

Docks and Wharves, Jurisdiction of Railroad Commission Over. Railroad Commission, Jurisdiction Over Docks and Wharves.

The Railroad Commission has authority to fix dockage fees, but has no authority to interfere with the contract rights of riparian owners of navigable waters.

Helena, Montana, May 11, 1909.

The Railroad Commission of the State of Montana,
Helena, Montana.

Gentlemen:

I am in receipt of your letter of May 7, 1909, enclosing copy of your letter of April 26, 1909, wherein you ask my opinion as to the extent of the authority and jurisdiction conferred upon the railroad commission in the matter of docks and wharves on navigable waters within the state of Montana.

You submit the following statement of facts:

That Mr. Frank Adelbert, and others, living along the shore of Flathead lake, desire to construct and maintain a dock for the purpose of handling freight and passengers, in lake transportation, and that the portion of the lake where they desire to construct the wharf (the abutting land presumably belonging to the persons named) is obstructed

by logs, the property of the Somers Lumber Company, which allows the logs to remain in the lake and refuses to move them.

The only jurisdiction which the railroad commission has over docks and wharves is conferred by Chapter 38 of the Laws of 1909. Section 5 of this chapter provides:

"The railway commission of this state shall have jurisdiction over all docks and wharves within the state and have full power to regulate; determine and fix all dockage and wharfage fees."

I believe that this section is not sufficiently broad to confer power and authority upon the railroad commission to compel the Somers Lumber Company, or any other person, to remove the logs from navigable waters where the same might prevent the erection of docks or wharves; or which might obstruct the ingress or egress of vessels to and from such docks and wharves.

However, it seems that private persons or corporations should not be permitted to obstruct the navigable waters of the state so as to prevent or impede navigation, and as Chapter 38 confers the power and authority to construct docks and wharves upon "persons owning land bordering upon any of the navigable waters within the state of Montana," it seems that such persons, if desirous of constructing a dock or wharf, could proceed, with the aid of private counsel, to prevent the obstruction by logs or otherwise of the water-way leading to such wharf or dock.

Your attention is called to Section 8757, Revised Codes, which provides a penalty for unlawfully obstructing the navigation of any navigable stream. As Chapter 38, laws 1909, confers the privilege upon abutting land owners of constructing docks and wharves, it seems that any unnecessary obstruction caused by log booms or otherwise would be unlawful, and would therefore fall within the provisions of Section 8757. While the last named section refers only to "navigable streams," I believe it is sufficiently broad to include any navigable body of water.

Yours very truly,

ALBERT J. GALEN,
Attorney General.