

**BIENNIAL REPORT: THIRD REPORT  
OF THE STATE RAILROAD  
COMMISSION OF COLORADO  
FROM JANUARY 1, 1911, TO  
JANUARY 1, 1913**

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Biennial Report: Third Report of the State Railroad Commission of Colorado from January 1, 1911, to January 1, 1913 by State Railroad Commission of Colorado

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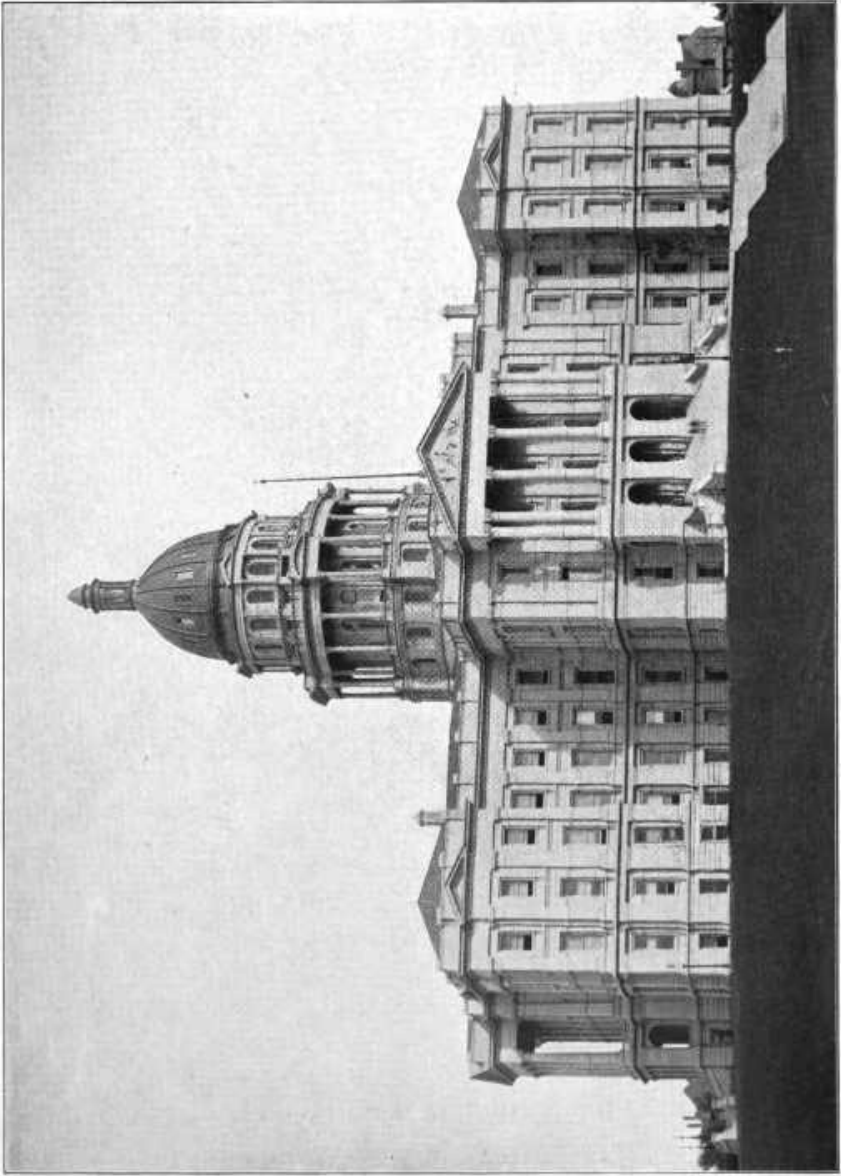
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STATE CAPITOL, DENVER, COLORADO.

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OF

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DENVER, COLORADO  
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1913

# BIENNIAL REPORT

## Third Report of the State Railroad Commission OF COLORADO

From January 1, 1911, to January 1, 1913

To His Excellency,

The Governor of Colorado,

State Capitol, Denver, Colorado.

Sir: In accordance with Chapter 3 of the Session Laws of 1910, we have the honor to submit our biennial report, containing an account of all matters pertaining to this office from January 1, 1911, to January 1, 1913.

Since our last report, Cases Nos. 22 and 23, known as the "Northern Coal cases," have been determined by the Supreme Court as to all law questions; the said court having determined the following questions:

First—That the Railroad Law is constitutional.

Second—That the Commission has full power to regulate rates.

The question of the reasonableness of the order therein was not presented to the court, but this question is now under consideration in the District Court of Denver County.

At the same time an opinion was handed down establishing in office Commissioner S. S. Kendall, elected commissioner at the general election of 1910, as provided for in the Railroad Act of 1907, against whom quo warranto proceedings had been brought by F. S. Hoag, appointed commissioner by Governor Shafroth, as provided for in the act of 1910, which repealed the law of 1907. Mr. Hoag's contention was that the law under which Commissioner Kendall was elected was unconstitutional, in that it exempted, in section 1 of the act, "mountain railroads operating less than twenty miles of road, the principal traffic of which is the hauling of mineral from and the supplies to the mines." This was called class legislation.

In the fall of 1911 the Breckenridge Chamber of Commerce filed a petition with the State Railroad Commission against the Colorado & Southern Railway Company, setting forth that the South Park Branch had been operated continuously previous to the winter of 1910-1911 by the railway company and its predecessors for about thirty years, during which period the service consisted of not less than one passenger train each way each day from Denver to Leadville, and one freight train each way each day between the same points. In November, 1910, the railway company ceased to operate that portion of its line from Como to Breckenridge, and refused to receive or transport either passengers or freight over its road between these points. The service was then limited to a combination freight and passenger train between Como and Denver, and a similar service between Breckenridge and Leadville. In the summer of 1911 a passenger train daily, except Sunday, was operated between Leadville and Breckenridge, with a stub train from Breckenridge to Como, and a combination train from Como to Grant, connecting with a passenger train at the latter point for Denver. They charged that, unless restrained, the railway company, during the winter of 1911-1912, would cease to operate its road between Como and Breckenridge, and probably for all time to come; and that freight from Breckenridge to Denver, or vice versa, had to be shipped over the Denver Rio Grande via Leadville and Pueblo.

The petitioner asked that the railway company be ordered to operate its line between Como and Breckenridge, and to receive and transport freight between Como and Breckenridge, and all intermediate points, and provide an exclusive passenger service between Denver and Leadville daily, including Sunday.

The railway company filed an answer, challenging the jurisdiction of the Commission to make any order in the premises; denied that closing the road between Como and Breckenridge occasioned any damage to the citizens of Breckenridge and Summit County; admitted that it had declined to receive freight for transportation from Denver through Como to Breckenridge; that such freight, when conveyed to Breckenridge, was shipped via other lines of road through Colorado Springs and Pueblo to Leadville, and then reshipped to Breckenridge; admitted that it refused to receive for transportation any freight between Como and Breckenridge, consigned to Breckenridge; and had refused to receive and transport over its own line freight consigned to Breckenridge originating at Denver or points between Denver and Como. It then set forth at some length the physical character of its line from Denver to Leadville; the fact that it was built through a canon and over high mountain passes; that the grades and curves between Como and Breckenridge were excessive; that there was no business between these points; that the line was often closed by storms and snowslides, which imposed upon the company a heavy expense; that during the year 1910 the operation of the road between Como and Leadville resulted



in a heavy deficit; that there was no prospect of an improvement of business over the line; that there was no necessity for operating a railroad between Como and Breckenridge, and not enough business between these points to pay the operating expenses of running trains and maintaining a road; and that the railroad facilities to and from Breckenridge via Leadville were adequate and conducted at a heavy loss.

On the issues thus made, the trial before the Commission resulted in an order directing the railway company, on or before the first day of January, 1912, and during a period of two years thereafter, to maintain, operate, and conduct a through freight service between Denver and Leadville by way of Como and Breckenridge, at least three days each week; and also, from the same date and during the same period, to operate and maintain a through and exclusive passenger train service daily, excepting Sunday, between Denver and Leadville via Como and Breckenridge. The railway company declined to obey the order of the Commission. Thereafter proceedings were instituted in the District Court to enforce the order of the Commission, the State Railroad Commission and the Breckenridge Chamber of Commerce joining as plaintiffs in the case.

The complaint set out the order of the Commission and the refusal of the railway company to obey it. It prayed for an order that the railway company be required to answer the petition, and show cause why the order of the Commission should not be obeyed, and for an injunction or other process requiring the defendant to comply with the order of the Railroad Commission. To this petition the railway company filed a demurrer, raising various questions, which was overruled. Thereafter the company filed its answer, wherein it pleaded three separate defenses, which, in the main, raised the same questions presented by the answer filed with the Commission, and in addition pleaded that the order of the Commission, if enforced, would deprive the company of its property without due process of law.

The cause was tried to the court on the testimony taken before the Commission, and some additional evidence introduced by the respective parties. The court directed that an injunction issue, commanding the railway company to comply with the order of the Railroad Commission. The railway company took the case to the Supreme Court for review on error.

On December 9, 1912, the Supreme Court decided the case, affirming the decision of the Commission and the District Court, and deciding the following propositions in favor of the Commission:

First—That the Railroad Commission Act confers authority on the Commission to regulate and control railroads and the operation of trains.

Second—That the commissioners were legally chosen as members of that body.

Third—That the constitutional and legislative provisions of the state required the railroad to operate its abandoned line.

Fourth—That the order of the Commission does not amount to an impairment of plaintiff's charter rights.

Fifth—That the order of the Commission does not amount to the taking of property without due process of law.

A motion for a rehearing was denied, after which plaintiff notified the Commission of its intention to obey the order of the Commission; and on Monday, January 20, 1913, the said line was opened for both passenger and freight traffic, and is now being operated in compliance with the Commission's order.

Since last summer, when the Supreme Court rendered its decisions on the constitutionality of the law and the power to fix freight rates, the number of complaints have steadily increased, until the Commission has been compelled to increase its office force to take care of the business. Most of the complaints filed with the Commission have been of an informal character, and in a great many cases the Commission has been able to settle the difficulties between the shippers and railroad companies without the necessity of having a formal complaint filed.

The Commission is of the opinion that a public-utilities act should be passed by the present legislature, conferring on the Railroad Commission the supervision over all public utilities in the state; which act should contain provisions materially strengthening the powers of the present Commission, and modeled along the lines of the Wisconsin Utilities Commission. If this is not done, then the present law should be amended; and we recommend the following amendments:

First—An amendment allowing the Commission to institute any action on its own motion, which can be commenced on the complaint of individuals or other parties.

Second—An amendment providing for the suspension of any schedule of rates filed by any common carrier, until such time as the Commission shall have had an opportunity to investigate the reasonableness of the rates sought to be enforced, with full power of absolute suspension if it should so conclude after full hearing.

Third—An amendment providing that all orders of the Commission shall remain in effect until set aside or modified by the Commission or by an order of court. The present law provides that they shall remain in effect for two years only.

Fourth—An amendment providing a limitation of time during which actions may be brought for reparation, following the Interstate Commerce Act.

Fifth—An amendment shortening and limiting the time on appeal from the decisions of the Commission, thus preventing the delay now experienced by the Commission in enforcing its orders.

Sixth—An amendment to the present sections relating to demurrage, which, in the experience of the Commission, are ineffective and inadequate.

Seventh—An amendment preventing trespassing on railroad rights of way.

The official statistics of the Interstate Commerce Commission show that 51 per cent of the persons killed on railroads were trespassers.

#### RAILROAD MAP

Since our last report we have received over two thousand requests for railroad maps. The commissions of other states have railroad maps of their states. This state has never had one. We recommend that an appropriation be made for one.

#### BIENNIAL REPORTS

Our supply of our last reports was exhausted within three months after their issue. We recommend that at least 1,500 copies be printed of this issue, as we have been flooded with requests for the same—parties even offering to pay for them—but we have been unable to supply them.

AARON P. ANDERSON,

DANIEL H. STALEY,

SHERIDAN S. KENDALL,

Commissioners.

JOHN W. FLINTHAM,

Assistant Secretary.