

Southern Pacific Company

EXECUTIVE OFFICES
165 BROADWAY

LEWIS J. SPENCE,
DIRECTOR OF TRAFFIC.

NEW YORK

September 6, 1917.

Hon. George Sutherland,

Salt Lake City, Utah.

My Dear Senator:

I have read with great interest and pleasure an extensive quotation in the New York Sun of the 5th instant from your address at Saratoga Springs before the American Bar Association. The part of your address quoted deals with the growth and dangers of government by commission, and I note particularly the following language:

“A serious danger to the citizens in this situation, however, is likely to arise from a failure on the part of the legislative authority to lay down explicitly and with sufficient care the primary standard which fixes the limits within which the power of the bureau or commission is to operate,”

with which I heartily agree.

Your language, citing the difficulty of determining what are “unfair methods of competition,” as the Trade Commission will be required to do, reminds me of the long drawn out battle, which still continues, to determine what is a reasonable freight rate. This is a question which must be determined by the Interstate Commerce Commission as to interstate business, and I have been unable to discover where Congress ever defined reasonableness, unless we may assume that the meaning of the term as applied to a railroad rate had been settled by common law practice before the Interstate Commerce Act was passed. It seems to me that must be assumed,

or else the delegation of power to the Commission to determine reasonableness, without laying down any rule to guide them, is an unconstitutional delegation of legislative power. I dealt with this subject in a pamphlet published by the Railway Age Gazette in October, 1914, and, as it is probable you have never seen that document, I am mailing you a copy and would deem it a great favor if you will read at least that part of it contained on pages 30 to 42, inclusive, and give me the benefit of your opinion on the views expressed. I hope you may become interested enough to read the entire pamphlet, but that may prove too much of a burden. The particular pages cited deal with legal questions, and it is as to these that I am anxious to get your thought.

I have often recalled my pleasure in meeting you on a few occasions in the past and hope to repeat it at some time in the future.

Very sincerely yours,