

Board of Railroad Commissioners, Jurisdiction Of. Jurisdiction of Board of Railroad Commissioners. Operating Department of Railroad Company Not Within Jurisdiction of Railway Commission.

The Railroad Commission has no jurisdiction over the strictly operating departments of railways.

An order affecting the operating department of a railroad company is beyond the jurisdiction of the board of railway commissioners there being no express jurisdiction conferred upon said board by the Act creating and establishing said board.

Helena, Montana, May 8, 1908.

To the Railroad Commission of Montana,
Helena, Montana.

Gentlemen:

In your letter dated May 2nd, 1908, directing me to institute proceedings against the Northern Pacific Railway Company for violations of an order made by you April 15, 1908, and effective May 1st, 1908, requiring said railway company to discontinue its practice of "backing" Class Z. engines from Blossburg to Helena, has had my careful attention, and before commencing action in compliance with your request therein contained I desire to lay before you the result of my investigation of the law covering the matter. The proceedings desired by you is the prosecution of the railway company for the violation of an order

of the board made in pursuance of the powers delegated to your board by House Bill No. 1, Tenth Legislative Assembly, Laws 1907, page 68. The particular section under which the order is made seems to be Section 16 of said law. This section of the law as it passed the House and was sent to the Senate read in part as follows:

"The Board shall have the general supervision of all railroads, express companies, car companies, sleeping car companies, freight and freight line companies, and any common carrier engaged in the transportation of passengers or property in this state * * *

On February 18, 1907, as appears from the senate journal, the senate adopted an amendment to said section as follows:

"Amend Section 16 on page 8 by inserting after the words, "This State" in line 165 the following: In all matters appertaining to the duty of said board and within its power and authority under the provisions of this Act."

You will note at this juncture that the insertion of the added words "in all matters" etc. were to follow the words "this state" and therefore preceded the period then following the words "this state". After the adoption of this amendment the law, so far as this section is concerned reads as follows:

"The board shall have the general supervision of all railroads, * * * and any common carrier engaged in the transportation of passengers or property in this state. In all matters appertaining to the duty of said board and within its power and authority under the provision of this Act."

And it was in this form that this section was finally passed by the house and became a law. However, an examination of the enrolled copy on file in the office of the secretary of state shows a period after the words "this state" and the amendment referred to above begins with a capital letter. Reading the amendment as shown in the enrolled copy it is impossible to make sense of it. I give it to you as my opinion that the supreme court of this state, if asked to interpret this particular section would preserve its sense and thereby save its effectiveness, even at the sacrifice of the punctuation marks appearing in the enrolled bill, and to preserve the effect of its amendment it is necessary to read it as it was introduced and adopted in the senate; that is, without any punctuation mark after the words "this state."

State vs. Pilgrim, 17 Mont. 311.

Mut. Co-op. Ins. Co. vs. Meyers, 77 Pac. 628; 10 Idaho 294.

State vs. Donel, 66 Pac 1073; 63 Kan. 811.

If my view of the interpretation which should be placed upon this section is correct, then the "general supervision" given you over railroads is only "in matters pertaining to the duty of said board and within its power and authority under the provisions of this Act." Therefore we would have to look to the remainder of the bill, as passed, to find what is "the duty of said board and within its power and authority under the provisions of this Act."

After a careful examination of the law creating and establishing your board and defining your powers and duties, I am unable to find any section or clause upon which to predicate your supervision or control in any measure of the operation of railroads, except in so far as you are given power by Section 19, which reads as follows:

"The board shall have the power, and it shall be the duty, to compel any and all railroads subject hereto, to provide, maintain and operate sufficient train service, both freight and passenger for the proper and reasonable accomodation of the public, and to provide and maintain suitable waiting rooms for passengers, and suitable rooms for freight and baggage at all stations.'

I therefore advise you that in my opinion it will be extremely difficult to bring to a successful determination any proceeding brought for a violation of the order above referred to.

However, if notwithstanding my decision in the matter you desire a judicial determination of your powers along these lines, I am willing to proceed to have the matter adjudicated.

Very truly yours,

ALBERT J. GALEN,

Attorney General.