

**Power of Commission. Railroad Track, Abandonment Of.  
Removal of Railroad Track.**

The railroad commission of Montana has no authority to prohibit tearing up of a railroad track which had been abandoned prior to the time the commission was created.

Helena, Montana, July 6th, 1908.

The Railroad Commission of Montana,

Helena, Montana.

Gentlemen:—

I am in receipt of your letter of the 24th ult. submitting for the consideration of this office the following question:

“Has the railroad commission of Montana the authority to prohibit and prevent the Great Northern Railway Company from tearing up its track between Lakeview and Marion, in Flathead county, Montana?”

You also transmit with your letter a transcript of the testimony taken at the hearing had by the commission in December, 1907, at

Kalispell, Montana; also a copy of telegram received by you bearing date June 21, 1908, as follows:

"The Great Northern is now tearing up track between Lakeview and Marion. In behalf of thirty-four resident freeholders effected thereby, we ask that you immediately ask this action stopped."

I have heretofore expressed to you my opinion to the effect that the commission had no authority in the premises.

The question submitted is largely dependent upon the facts, but the following authorities may have some bearing upon the question.

Sec. 898, Civil Code.

State ex rel Knight vs. Helena Power & Light Co., 22 Mont. 391.

Chapter 37, Session Laws 1907, and particularly Section 19, considered in connection with the other sections of said chapter conferring power on the commission.

It appears from the records submitted with your request that in November, 1907, a verified complaint was filed with the commission containing seventeen separate specifications of charges against the Great Northern Railway Company.

Specification No. 9 of this complaint relates to the operation of the Great Northern Railway from Marion eastward through Pleasant Valley to Lakeview. Said Specification No. 9 stating:

"A large number of people live along the line of the said railway west of Marion and they are denied any railroad facilities for the transportation of themselves or their freight; that a still larger number would live out there if railroad facilities were afforded them; that the Great Northern railway tore down all its stations at the above points on this old main line when the road was changed, and at the places where said train now stops there are no accommodations whatever for passengers or freight, and it is reported that the Great Northern is going to take up this track."

The intention of the railroad to take up this track was known at the time this charge was made. Specification No. 12 of this complaint is to the effect that at certain points there are no accommodations or insufficient accommodations for passengers or for handling freight, and Lakeview and Marion are named as two of these places.

A public hearing was by the commission had on all of the charges contained in the complaint in December, 1907, at Kalispell, Montana. At that hearing when Specification No. 9 was read counsel for complainant stated:

"I will say that as to No. 9, unfortunately for the general public, the witnesses we expected to bring from Pleasant Valley have, I believe, with one exception, refused to come—maybe two exceptions—for the reason that they say they have settled with the Great Northern Railway Company for damages for the failure to run these trains, and they signed some sort of

an agreement whereby they were not sued for it. \* \* \* "

Thereafter in March, 1908, the railroad commission made its findings respecting the charges contained in the complaint, and regarding said Specification No. 9 the board said:

"No evidence having been submitted with respect to this charge \* \* \* therefore this complaint is ordered dismissed."

The board further found regarding Specification 12 (and Specification 13):

"Both of these charges having been formally withdrawn by the complainants by statement in writing are therefore hereby ordered dismissed from further consideration."

If at the hearing of the complaint involving the charge stated in the telegram, no evidence was produced because the public living in the vicinity had "settled with the railway company for damages for failure to run these trains," these findings made by the board are either to be regarded by the commission as res adjudicata or else another hearing should be had.

However, it appears that the main line of the Great Northern Railway Company formerly extended from Columbia Falls, Montana, through Marion, Pleasant Valley and Lakeview and on to Jennings, but that prior to the enactment of said Chapter 37, Laws 1907, creating the railroad commission, the railroad company changed the grade and location of its main track by leaving the old track at a point near Columbia Falls; thence westward to the Kootenai river; thence south to Jennings, leaving Marion, Pleasant Valley and Lakeview off the main line. The old track was then taken up from Jennings eastward to a point a short distance west of Lakeview, and all through trains were run over the new track by way of Whitefish and Shields; thence down the Kootenai river to Jennings. No regular train service was maintained on the old track to Lakeview or Pleasant Valley, or to any points, at least west of Marion, though trains were occasionally run there for special purposes. The company had in fact abandoned this part of the old track. No stations were ever established or maintained at either Marion or Pleasant Valley. All this occurred prior to the enactment of the law creating the railroad commission and such law is not retroactive.

Under this state of facts you are advised that the railroad commission of Montana is not vested with power and authority to grant the relief demanded as expressed in the question submitted and contained in the telegram above quoted.

I return you herewith all of the papers and records you submitted respecting the matter.

Yours very truly,

ALBERT J. GALEN,

Attorney General.