

**Railroad Commission, Power of to Prevent Removal of
Tracks. Railroad Tracks, Power of Railroad Commission to
Prevent Removal of.**

The Railroad Commission has power to make a rule that no railroad company shall abandon or remove any side track or spur now or hereafter to be installed, without receiving permission from the Board of Railroad Commissioners of the State of Montana.

Helena, Montana, May 25, 1909.

Railroad Commission of Montana,

Helena, Montana.

Gentlemen:

I am in receipt of your letter of May 17, wherein you ask my opinion as to whether or not the Great Northern Railway Company may, without permission of the railroad commission, remove its spur track, laid in 1906 at Star Creek. In our letter you quote a portion of an order made by your commission on May 28, 1908, as follows:

It is further ordered that no railway company now or hereafter operating within the state of Montana, shall abandon or remove any side track or spur track either on main or branch lines which now is or may hereafter be installed, without first giving notice to and receiving permission from the Board of Railroad Commissioners of the State of Montana."

Your further statement of fact shows that the spur in question was laid for the use of one August Schulze; that he did the grading, furnished the ties and paid the railway company for the labor employed in putting down the track; that the track was laid before the regular agreement or contract between Schulze and the railway company was executed, and that Schulze, not being satisfied with the terms of the contract, submitted to him by the railway company, refused to execute the contract, and, as a result thereof, the railway company removed the spur.

I am of opinion that your order of May 28, 1908, is a proper order, which the commission has the power to make under the authority conferred by Division I., Part IV., Title VIII., Chapter V., (Section 4363, et seq.) Revised Codes of Montana, and one which the courts have jurisdic-

tion to enforce under Section 4378, Revised Codes. Under Section 4382 the board is given the power to compel railroads to provide, maintain and operate sufficient train service, both freight and passenger, for the proper and reasonable accommodation of the public; and Section 4378 gives the board general supervision of common carriers in matters within the power and authority of the board, under the provisions of the act creating a railroad commission. Sections 4373 and 4374 define the words "transportation" and "Railroad." The word "transportation" includes all instrumentalities of carriage and shipment, and is broad enough to include spur tracks, which would, therefore, come within the jurisdiction and supervision of the board.

However, if the construction of the spur track at Star Creek is not for the accommodation of the public generally, but was laid in furtherance of a private agreement between Schulze and the railway company, the matter would, in all probability, be governed by the private contractual relations established between the parties, and if either is aggrieved by the action of the other, the court, rather than the railroad commission, seems to be the proper tribunal for the adjustment of their differences.

The commission was, in my opinion, acting within its jurisdiction, and not exceeding the power and authority conferred upon it by statute, in making the general order of May 28, 1908. But the private contractual relations established between complainant and the railway company in this particular case would, perhaps, confine the remedy of the complainant to an action on his part, based upon his agreement for the installation of the spur.

Yours very truly,

ALBERT J. GALEN,
Attorney General.