

Board of Railroad Commissioners, Lines Intersecting. Transfer Connections, Power to Compel.

The Board of Railroad Commissioners has no power, under the Act providing for said board, to compel intersecting railways to install transfer connections.

Helena, Montana, January 12, 1909.

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

I have your letter of January 5, 1909, asking whether your Commission has the power to compel the Billings and Northern Railroad Company and the Chicago, Milwaukee & St. Paul Railway Company to install and operate a connection at some point in Fergus County where they intersect. This letter was transmitted to this office under the signature of B. T. Stanton, Commissioner, and was supplemented on January 11 by letter making the same inquiry, signed by the Secretary of your Commission.

I advise you that, in my opinion, the law authorizing and establishing the railroad commission of the State of Montana does not confer any authority under which you could make the order requiring companies to install this connection.

In the case of Board of Railroad Commissioners v. Ry. & Nav. Co., 19 Pac. 706, the Supreme Court of Oregon says:

"The jurisdiction of such commission is not given by implication. Commissions of this character are mere creatures of statute and possess no power except what the statute expressly confers upon them."

A careful review of the statute under which your commission is organized fails to show any express delegation of the power here sought to be exercised. Subdivision 6 of Section 4275, Revised Codes of Montana of 1907, does not confer any power upon the railroad commission, but provides a method whereby one company desiring to affect a transfer connection with an intersecting road may, in the absence of agreement force the connection.

In Elliott on Railroads, Vol. 2, Section 682, the powers of a railroad commission to compel companies connecting by intersection to so unite and connect their tracks as to permit the transfer of cars from the track of one to that of the other, is discussed.

In the case of State ex rel. LaFollette v. C. M. & St. Paul, Ry. Co., the Supreme Court of South Dakota holds that under the statute establishing the board of railroad commissioners, that commission has the power to compel intersecting railways to establish transfer connections. However, the court further holds that the statute granting this power must be complied with in every respect. The clause conferring this power on the board of railroad commissioners of South Dakota reads as follows:

"Such corporations, connecting by intersection as aforesaid, shall also, whenever ordered by the railroad commissioners, so unite and connect the tracks of said several corporations as to permit the transfer, from the track of one corporation to the other, of loaded or unloaded cars designed for transportation upon both roads."

For your information I give you the citation in which this opinion is contained:

94 N. W. p. 406.

You will notice that two of the railroads concerned in the case last above cited are the same as those which you now desire to connect; namely, the Great Northern Railway Company and the Chicago, Milwaukee & St. Paul Railway Company.

Very truly yours,

ALBERT J. GALEN,

Attorney General.