here follows a tabulated statement of the sort described in the resolution, and this is all the statement that there is on record as to how the values of railway property for that year were determined. This is the traditional record occurring regularly in the Journal for the successive years of the board's existence.

In connection with the assessment of "All other property" in 1902 there appears an interesting fact in the records of the board as set forth in its Journal for that year. On the ninetyeth day of the session for that year Mr. E. C. Crow, at that time member of the board by virtue of his office as Attorney General, introduced either as an amendment or substitute resolution, no less than eight times the following:

"Whereas, the market value of the entire property of the railway on June the first 1901, was \$, \$, ... ; and the

net earning value of the entire property of railroad was on said date \$; and the said road owned miles; and owned in the state of Missouri miles; and

Whereas, The market value of the entire property of said railroad in the state of Missouri, on June first 1901, was \$; and the net earning value of the entire property of said railroad in Missouri on June first 1901, was \$;

Therefore, be it resolved, by the State Board of Equalization that considering the cost of construction of said road, the improvements thereon, the equipment thereof, the market value of the stocks and bonds of said road, and the net earning value of said property, the location thereof, and all other matters which would assist the State Board in its judgement in arriving at the true value of said property, and said board having assessed the tangible property in the state of Missouri of said railroad company,-- that the State Board of Equalization fix and assess the value per mile of 'all other property' of the railway, and its various lines in the state of Missouri, as follows:"(Here follows a detailed statement of the values per mile assessed on the different lines of road in the state belonging to the company under consideration).

This resolution was voted down by the State Board of Equalization every time that it was introduced, Mr. Crow's vote being the only one cast for it; and this is the only time that the Journal of the board shows an effort to enumerate any of the matters considered by the board in arriving at the value of property. Notice that Mr. Crow's motion includes the phrase "all other matters which would assist the State Board in its judgement in arriving at the true value of said property", which would seem to put the resolution in a form likely to be approved by the courts.

Instead of the above motion, the board regularly adopted a resolution which is usually recorded in about the form of the following (Page 46 of Journal 1902):

"Mr. Cook moved that the roadbed and superstructure of the Southern Missouri and Arkansas be assessed at \$3000 per mile, and that 'all other property' of said road be assessed at \$1294.7938 per mile, which was carried by unanimous vote."

It is intended to show by setting these two resolutions off against each other that one of them, if adopted, would enumerate certain things which would help the board in determining the value of a given property, though retaining the saving phrase "all other matters which would assist the State Board in its judgement in arriving at the true value of the said property"; while the second resolution shows nothing but the values arrived at, throwing no light upon the means of determining said values. In view of this fact, Mr. Crow's effort seems a commendable one, since, had it succeeded, it would have served as an announcement to the citizenship of the state that the board proposed to consider certain classes of facts in arriving at the value of property for taxation, while it would have preserved the board's valuable privilege of hearing evidence of "all other matters which would assist" it in the determination of the value of a given property.

It remains to call attention to the fact that certain property owned by the railway companies is assessed in the regular way by the local assessors of the counties and cities of the state. The division of property for assessment is not according to the ownership of it, but according to the class of property. Lands other than right of way, yards etc. of the roads are the best example of this property of the roads that is assessed locally. This local assessment of certain property of the roads is of small consequence so long as the board is not committed to any theory for arriving at value; but it would be otherwise were this hit-or-miss activity discontinued.

Chapter IV.

Some Criticisms.

The first defect that demands attention when the State Board of Equalization is considered as a tax or assessing board is its composition. It has been noticed earlier that the board is composed of certain high officials of the state who are declared ex officio members of the board. Now, these men are elected to office primarily for other purposes than to be members of the State Board of Equalization, and the qualifications that appeal to the parties in choosing men for these offices are not primarily those that would fit a man to discharge properly the duties of a member of a state board of assessors. In fact, it is doubtful whether such qualifications as would properly fit a man for membership on an assessing board can be at all considered in choosing the members of the present state Board of Equalization. The board should be reconstituted, and it should be composed of men who are chosen to the position directly and who fill, probably, no other office in the state.

The second defect is almost as organic a matter as the first. The present State Board of Equalization lacks authority. While the board has almost unlimited authority, in the matter of its decisions as to value, as pointed out by Judson in his "Missouri Taxation"; it has no authority to procure facts upon which to arrive at the value of a given property. As was pointed out earlier in this paper, the board has the power of a Circuit Court in sending for and

summoning witnesses and in compelling them to testify; but when the witness reaches the point in his testimony where he declares "I do not know" the board is without authority to compel him to discover the desired facts. This is not all, however, for the board is without authority to discover the facts for itself. What is referred to here, especially, is such facts as the net earnings of a given railway in Missouri for a given year, cost of construction of a given piece of railway property, probable cost to replace a given property in its present physical condition, the sort of items of outlay of funds that are set down to cost of operation etc., the wise or unwise management of a given property, and other facts that determine so largely the value of a given railway as a going concern,-- in general, the classes of facts which the State Board of Equalization asks for in its interrogatories. The state board of assessors should have authority to employ experts and arrive independently at unit costs in the state of Missouri for the sorts of property which they are authorized to assess, and to compel (by an appeal to the courts for violation of a statute with penalties attached, or otherwise) railway managers and other witnesses to procure such information as it is deemed just for the state board of assessors to require of them. The state board of assessors should have access to the books of the railroad companies, together with authority and funds to employ experts to examine same with a view to determining the desired facts in regard to the given company. The idea here advocated is that the state board of assessors should be able, in the most independent manner possible,

to arrive at the facts upon which it is expected to base its evaluation of property for taxation.

The next defect that should be noticed is that of theory or guiding principle. It has been shown pretty clearly that the State Board of Equalization is committed to no guiding principle in arriving at the value of a given property. There should be a legally adopted and generally known statement for the guidance of the state board of assessors in arriving at the value of property, setting forth as far as is practicable the classes of facts that the board will consider as evidence in fixing the value of property of a given sort, though the board should retain its present authority to hear any other evidence that seems to it of consequence in the determination of value and to give to any evidence only such weight as it deems proper in determining the value of the property in question; and the board should be required to hear, in addition to the facts enumerated, all other evidence. This would enable both the owners of property and other citizens who may be interested in the value placed upon a certain property some guidance as to what facts or statements before the board should be challenged or amended in order to influence the value placed upon the property.

The matter of the sort of records kept by the board should not be passed without a word. The present records are painfully meager. In fact, there seems to be just grounds for doubting whether they constitute the "full and complete" record required by statute. While the

Journal for several years has been examined and the contents tabulated so far as they constitute a record of the activities of the board, it seems that the single year of 1910 is sufficient to make clear the condition here complained of. That Journal shows that the State Board of Equalization was in session 116 days. Of these days, four (including the first) have been classed as special days because they show some special activity recorded. The first day of the session the members of the board for the year took the oath prescribed by statute, fixed the dates for hearing witnesses in regard to the different properties which they were to assess, and authorized the secretary of the board to send out a certain set of interrogatories to the railways of the state. Another of the special days was indicated by the resolution to meet in certain other cities (under what authority is doubtful) while another shows the resolutions (of the sort noticed in the preceding chapter) setting forth the value of the various properties which was authorized to assess. Nine days are reported as given to hearing witnesses, the names of the witnesses being given and the property in regard to which they testified, though there is never a hint as to the character of the testimony heard. Why are these nine days not recorded in the briefer form which is the only record for so many days ! Of the 116 days constituting the session last year, 103 are recorded in the Journal of the Board in the following form :

"SECOND DAY -- Tuesday, April 19th, 1910.

The board met pursuant to adjournment.

A quorum being present, the minutes of the preceding meeting were read and approved.

The board had under consideration the valuation and assessment of railroad, bridge, telegraph and telephone property for the taxes of 1910.

On motion the board adjourned until tomorrow morning at 10 o'clock.

On motion the board adjourned until tomorrow morning at 10 o'clock."

This form is repeated day after day and year after year through the Journal of the board, the only the variation for the past year being in the number of the day of the session and the date. In the early years of the board's existence the Journal of the board was signed by the president and secretary of the board, at the close of the minutes for each day, but that practice was abandoned several years ago.

The state board of assessors should keep some sort of a serviceable record of the activities of the board from day to day; the present Journal should, for the larger part, so far as it is a journal, be abolished. It is, so far as it is a journal, of no service to any one*.

*An amusing example of misdirected activity and of wasted clerical service in connection with this matter of the report, or Journal, of the board came to the writer's attention recently. The statutes provide for the publication of five hundred copies of the Journal of the State Board of Equalization, two hundred of these to be filed for the use of the members of the board. It has been the practice for probably twenty years for the board to allow, or require, one of its clerks to write out with a pen another copy of the Journal each year, copying from one of these printed copies after they are filed with the board. These volumes, which were never used, were among the record preserved at the time of the capitol fire last winter when so many really valuable records were lost. About two months of work for one man was required to make this pen copy of the Journal each year. However, it is only fair to close this note with the cheering statement that it is believed at this time that the present board will never have the incomplete pen copy of last year's Journal, which was destroyed in the capitol fire, reproduced and finished ! And it is further hoped that this may mark the final end of this practice !

Another thing in connection with the work of the State Board of Equalization that seems to deserve comment here is the valuation itself. The valuation seems to be one that is arrived at by evaluating the various elements of railway property separately and then summing these partial values in order to get the value of the total property. If this be the case, it is open to question as a proper value for the property as a whole. It seems that it can hardly be possible to arrive at the value of a property as a whole by valuing the parts separately and summing these partial values.

But this mode of arriving at the value of the property seems to carry with it certain far-reaching possibilities. It seems that the board, if it deemed such action wise, could by its assessment tax out of existence any unearned element in the property, any element not represented by tangible assets. The board places a value, whatever it sees fit, upon the intangible elements of the property under the title of "all other property". It would seem that if this element (presuming that its value is based upon earning power) were valued by capitalizing the earnings at the tax rate that is actually collected upon the real value of all property, there would be no unearned increment, no intangible assets, remaining in the hands of the railway companies.

There is one suggestion of an entirely different nature that seems ^{to} belong more nearly here than elsewhere that the author feels constrained to offer. It might be wise to allow the state board of assessors the authority to excuse any property from any portion, or all, of the tax due in any year,

if the property has suffered any unusual loss such as that sometimes occasioned to railways by floods, storms etc. It will be seen at once that this would be in effect a slight property insurance provided by the state, and it would have to be met by raising the value or the tax rate on the property for the years when there was no occasion to excuse the tax. This practice commends itself strongly to the author for such property as that of railways and other public service corporations.

Chapter V.

The Railroad and Warehouse Commission.

The State Board of Railroad Commissioners, which has for a number of years borne the name placed at the head of this chapter, is older than the present Constitution of the state, though both date from 1875; for the State Board of Railroad Commissioners was created by an act passed by the twenty-eighth General Assembly, approved March 29th, 1875, while the Constitution was not adopted by vote of the people until November 30th, 1875. There is no mention of the State Board of Railroad Commissioners, nor of any similar body, in the Constitution; and the commission seems to look to section 1 of the Schedule attached to the Constitution for its continuation in existence as a legal body. This article provides

"That all laws in force at the adoption of this Constitution, not inconsistent therewith, shall remain in full force until altered or repealed by the General Assembly"; and section 6 of this same Schedule provides that

"All persons now filling any office or appointment in this state shall continue in the exercise of the duties thereof, according to their respective commissions or appointments unless otherwise provided by law".

The commission held its first meeting in Jefferson City on the 27th day of April 1875, and, after organizing, immediately adjourned to St. Louis, and there opened an office in obedience to the Act under which it was created. The first report made by the commission is dated February 25th 1876, and was addressed to Governor Hardin at his request, and consists of a brief summary and survey of the work of the commission

since its organization together with some suggestions as to needed changes in the law under which the commission was working and certain plans of the commission for its further activity, the whole comprising only thirty-one printed pages. Yet, this is, in some ways, the most interesting report that the commission has ever made. There will be occasion to refer to it later in a way that may indicate the truth of this estimate. For several years the State Board of Railroad Commissioners very irregularly, usually at the request of the General Assembly, and the reports were addressed to that body. There are no reports, after the special report above referred to, until one is made to the General Assembly in 1879; yet, this report of 1879 bear the title "Fourth Annual Report", while the reports for 1879 and 1880 were combined and issued together. However, beginning in 1880, the law required the commission to report annually to the Governor. From that time forward the reports are issued at regular intervals, though they are not always interesting or informative.

It has been remarked earlier in this paper that the State Railroad Commissioners are expected, primarily, to protect the lives and property of citizens of the state while the same are in the keeping of the railway companies. This is well brought out by passages in this first report of the commission which has been mentioned above. Here the Commissioners say:

"The thirteenth section creating this board requires of them to 'carefully examine the condition of the several railroads of the state' etc., with a view to the safety of life and property in passing over them.

In the performance of this duty the board determined to make a general inspection of all the roads in the state. The points noted in regard to each road were:

1st. Whether it was originally constructed in a substantial and permanent manner, that is to say, whether the roadbed was of sufficient width, and suitable side slopes, the culverts and bridge abutments of substantial and durable masonry, the bridges of approved patterns and good material and workmanship, the cross-ties sufficient in number and quality, the rail and joint fastenings of approved size, pattern and quality, whether the track was properly ballasted etc.

2d. Whether the road was kept in good repair; whether the track was in good line and level, without low joints, the ditches clean, and all decayed and worn out material promptly replaced by new.

3d. Whether the fuel and water stations were sufficient in number and quality.

4th. Whether the rolling stock was sufficient in amount and condition for the business upon the road; and

5th. Whether a strict discipline was maintained over all employees; so that every man knew his especial duty and performed it with promptness and alacrity. * * * * *

Upon all these points the inspection made by the Commissioners was sufficiently thorough to enable them to classify the roads with respect to their degree of safety."

Again on page 20 of the report, when the Commissioners are discussing the lack of penalties sufficient to compel the railroads to comply with provisions of the law, this section of the law is further discussed. Here it is said:

"The thirteenth section of our law is the only one with adequate penalties for its enforcement. This section requires that the 'Commissioners shall, as often as they may deem necessary, carefully examine the conditions of the several railroads of the state, and it shall be the duty of said Railroad Commissioners, whenever they shall have reasonable grounds to believe, either on complaint or otherwise, that any of the tracks, bridges or other structures of any railroad in the state, are in a condition which renders any of them dangerous, or unfit for the transportation of passengers with safety, to inspect and examine the same; and, if, upon, such examination, in their opinion, or in the opinion of a majority of them, any such track, bridges, or other structures, are unfit for the transportation of passengers, with reasonable safety, it shall be their duty to give to the superintendent, or other executive officer of the company working or operating said defective track, bridges or other structures, notice of the condition thereof, and of the repairs necessary, to place the same in a safe condition, and may also order and direct the speed of trains over such dangerous and defective track, bridges or other structures, until the said repairs are made, and the time within which the said repairs shall be made by the company.'

For a neglect of any of the duties prescribed by this section, or a disregard of any of the instructions of the Commissioners, heavy penalties are imposed. And upon the failure of the company to repair, etc., the Commissioners are required to give notice to the public of the dangerous condition of the track, etc., and may, furthermore, recover from said railroad company for the use of the state, the sum of one thousand dollars for each day that expires after the time fixed by the commissioners for the repair of the defective track, etc. Here it will be seen that the penalties for the violation of the provisions of this section are to be enforced by the state.

The duties to be performed by the Commissioners under this section are of a very grave and responsible character, and require for their performance a vast amount of labor, and careful, patient, close and skillfull investigation. * * * *

In the performance of these duties we have several times found it necessary to notify superintendents of the unsafe condition of certain portions of their roads, and in no instance have our suggestions been disregarded. ** ** *

We are this particular in calling your attention to the completeness of this section and its practical operation, that you may more clearly see the inadequacy of the means for enforcing the others, and the necessity for providing efficient remedies."

This provision of the law as originally enacted has been followed out the more patiently in view of the fact that it has never been repealed or seriously altered, but is embodied in our present laws as articles 3259 and 3260 of the Revised Statutes of 1909.

Likewise, the original organization of the Board of Railway Commissioners has been preserved. According to section 3250 of the Revised Statutes of 1909 the voter are authorized to elect one member of the commission each two years who shall serve a term of six years, while section 3262 of the Revised Statutes of 1909 fixes the compensation of the Commissioners at three thousand dollars per year, providing in addition thereto a fund of eight hundred dollars per year office expenses etc., and for a secretary of the Board of Commissioners at a salary of two thousand dollars per year. The only specific qualification of a member of the

Commission is that he shall not be pecuniarily interested in any railroad, and each commissioner is required by section 3261, Revised Statutes of 1909, to take an oath to that effect.

On page 25 of first report of the State Railroad Commission, referred to above, the general railway policy of the state is ver well set forth in the following:

"The form or railway control adopted in this state, and fully recognized by the provisions of the new Constitution, is that of legislative, supplemented by direct, supervision.

That instrument by force of its own provisions, or its requirements of the legislature, provides:

1. That all railways are declared public highways, and railroad companies common carriers.

2. For the prevention of unjust discrimination and extortion in the rates of freight and passenger tariffs.

3. The establishment of reasonable maximum rates.

4. To prevent the charging for freight or passengers a greater amount for a shorter than a longer distance.

5. To prevent the consolidation of parallel or competing lines.

6. To prevent the president, or any director, officer, agent or employee of any railroad company, from being interested in furnishing materials or supplies to such companies, or in the business of transportation as a common carrier of freight or passengers over the roads of such company.

7. To prevent any discrimination in charges or facilities between transportation companies and individuals.

8. To prevent stock inflation."

This seems a fair and rather full summary of the regulation of the railroads as undertaken by the state to the present time. However, there will be occasion to point out in a different connection later that this control has continued more or less vague in certain particulars as far as its realization is concerned. These first Commissioners realized that there was much lacking in the laws for the accomplishment of this rather ambitious program; and this is shown clearly in the following recommendations as to new legislation:

"To successfully carry into execution the foregoing, and such other provisions as experience may dictate in the future,

it would seem to require, as the ground work of the structure, that the state should exercise a limited supervision and control in the location, construction and operation of these highways, by such regulation as will secure harmony and efficiency, both in construction and management. The means deemed essential to this, in addition to those provided in the new Constitution, and as auxiliary thereto, are:

Publicity through the Commissioners, of --

1. The survey and location of the road.
2. All contracts for construction, including grading, bridges, ties, depot buildings, rails, real estate and rolling stock.
3. Working and traffic contracts.
4. All contracts between railroad companies, whether with one another, with express and telegraph companies, or with companies operating freight or water lines.
5. All agreements, leases, purchases and conveyances.
6. A complete and uniform system of accounts to be kept by all railroad companies, and full reports to be made annually.
7. Thorough inspection of the books and accounts of railroad companies by the Commissioners.
8. Laws better defining and limiting the powers of directors, presidents and superintendents of roads.

The above suggestions are all, in our opinion, of great importance. The three last mentioned, however, we think strike at the root of the evil in our railroad system, and their enforcement would go very far toward the solution of the causes of dissatisfaction with the present management of our roads, and of the financial ruin that is now overtaking so many of them."

Many of these suggestions have never been enacted into law, but are among the remedies being discussed and advocated for railroad evils current in our own time. Perhaps the ones most advocated now are the establishing of a uniform accounting system and the inspection of accounts by some responsible state official. However, it has not been possible to enact these into law in Missouri up to this time, the Secretary of the present State Board of Railroad and Warehouse Commissioners writing under date of April 5, 1911, says :

"Commissioners have no authority over the manner of keeping accounts by railroads."

For a few years after this first report the Commissioners

continued this commendable practice of suggesting the legislation needed for the better working out of the state's control of the railroads; but as early as 1882 there are no suggestions for needed legislation contained in the report of the Commissioners. Some of the later reports go so far as to say that no further legislation is, in the judgement of the Commissioners, necessary; and the later reports make no reference to contemplated legislation in any way.

Yet, this is not at all to say that there is not much of consequence in the reports for recent years; there are many things in the volumes that are helpful to the citizenship of the state. The reports as prepared in recent years are composed of five parts as follows:

"Part I; Letter of transmissal and a 'Roster of Railroad Commissioners of Missouri'.

Part II; Complaints disposed of and Other Orders of the Board of Commissioners.

Part III; New Organizations, Consolidations, etc., Mileage, Capital Stock, Funded Debt, Earnings, Income, Disbursements, Physical Condition, Tabulated Statistics, Maps of Lines, etc., of Railroads Reporting for the Year ending June 30th, of the year for which the report is issued.

Part IV; The Maximum Freight and Express Rate Schedules issued by this Commission, with all Amendments in Effect, Rules and Regulations Governing the Same, and a Copy of the Laws applying to Railroad and Express Companies.

Part V; Warehouse Department."

This table of contents of the reports as it has come to exist in recent years shows some interesting developments. Parts 3, 4, and 5 are the ones that appear to contain the new material. However, there is little here that is not either contained in the work of the early Commissioners or is an evident development from it, except part 5 which is devoted to the warehouse department. Part 3 shows that the roads make annual reports to the Commissioners as the first

report of the Commissioners suggested that they should be required to do.

The act establishing the State Board of Railroad Commissioners, which has been referred to above, provided that the Commissioners should fix maximum freight schedules, etc., classifying all freight which the General Assembly had not classified in the act itself which included a sort of skeleton classification of freight. These provisions are still embodied in our laws as can easily be seen by reference to the statutes. The compilation of the laws relating to railways was undertaken by the first Board of Commissioners soon after its organization, and the reports for several years have regularly carried such a compilation. The express companies are included as being in reality a sort of railway transportation and, of necessity, subject to the same regulations etc.

Part V, the Warehouse Department, is an addition to the work of the Board of Commissioners as originally organized; and its relative significance in the work of the commissioners at present can be inferred from the fact that only about one-fifth of the report is each year taken up with the work of this department while the rest is devoted to railroad and express companies.

It is not to be inferred from what has been said that there has been no new legislation on the regulation of railway traffic and rates in Missouri. On the contrary, there has been much legislation and attempted legislation at different times. It is intended here to present the thought that the quality of this legislation has suffered

from the absence of recommendations by the Board of Commissioners. Had these suggestions been made regularly, it would have done much to crystallize public opinion around the needed reforms so that their enactment into law would have been more likely. A good example is that of the control and inspection of accounts. It can scarcely be doubted that this measure would have found its way into the statutes had the Commissioners continued year by year to ask for its enactment, as they probably would have done whenever they were really devoted to the service of the people, had they made suggestions for legislation at all.

"Recent years have seen another pronounced outburst of interest in railroads, brought on, perhaps, by a feeling of distrust of the management of the roads, much as the earlier wave of interest in their regulation was induced in Missouri. However, it seems best to take this up in the next chapter, which will be devoted to some work of recent legislatures.

Chapter VI.

Some Recent Railway Legislation.

There are certain provisions in the present Constitution of the state that really work as restrictions upon the General Assembly in its dealings with the railways as well as being requirements of the roads themselves. These are embodied in Article V, Section 50, of the Constitution; but it seems unnecessary to quote these provisions here, though they constitute so large a portion of the system of railway regulation now established in this state, since the section is of considerable length and easily accessible.

In addition to the passages here cited, there are certain passages in the Constitution in regard to the taxation of railway property; but these passages have been sufficiently discussed earlier in the treatment of the State Board of Equalization. It has been remarked earlier that there has been action on the part of the General Assembly from time to time in regard to the regulation of railways; and certain acts of recent years will now be examined.

The General Assembly at its Session in 1905 passed an act, approved April 15, 1905, fixing a schedule of maximum freight rates, the schedule being embodied in a bill as enacted into law. On June 16th, 1905, the date should have gone into effect, the Chicago, Burlington and Quincy Railroad Company filed in the Circuit Court of the United States for the Western District of Missouri a bill of complaint against the state officers charged with the

enforcement of the law; and a restraining order was at once issued against those officers. This order was later made permanent, and the cases of this and other roads which had filed similar bills were referred to a Master for the taking of evidence etc.

While the law above mentioned was still under consideration by the Federal Courts. The General Assembly met in the session of 1907. On page 19 of the brief of the Attorney General of Missouri in these cases occurs the following:

"The General Assembly of 1907 passed three acts regarding the transportation of freight. One of them, approved March 19, 1907, repealed the act of April 15, 1905, attacked by the original bill of complaint, and the act of April 14, 1905, concerning the carriage of stone, sand and brick, and enacted a new law instead of them. This new enactment took effect on June 14, 1907. It fixed the maximum rates for the transportation of certain commodities in car-load lots, such rates being on the whole higher than those fixed by the act of 1905."

On page 23 of the brief referred to above we read:

"Another of the acts of the General Assembly of 1907 was approved March 19, 1907, and also took effect June 14, 1907, and fixed maximum rates for the carriage of fruit in car-load lots."

Again on page 25 of this same brief we find:

"The General Assembly of 1907 also passed an act, approved February 27, 1907, which also took effect June 14, 1907, fixing maximum rates for the transportation of passengers within the state."

The railway companies asked and were granted leave to file an amended bill which they did, including the laws just referred to as well as the earlier laws. The complainants contended that the rates fixed by the General Assembly were so low as to be confiscatory, both as regards freight and passengers, and any reduction of rates for either freight or passengers as regards intrastate business would work a

reduction in the charges for interstate business as well, that if any one of the laws was invalid for any one of the eighteen railroads bringing the suits, it was invalid for them all, that the expenses of doing intrastate business whether freight or passenger should be determined upon a revenue basis, that the penalties were enormous and unreasonable, that the complainant was entitled to a return upon the value of its franchise, (Brief of the Attorney General of Missouri, pp. 35-36); "The defendants disputed each of these contentions" (ibid P. 36). On March 17, 1909, the Court, having heard the case argued etc., issued its final decree sustaining the contentions of the railways (brief of Att.-Gen. of Mo. P. 34).

The Railroad and Warehouse Commissioners and the Attorney General of Missouri were, on July 28, 1909, allowed an appeal from the decree (Brief P. 37). The case came up for hearing in the Supreme Court of the United States in the October term of 1910, and the decision of the lower court was reported as sustained. However, the newspapers have recently contained reports that the Supreme Court has reopened the cases on its own motion. Thus the rate laws of those sessions of the General Assembly are still in the Federal Courts.

The recent session of the General Assembly enacted several bills in regard to railroads, though it killed several others. Three bills of importance to the people of the state, and relating to railroads, were approved by the Governor, according to a letter of the Secretary of State under date of April 15, 1911. Senate Bill No. 211, approved March 16,

1911, is

"An Act requiring Railroad Companies to furnish a sufficient number of passenger coaches to comfortably accommodate and seat all of its passengers, and providing penalty".

The penalty provided is a fine "not less than five or more than five-hundred dollars". Senate Bill No. 212, approved March 30, 1911, is

"An Act requiring railroad companies to furnish cuspidors for all passenger reception rooms and passenger coaches, posting notice of fine against persons failing to use same, with an emergency clause".

The fine for violation of this law is not to exceed ten dollars, and the Railroad and Warehouse Commissioners are required to enforce the provision as regards the railroads.

Senate Bill No. 225, approved March 30, 1911, is

"An Act to amend Section 3251, Revised Statutes of Missouri, 1909, relating to freight rates".

The amendment here enacted gives to the Railroad and Warehouse Commissioners authority to fix proper charges for reconsigning, switching, etc.

Among the bills that were yet in the hands of the Governor on April 15th, as reported in the letter of the Secretary of State referred to above, is one that should not be allowed pass unmentioned. It is Senate Bill No. 37,

"An act authorizing and empowering the Board of Railroad and Warehouse Commissioners or any other public service commission which may be hereafter established in its place by law to prescribe and fix maximum rates of fare for passenger travel within this state over the railroads therein and dividing the railroads for that purpose into classes according to their gross earnings per mile in the state and giving said board power to determine the class in which any railroad of the state belongs and from time to time as facts and conditions may warrant to ascertain and determine anew the class in which any railroad may belong and establish new maximum rates for each class".

This bill, if approved, would give the present State Board of Railroad and Warehouse Commissioners authority to fix rates for the roads according to the earning power of the roads, if that fact could be ascertained, which, as the law now stands, seems doubtful.

It is not judged important to consider any of the bills which were passed by the General Assembly and later vetoed by the Governor. However, it may be allowable to remark just here that it was charged against the authors of some of the measures passed by the General Assembly at its recent session that they were acting on an animus against the roads, a personal matter pure and simple. Again it is too early to discuss the wisdom of any of the laws recently enacted and approved by the Governor; that must be reserved until these laws have gone into operation or been set aside by the courts.

DUE	RETURNED
JUL 13 1973	JUL 11 1973
DEC 8 1976	
JAN 21 1977	DEC 23 1976
MAY 23 1980	APR 21 1980

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