

Railroad Commission, Notice of Hearings by. Hearings Before Railroad Commission, Notice of.

Section 4376, Revised Codes, provides for notice to be given of hearings before the railroad commission in the matter of fixing rates. The act creating the commission does not provide for hearings in matters other than rate hearings. However, it is safe for the commission to follow in other matters the rule by which they are governed in rate hearings.

Helena, Montana, January 21, 1910.

The Railroad Commission of Montana,

Helena, Montana.

Gentlemen:

I am in receipt of your letter of even date, asking my opinion as to the necessity of advertising a hearing which you contemplate in the matter of the complaint of certain shippers against the M. W. & S. R. Co., and their failure to furnish grain doors for coal cars, and also the insufficiency of the freight services on their line of railroad.

The jurisdiction which the board has in these matters is conferred entirely by the act creating the railroad commission, sections 4363 to 4399, revised codes.

Section 4382 gives the board specific authority in the matters above referred to. The entire act constituting the railroad commission of Montana makes of it a commission for the fixing and regulation of rates, both passenger and freight, within this state. Additional power is given to the commission to make proper orders concerning equipment, train service and station facilities. These latter powers conferred upon the board, however, seem to be in addition to the main power conferred; namely, that of establishing and regulation of rates, and the procedure to be followed by the commission in matters other than rate regulation are not set out in the act.

While the act authorizes the board to make orders concerning freight and passenger service, thereby authorizing, by implication, the board to hold hearings concerning these matters, the method of procedure in conducting these hearings is not touched upon.

In fixing rates, under the particular power of the commission, the statute (Section 4376) provides that notice shall be given of the hearing by publication for at least ten days, and also provides for the publication of the rates fixed for a period of two weeks.

These required publications seem to be reasonable, and it is also reasonable that a railroad company should be given adequate notice of a

hearing, the object of which is to increase the service to accommodate the business of the railroad. And, while no specific notice is required, I advise you that it is the safe plan to follow the statute made by the same act in reference to rate regulation. If a shorter notice were given in this instance, and the railroad company, without objection, came into the hearing and presented its case, undoubtedly that action would constitute a waiver of the longer notice. However, if the point were made that sufficient notice had not been given, I am strongly inclined to the belief that the court would consider the notice required in the matter of rate regulation to be the proper notice in the matter of additional service.

In the event that notice is given, not in accordance with section 4376, and the points were raised by counsel for the railroad company at the hearing, or if the order to appear were entirely ignored, additional time would be lost, for this department would then feel constrained to advise the commission that a readvertisement should be made.

Very truly yours,

ALBERT J. GALEN,
Attorney General.