

Sixteen Hour Law, Railroad Employes, Hours of Labor of Labor, Hours Required of Railroad Employes.

Sections 1741 and 1742, Revised Codes, comprising the sixteen hour law are ineffective and not capable of enforcement, in view of the passage of the Act of Congress of March 4, 1907, in that the Federal law regulating matters pertaining to interstate commerce supersedes Sections 1741 and 1742.

These sections, however, are valid and enforceable in matters concerning the transportation of intrastate business.

Helena, Montana, March 2, 1909.

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

I have your letter of February 27, 1909, together with the enclosed report of your inspector, S. M. Ross, in regard to apparent violation of Sections 1741 and 1742 of the Revised Codes of Montana, commonly known as the sixteen hour law.

In the case of state v. Northern Pacific Railway Company, 36 Mont., 582, the constitutionality of these sections were directly passed upon and affirmed by the supreme court of this state.

A very similar federal statute was passed in March 1907 by the congress of the United States, with the proviso, however, that it should not take effect until one year from and after its passage. The Montana statute was passed about the same time as the federal statute, but with the proviso that it should take effect from and after its passage and approval.

The particular question involved in the case above referred to was as to whether the passage of the federal statute, fixing the date when it

went into operation, contravened and superseded the provisions of Sections 1741 and 1742 of the Revised Codes.

The opinion in this case is exhaustive, and numerous authorities are therein cited by the Supreme Court of Montana. In *C. C. & St. Louis Co. v. Illinois*, 177 U. S. 514, many cases are collected by Mr. Justice Brown, which seems to indicate that the legislatures of the states have the power to regulate to a large extent the operation of railroads within their boundaries, even though engaged in the transportation of interstate commerce. Among others, it is held in Alabama that the state has the right to require locomotive engineers to be examined and licensed by state authorities; also that they may be examined as to their ability to distinguish colors; also, forbidding the running of freight trains on Sunday; regulating the heating and other sanitary conditions of passenger cars. All of these cases are cited and discussed in the Montana case above mentioned. After considering these and other authorities along the same lines Mr. Justice Brantly uses the following language:

"The cases cited, it seems to us, are conclusive; and while we think it properly conceded that the subject, so far as it affects interstate commerce, falls within the power of federal legislation under the Constitution, yet, in the absence of such legislation on the subject, it is a matter for state control, under the exercise of its police power, to provide for the public safety and also for the health and lives of railroad employees themselves."

This language seems to clearly express the view of the court as to the relative authority and jurisdiction of the federal courts and the legislature of the State of Montana concerning the question under discussion. It appears, from the statement quoted above, that the Supreme Court of the State of Montana is of opinion that where the hours of labor of railroad employes engaged in the transportation of interstate business is regulated by act of congress, and that prior to such regulation a statute existed in the state of Montana covering the same matter, that upon the enactment of the federal law the Montana statute is superseded and becomes inoperative as to those employes of roads engaged in interstate commerce.

Of course, Sections 1741 and 1742 of the Revised Codes are still in full force and effect so far as the hours of employment of persons engaged in the operation of trains handling intra-state business.

You are therefore advised that it is my opinion that a prosecution brought under the statement of facts disclosed by the report of your inspector could not be sustained under Sections 1741 and 1742, because of the fact that the trainmen were engaged in the transportation of interstate business. This is particularly true in view of the fact that the provisions of the act of congress above referred to and the Montana statute are not identical.

Very truly yours,
ALBERT J. GALEN.
Attorney General.