

HOUSE No. 1169.

Printed on motion of Mr. Hayes of Lowell.

Commonwealth of Massachusetts.

OPINION OF THE ATTORNEY-GENERAL GIVEN TO THE COMMITTEES ON RAILROADS AND STREET RAILWAYS, SITTING JOINTLY, RELATIVE TO THE INVESTMENT OF CERTAIN RAILROAD COMPANIES IN THE SECURITIES OF CERTAIN STREET RAILWAY COMPANIES IN THE YEAR 1903.

BOSTON, April 6, 1903.

Hon. JOHN P. MONROE, *Chairman, Committee on Railroads and Street Railways.*

DEAR SIR: — The committee on railroads and street railways requests my opinion upon the following question: —

“First. Has any railroad incorporated in another state and doing business as such railroad within this state, which has a right under the charter of the foreign state to invest in the securities of street railways wherever existing, the right, under the laws of this Commonwealth, to invest in the securities and assume ownership of street railways incorporated in this Commonwealth.”

I assume that the foreign charter referred to is broad enough in terms to give the foreign railroad corporation power to purchase or subscribe for stock of our domestic street railways, even to the extent of a controlling ownership therein.

The right of foreign corporations in general to own stock in Massachusetts street railway companies is recognized by Revised Laws, chapter 126, section 11: —

“If a foreign corporation which owns or controls a majority of the capital stock of a domestic street railway, gas light or electric light corporation issues stock, bonds or other evidences of indebtedness based upon or secured by the property, franchise or stock of such domestic corporation, unless such issue is authorized by the law of this commonwealth, the supreme judicial court shall have jurisdiction in equity in its discretion to dissolve such domestic corporation. If it appears to the attorney-general that such issue has been made, he shall institute proceedings for such dissolution and for the proper disposition of the assets of such corporation. The provisions of this section shall not affect the right of foreign corporations, their officers or agents, to issue stocks and bonds in fulfilment of contracts existing on the fourteenth day of July in the year eighteen hundred and ninety-four.”

There is no provision of our law forbidding such ownership by a foreign railroad corporation. But I do not consider under what circumstances such control might lead to a violation of the Sherman Act, such inquiry not being germane to the question addressed to me.

The committee further requests my opinion upon a second question: —

“Would such railroad, so incorporated and also incorporated in this Commonwealth, have such authority to purchase the securities of such street railways, unless specially authorized by the Legislature of this state?”

A domestic railroad corporation, without express legislative authority, has no power to acquire the stock of street railways. Such acquisition is, indeed, expressly prohibited to a domestic railroad corporation by Revised Laws, chapter 111, section 77: —

“No railroad corporation, unless authorized by the general court or by the provisions of the following five sections, shall directly or indirectly subscribe for, take or hold the stock or bonds of or guarantee the bonds or dividends of any other corporation; and the amount of the bonds of one or more other corporations subscribed for and held by a railroad corporation, or guaranteed by it conformably to special authority of the general court or the authority given in said

sections, with the amount of its own bonds issued in conformity with sections sixty-three and sixty-four, shall not exceed at any time the amount of its capital stock actually paid in cash."

This second inquiry presents the question whether a railroad corporation existing by the concurrent legislative authority of this state and of another, may buy stock in our domestic street railway companies, such purchase being authorized by the foreign state, but prohibited as to domestic railroad corporations by our law. The general law concerning such railroad corporations contains no provisions applicable to or conclusive upon the question submitted. Revised Laws, chapter 111, section 4:—

"A railroad corporation, chartered by the concurrent legislation of this and other states shall, as regards any portion of its road lying within this commonwealth, be entitled to all the benefits and be subject to all the liabilities of the railroad corporations of this commonwealth."

This statute appears to be applicable rather to the physical locations, the operation and administration of the railroad within our jurisdiction, and does not appear to take into consideration and control those acts which are *ultra vires* of a Massachusetts railroad and *intra vires* of a foreign company. I doubt whether any general answer can be made to the question addressed to me that will be conclusive upon any specific case, for there may be special legislation enacted by our General Court as to certain railroad corporations which would authorize such purchase as is inquired of. An exhaustive examination of all such special legislation would have to be made to ascertain what might be the rights or authorities of any designated railroad company. I may say, however, that assuming no such permission has been granted by such special law, I hold to the opinion that our courts would decide that such railroad corporation has no lawful authority to purchase the stock of other corporations, but I do not know that this question has yet been specifically decided. I may suggest that if it should be decided that the railroad corporation created, for instance, by concurrent legislative action of Massachusetts and Connecticut, has a right to buy stock given by the laws of Con-

necticut, but withheld by the laws of Massachusetts, the Legislature would, in my opinion, have power to revoke the Massachusetts charter if it deemed that such action by the railroad company was sufficiently injurious to the public interest to warrant such action.

Very respectfully yours,

HERBERT PARKER,
Attorney-General.