

## Express Franks Considered by Board of Railway Commissioners.

The Chief Railway Commissioner, Hon. F. B. Carvell, prepared the following memorandum, dated Jan. 19: "The question has arisen as to what rights Canadian express companies have in issuing franks, and an examination of the Railway Act, 1919, shows that, so far as tariffs and tolls are concerned, they are governed entirely by Sec. 360, sub-sec. 2, which provides that: 'The board may disallow any express tariff or any portion thereof which it considers unjust or unreasonable, and shall have and may exercise all such powers with respect to express tolls and such tariffs as it has or may exercise under this act with respect to freight tolls and freight tariffs.' Therefore, so far as tolls and tariffs are concerned, they are governed entirely by the law regarding freight tolls and tariffs, and, as I can find no provision in the act specifically allowing a railway company to carry freight free of charge, an express company has no such right, unless it can be found within the provisions of secs. 345, 346 and 347, dealing with reduced rates and free transportation.

"The whole intention of sec. 345 is to give to the railway companies certain rights which may be exercised under their own discretion, subject always to the provisions of this section, and, in certain cases, if approved and permitted by this board, always provided, however, that in doing so no discrimination shall be practised. Sec. 345 begins with the following words: 'Nothing in this act shall be construed to prevent,' and sub clause (a) thereof allows the railway companies to carry, store, or handle traffic free, or at reduced rates, for the Dominion Government or for any provincial or municipal government, or for charitable purposes, or to or from fairs and expositions for exhibition thereat. As the word 'traffic' in the definition clause includes passengers, goods, and rolling stock, I therefore take it that it would mean goods carried by an express company, and I think an express company under this clause would have a right to carry goods free of charge for the parties and purposes mentioned therein. The remainder of the subclause (a) clearly refers to the carriage of passengers. Subclause (b) refers to the carriage at reduced rates of goods and effects belonging to immigrants and settlers, and commercial travellers' baggage. Subclause (c) refers expressly to the carriage of passengers, and subclause (d) allows railways and transportation companies, under which the express companies would come, to exchange passes or free tickets with other railways or transportation companies 'for their officers, agents, and employees, and their families, goods, and effects,' and also for the issuing of passes or free tickets to 'the officers and employees of the Department of Railways and Canals, or their families, and their goods and effects.' I can find no other authority in the Railway Act, by which the express companies are justified in issuing express franks.

"It has been urged upon this board that clause (c) would justify express companies in granting franks to the members of this board, as well as our officers, agents, and employees, on the ground that at least the officials of this board would be officers, agents, or employees of the Department of Railways

and Canals. As to the members of the board themselves, I have no doubt whatever that the express companies would not have the right to grant to us express franks, because whatever rights of free transportation we possess are given us under the provisions of sec. 346, which is very explicit, and states that, as a matter of law, we, and such other of our officers and staff as we may determine, have the right of free transportation, with our baggage, equipment, and official car. As to all of the officials of the board, including the members thereof, I am unable to come to the conclusion that we are in any way officers or employees of the Department of Railways and Canals. This board is created by statute as found in the Railway Act, 1919, secs. 9 to 71 both inclusive, and, by sec. 9, we are distinctly created a court of record, with an official seal which shall be judicially noticed. The only section in the Railway Act which might be invoked in support of the contention that we are in any way a part of the Department of Railways and Canals is sec. 31, which provides that: 'The board shall, within two months after Dec. 31 in each year, make to the Governor in council through the Minister an annual report.' It is true that the estimate for the members and staff of this board are presented to the House of Commons through the Minister of Railways and Canals, just the same as those of the judges of the Supreme and Exchequer Courts and the staffs thereof are presented to the house by the Minister of Justice, but no person would argue that the Supreme or Exchequer Court of Canada is a part of the Justice Department of Canada. I find, on an examination of the estimates for 1919-1920, that a lump sum is included in the estimates of the Railways and Canals Department for the maintenance and operation of this board, and also an estimate for the salaries of the Board of Railway Commissioners, although it is plainly stated these are authorized by statute. I also find that the estimates for the judges of the Supreme and Exchequer Courts, as well as all other judges in Canada, together with a lump sum for contingencies and disbursements for the officers of the Supreme and Exchequer Courts, are included in the estimates of the Minister of Justice. I find further confirmation of this contention in the provisions of the Civil Service Act, 1918, chap. 12, as amended by chap. 10, of the second session of the Dominion Parliament of 1919. By this act, for the purpose of administration thereof, the Board of Railway Commissioners means the same thing as the deputy or deputy head of a department, and the head of the department means the minister of the Crown for the time being presiding over the department, and I, therefore, take it that, for the purpose of the Civil Service Act, we are a department, with the Minister of Railways as our head, just the same as he is the head of the Department of Railways and Canals. In other words, the Minister of Railways, for the time being, occupies the dual position of Minister of Railways and Canals and as Minister at the head of the Railway Commission for the purpose of the Civil Service Act. If I am right in my contention that we are not a part of the Department of Railways and Canals, then the officers

and employees of this board would not have the right under sec. 345 to receive, and the express companies would not have the right to grant, express franks.

"I have already referred to the authority by which members and officials of this board are entitled to free transportation as provided in sec. 346, which also provides that members of the Senate and House of Commons, with their baggage, shall be entitled to free transportation on any of the trains of a railway company, and as this is a right granted specifically by statute, and not a favor from the railway companies, I hold that had parliament intended that these persons specially referred to in sec. 346 should be entitled to receive free express franks, it would have said so, and, not having done so, and they not coming within any of the classes referred to in sec. 345, I am forced to the conclusion that express companies have no right to grant franks to them. I realize that for many years the express companies have granted express franks to a number of people in different parts of Canada, but I fail to find any authority therefor in the Railway Act, 1919, excepting in the few cases to which I have previously referred, namely to those persons and for the purposes set forth in the first part of clause (a) sec. 345, for the exchanging of passes with other transportation companies, and probably to some of the officers and employees of the Department of Railways and Canals, although in the exercise of this latter privilege, in my judgment, very great caution should be observed in the manner in which they are exchanged. Sec. 347 of the Railway Act is as follows: 'Subject to the provisions of sections 345 and 346 of this act, no company shall hereafter, directly or indirectly, issue or give any free ticket or free pass, whether for a specific journey or periodical or annual pass, and no company shall otherwise arrange for or permit the transportation of passengers except on payment of the fares properly chargeable for such transportation under the tariffs filed under the provisions of this act, and at the time in effect.' Therefore, unless the express companies can find some express authority for granting express franks, or can successfully extend the provisions of secs. 345 and 346 beyond my interpretation, I fail to see where they are justified in granting express franks, excepting as hereinbefore referred to.

"My object in thus expressing this opinion is to give, both to the transportation companies and the public, my views in the face of the fact that the express companies, as well as all other public utilities in Canada under the jurisdiction of this board, either have come, or are expressing an intention of coming, to this board for an increase in their rates in order that they may properly carry on the business of the country for which they were created, and, such being the case, while probably the amount of express matter carried on these franks forms a very small proportion of the total traffic of the express companies, yet the principle involved is just as important as though it amounted to a very large percentage thereof, and, if rates must be increased in order to place the companies in a position to properly exist, then every dollar's worth of free transportation given by means