

COURTS CANNOT MAKE RATES

Moody's Opinion on Railroad Issue.

IS NOT JUDICIAL FUNCTION

Congress May Give Commission That Power.

EQUALITY AMONG PORTS

Attorney-General Defines What It Means—No Doubt Congress Can Authorize Interstate Commission to Make Rates.

POWER OF CONGRESS OVER RATES.

First—There is a Governmental power to fix the maximum future charges of carriers by railroad, vested in the Legislature of the states with regard to interstate commerce, and in Congress with regard to all other transportation.

Second—Although legislative power, properly speaking, cannot be delegated, the lawmaking body having enacted into law the standard of charges which shall control, may intrust to an administrative body not exercising in the true sense judicial power the duty to fix rates in conformity with that standard.

Third—The rate-making power is not a judicial function and cannot be conferred constitutionally upon the courts of the United States, either by way of original or appellate jurisdiction.

Fourth—The courts, however, have the power to investigate any rate or rates fixed by legislative authority and to determine whether they are such as would be confiscatory of the property of the carrier, and if they are judicially found to be confiscatory in their effect, to restrain their enforcement.

Fifth—Any law which attempts to deprive the courts of this power is unconstitutional.

Sixth—Any regulation of interstate transportation, however exercised, would seem to be so indirect in its effect upon the ports that it could not constitute a preference between the ports of different sections within the meaning of article I, section 9, paragraph 4, of the Constitution, even though they result in a varying charge per ton per mile to and from the ports of the different states.

WASHINGTON, May 5.—In an opinion presented to the Senate Committee on Interstate Commerce today, Attorney-General William H. Moody defines some very important constitutional limitations on the power of Congress to regulate railroad rates. He holds that Congress has power to fix minimum rates for interstate commerce, as have the several states to fix such rates within their boundaries. He also holds that this power can be delegated to an administrative body, but that it is not a judicial function, and therefore cannot be conferred on a court. He finds that the courts have power to restrain the enforcement of rates paid by legislative power, if they are confiscatory and that Congress cannot deprive courts of this power. He holds that rates to various ports may vary without being in conflict with the Constitution.

Legislative Power Over Rates.

Mr. Moody begins by citing the decisions of the United States Supreme Court in what are called the Granger cases as showing:

That there is a Governmental power to regulate the operations of railroads acting as common carriers, and, as a part of such regulation, to prescribe the maximum rates which they may charge in the future for the services which they shall render to those who resort to them, and that the power is vested in, and may be exercised by, the legislative branch of the Government.

These cases related to regulation by states of rates within the states. The principle laid down is now accepted as the settled law of the land and the United States Supreme Court has recognized the division of power on this subject between the states and the United States Government.

The authority to delegate the rate-making power is then discussed. Mr. Moody tells how State Legislatures found it necessary to create state railroad commissions to exercise this power and how their authority to thus delegate it was questioned in the courts. He then says:

But the courts have held that where the Legislature has enacted that railway rates shall be impartial and reasonable, the duty of executing this law and determining the rates for the future in detail in conformity with it may be conferred constitutionally upon an administrative body, and that a grant of such power is not a delegation of the legislative authority. It is sufficient to refer to a few only of the cases which support this view and to say that no case which opposes it has come to my knowledge.

Power Not Given Commission.

He cites several cases in point and concludes:

These cases affirm the right of a State Legislature to confer the power in question upon a state commission. No reason has been advanced and none can be perceived why the same principle would not control in the case of a grant by Congress of a like power to a commission over interstate transportation. The Supreme Court in many cases has recognized the propriety of the large delegation

EACH MAKES A SURE ESTIMATE

Figures of All Candidates for the Mayoralty at Primary Today.

EVERY ONE IS CONFIDENT

Albee, Glafke, Merrill, Rowe and Williams All Give Statistics to Show That They Are Sure of the Nomination.

ESTIMATES BY THE CANDIDATES.

Note in today's primaries as predicted by prophets of the several Republican candidates:

	Albee	Glafke	Merrill	Rowe	Williams
Albee	3,000	1,000	1,000	1,000	2,000
Glafke	250	250	250	100	100
Merrill	1,000	2,500	1,200	1,500	1,000
Rowe	750	1,000	3,000	1,000	1,000
Williams	1,200	1,000	1,400	2,500	1,200
Total	8,700	8,600	9,400	10,150	9,900

Wide gaps exist between the figures predicted of today's primaries by prophets in the Albee, Glafke, Merrill, Rowe and Williams camps. They all agree that between 250 and 300 votes will nominate the Republican candidate for Mayor, but each says that only his man will get that number.

And the prophets in the Lane and the Thomas camps on the Democratic side are far apart, too. In their opinion, perhaps 1200 votes will be cast in the Democratic primaries. A majority of that number will name the nominee, and the Lane boomers and the Thomas boomers, each set on its own side, avers that its man will get the majority.

The chief fights for nomination are the following, named in the order of their intensity:

Republican—Mayor, Municipal Judge, five Councilmen-at-Large, Treasurer, City Attorney and one Councilman from each of nine wards. In one ward there is no contest, Robert A. Preston being the only candidate, nor is there any contest for Auditor, for T. C. Devlin is the only candidate who will be voted for.

Democratic—Mayor, Councilman from the Tenth Ward, all other places on the primary ticket having only one candidate or none.

All Headquarters Thronged.

The political headquarters of the several candidates were thronged yesterday, those of Albee, in the McKay building, and of the liquor cohorts one floor below, of Glafke, at his front-street office, and of Rowe, in the Breeden building, while Ella Homer Mayor Williams received many callers in the City Hall.

One of the noteworthy events of the day was the endorsement of Otto J. Kramer by the Municipal Association as an antidote to the endorsement of George J.

Cameron by the liquor forces. Another was the appearance of two small cards from the liquor headquarters, printed in red ink, announcing the liquor state of candidates, the other making known that the state was approved by the wholesale liquor dealers and the brewers, the retail dealers, the Knights of the Royal Arch, the cigar makers' union and the Beer-Bottlers' and Beer-Drivers' Unions. An episode of some interest was the attempt of Fred T. Merrill to issue a red ink invitation of the liquor state, with his own name substituted for Mayor, thus to confuse the liquor forces and win votes to himself. This ruse of Merrill's was detected and he promised not to carry out his scheme. Still another episode of the day was the appearance last night of a brass band parading the streets with music and setting itself off with Rowe banners.

Guesses on the Vote.

Most of the guesses of today's Republican vote place the number of ballots at 9000 or less. The prophecy most startling to political gossip is that of Edward Newbegin, one of the chiefs of Glafke's staff of workers, who predicts that his man will get the nomination with 3500 votes, the nearest competitor being Williams with 1500. Mr. Newbegin said yesterday that 4700 Republicans had signed an agreement to vote for Glafke. In Mr. Newbegin's opinion, the nomination of Glafke was as sure as today's sunrise, and had already been made and the only function of the primaries is the formality of demonstrating that Glafke is the choice of the Republican party. A peculiarity of Mr. Newbegin's figures was the fact that he allowed Albee and Rowe only 1000 each and Merrill as much as either. It was the boast yesterday in the Glafke camp that that candidate would receive more votes than any other two candidates combined.

This confidence did not alarm the Williams boomers, however. Their estimates of today's vote for Williams range from 2500 to 4000 votes. In betting circles last night four to 1 was offered on Williams and even money that Merrill would not receive 1000 votes.

Liquor Element for Williams.

Strenuous efforts were made yesterday by the Rowe, Glafke and Merrill workers to break into the liquor forces which were lined up for Williams, but apparently without success. At a late hour last night it seemed that the liquor element was practically solid for Williams. An effort was made, however, to pry the retail dealers away from the wholesalers, who took the initiative in endorsing Williams. John Kelly, president of the Retail Liquor Dealers' Association of 257 members,

POLLS OPEN AT NOON, CLOSE AT 7 P. M.

A complete new city government is to be elected next June, and the Republican and the Democratic nominees are to be picked out today by direct primary vote. The polls will open at noon and close at 7 P. M.

It is estimated that his organization had not lined up behind the so-called liquor state and would not do so, but testified that at least 70 to 75 per cent of the liquor men would vote for Williams.

"Not," said he, "because it is necessary to the liquor element to support him, but because he has been maligned and pursued on their account."

Mr. Kelly said that he would support Williams, and that other liquor men should do the same under the circumstances.

That the retail liquor forces are united

(Concluded on Fourth Page.)

BRITT WINS IN TWENTY ROUNDS

In Last Seconds of Fight Californian Earns Victory With Championship Blows.

WHITE A SPLENDID BOXER

America Holds Lightweight Honors After a Contest Which Belonged to Nobody Until Time Was About Up.

WOODWARD'S PAVILION, San Francisco, May 5.—James E. Britt, of California, became lightweight champion of the world tonight when he knocked out James White, of England, at the close of a magnificent 20-round battle. With just 30 seconds to go, Britt hooked the Englishman with a left on the jaw and the foreigner went to the mat, where he lay flat on his back for eight seconds. He staggered to his feet, but was powerless to defend himself and Britt swung right and left on his jaw. The referee, to save the plucky Englishman from needless punishment, stopped the contest, although White was still on his feet, leaning up against the ropes in a helpless condition. White was carried to his corner and in a few minutes revived sufficiently to make a little speech in which he said:

"I fought the best I knew how. I received fair play, but Britt is evidently the better man."

Britt's victory was, of course, loudly acclaimed by the people of his home town, but White, though a defeated man, was cheered just as vociferously for the magnificent fight he made. All through the battle White showed that he was entitled to compete for championship honors. He is a clever boxer, an experienced ring general and has a cool head that carried him out of difficulty many times. He seemed to lack, however, one requisite for a champion—a knockout blow. He landed on Britt's jaw many a time with both right and left, but apparently did not hurt the little San Francisco brawler.

Battle Waxes Hot.

In the twelfth round it looked as if White had a chance. He landed a vicious straight right on Britt's jaw, and as the latter was off his balance, he went to the floor and rolled under the ropes. He was not hurt, however, and came back fighting faster than ever. Britt forced matters all through the fight. He paid particular attention to White's stomach, occasionally striking for the jaw. The Englishman's cleverness enabled him during most of the fight to block Britt's wicked punches for the stomach and to duck the swings for the head.

During the latter part of the fight Britt used only his left, and persistent care of his right led the spectators to fear that he had damaged it. But his right was in good order and he turned it loose in the nineteenth round, when he swung for White's stomach and jaw. Britt paid a tribute to White by saying he is the

THE TOWN TURNS OUT.

Innumerable Crowd Attends Britt-White Encounter at Pavilion.

WOODWARD'S PAVILION, San Francisco, May 5.—San Francisco tonight witnessed the first international championship pugilistic contest to be held in this country for a decade, when Jimmy Britt, the Californian, and James White, England's premier lightweight, met in the ring at Woodward's Pavilion to settle the question of static supremacy.

The enthusiasm which usually prevails in this city when men of Britt's and White's caliber are brought together was wanting tonight, due most likely to the unfavorable influences which have attended the matching of these two modern exponents of Queensberry. The date for the battle had previously been set for April 25 last, but the failure of the Board of Supervisors to issue a permit to enable the promoters to hold the contest on that night necessitated a postponement. Another circumstance which in a great measure tempered the interest was the prohibition by the grand jury of all public wagering in this city on events of this kind, and as a result of these restrictions speculation was limited to private bets between individuals.

Immediately at the conclusion of the preliminaries the ring was cleared and the principals for the international battle entered first, closely followed by White. Announcer Lesca then introduced to the spectators "Young" Corbett and Eddie Hanton. The latter delivered a neat speech in response to calls from the crowd and was cheered to the echo.

A telegram was read at the ring side from "Twin" Sullivan, challenging the winner of tonight's contest. Telegrams challenging the winner were read from Joe Gans and Abe Attell. The outcome of Gans' challenge was the signal for a vol-

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CRISIS IN STRIKE COMES TODAY

If Sheriff Cannot Protect Chicago Teams, He Will Call for State Troops.

RIOTING ON THE DECREASE

Merchants Will Resume Deliveries, and if They Go Safely Sheriff Says Strike Will Be Broken. Employers Defy Union.

CHICAGO, May 5.—The crisis in the teamsters' strike is expected to come tomorrow. The State-street merchants have decided to send out all wagons to make deliveries in all parts of the city. As far as possible these wagons will be guarded by Deputy Sheriffs and in some cases by the local police. It is the intention to place two men on each wagon, so far as the number of deputies already sworn in will permit.

Sheriff Barrett had 500 deputies in service tonight and said that he thought this number would be ample for the work outlined tomorrow. If it is not, it is said he will conclude that the Sheriff's office and the local police are not able to control the situation and a request will be made for the State Militia. Governor Deneen has said that he will order out the troops if the request is made by Sheriff Barrett, and upon the failure or success of the attempt at retail deliveries to be made tomorrow depends the coming of the troops.

Fifteen wagons were sent out today by the large dry goods and department stores, and all of them made deliveries without interruption. On each of these wagons rode two Deputy Sheriffs. It was the success of this attempt at delivering goods that prompted the stores to decide to send out tomorrow practically their full force of wagons.

Either because of threatened appearance of the troops or because of the addition to the police force in the shape of Deputy Sheriffs, there was much less rioting and fighting in the downtown streets today than on any day this week. The wagons of the express companies have all carried a guard armed with a rifle or double-barreled shotgun and went between the depots and express offices without serious interruption.

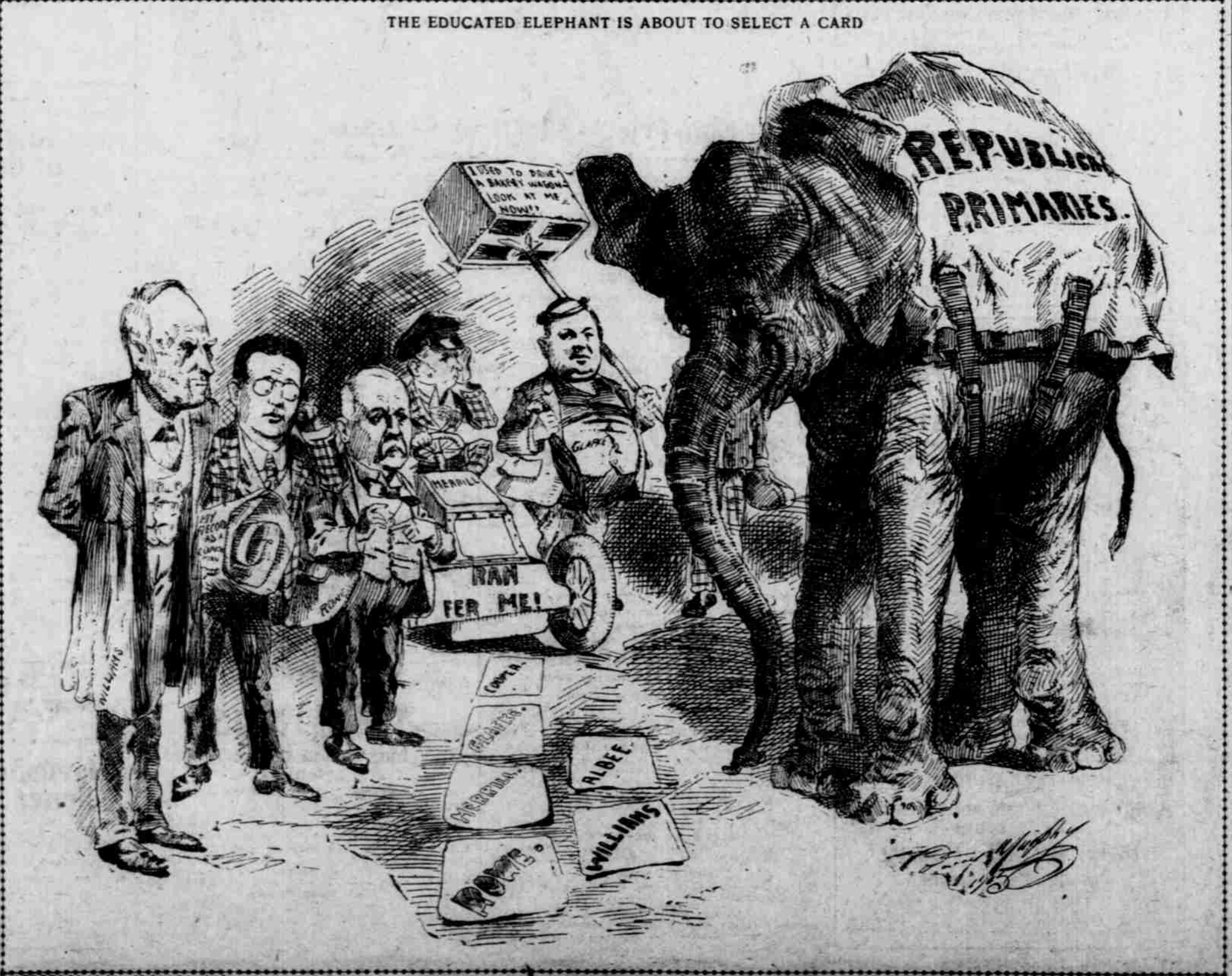
An order issued early in the day by Chief of Police O'Neil directing that all persons should be prevented from following up wagons as they went through the streets had much to do with the absence of rioting.

Assaults in Remote Sections.

While there was less rioting in the downtown streets, numerous assaults were committed in all parts of the city remote from the principal business sections.

Three coal wagons were attacked at (Concluded on Third Page.)

THE EDUCATED ELEPHANT IS ABOUT TO SELECT A CARD



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