

Railroad Commission of Montana, Power to Approve Five Cent Passenger Rate. Rates, Power of Commission to Fix. Passenger Fares, May Exceed Three Cents Per Mile.

Section 4349 of the Revised Codes of Montana fixes the maximum tariff for transportation of passengers by railroads in this state at three cents per mile, but Section 4375 of the same codes confers upon the board of railroad commissioners power and authority to fix different rates "if found necessary to do justice." This latter section seems to have been passed in order to place it within the wisdom and discretion of the board of railroad commissioners to provide for cases where a new railroad is constructed which, on account of conditions along its route, must for a time depend upon a meagre patronage.

Helena, Montana, November 22, 1910.

Railroad Commission of Montana,

Helena, Montana.

Gentlemen:—

I am in receipt of your letter of November 7th, wherein you state that Mr. M. S. Gunn, vice president of the W. S. S. & Y. P. R. R. has made application to the commission for authority to establish a five cent passenger rate on that line, stating that anything less than that would be confiscatory. You ask my opinion as to whether or not the board of railroad commissioners has power and authority

in view of Section 4349, Revised Codes, to approve this tariff.

While it is true that Section 4349 fixes the maximum tariff for transportation of passengers by railroads in this state at three cents per mile, which statute was passed in 1905, I am still of opinion that that section is abrogated by Section 4375, which confers upon the board the power and authority to fix different rates for different railroads and for different lines under the same management, or for different parts of the same line, "if found necessary to do justice."

This latter section seems to have been passed with the idea of placing in the wisdom and discretion of the board the authority to provide for just such cases as the one under consideration,—where a new railroad is constructed and which on account of conditions along its route must for a time at least depend upon a meagre patronage.

You are, therefore, advised that if upon investigation and hearing by the board it should be concluded that a five cent rate is under all the circumstances reasonable and just, then your board may authorize and certify such a tariff.

Yours very truly,

ALBERT J. GALEN,

Attorney General.