

**Sleeping Cars, License Of. License Tax, Sleeping Cars.
Cars, Sleeping, License Of.**

The provisions of Chap. 141, Laws of 1911, apply only to sleeping cars used in purely local or intrastate business.

January 11, 1912.

Hon. Elmer E. Esselstyn,
State Treasurer,
Helena, Montana.

Dear Sir:

I am in receipt of your letter of the 2nd inst., with which you transmit for my examination affidavits from the N. P. Ry. Co., the C. B. & Q., the C. M. & P. S. and the Oregon Short Line Railroad Companies setting forth the number of sleeping cars used by their respective roads within the State of Montana, such report having been made pursuant to the provisions of Chap. 141, Laws of 1911. You further call my attention to the fact that Section 1 of said Chapter provides for the payment of \$100.00 for each car used and that the payment of this license does not accompany the affidavit as provided for under said section, and you ask for advice as to what, if any, action is necessary to be taken.

Upon examination of the affidavits enclosed with your communication it appears that all of the cars that have been operated by either of the above named roads within the State of Montana subsequent to the passage of the act in question and prior to the date of the execution of such affidavit and report, were used in interstate business and that no sleeping car was used by either of said companies in purely local or intrastate business.

Chapter 141, Laws of 1911, provides:

"Every person, association or corporation engaged in the business of operating sleeping cars, carrying passengers from one point to another within the State of Montana shall pay into the state treasury * * * * a license tax, etc."

The license tax is imposed upon the sleeping cars used by the licensee in the conduct of such business from one point in the state to another. The important language of Section 1, of said act is:

"Every * * * * corporation engaged in the business * * * * from one point to another within the State of Montana."

It is my opinion that the question involved in this inquiry has been clearly passed upon by the supreme court of this state, under statute similar in character, in the case of State vs. R. M. B. Tel. Co., 27 Mont. 494. That action was brought under Section 4071 of the Political Code as amended by the act of the Fifth Legislative Assembly approved March 6th, 1897 (Laws of 1897, page 202), which provided that every person, corporation or association doing business in this state as a telephone company must pay a license in each county where such business is transacted of 75c per year for each instrument in use. And

in the opinion rendered by the court in that case this language was used:

"It is to be presumed that in enacting Section 4071 above, and in using therein the terms 'doing business in this state,' the legislature did so in view of the constitutional provision conferring upon congress the sole power to regulate interstate commerce, and it will not be implied that it intended to go beyond its lawful powers, in the absence of express statutory terms directly contravening those provisions."

"It cannot be said that the language used in Section 4071, above, expresses any intention on the part of the legislature to transgress the provisions of the constitution above referred to, and no presumption of that kind will be indulged."

State vs. R. M. B. Tel. Co. 27 Mont. 394.

Upon the authority then of the above cited case it is my opinion that the evident intention of the legislature in passing Chapter 141, Laws of 1911, was to impose the license tax of \$100 on each sleeping car used in purely local or intrastate business and that as to sleeping cars used in interstate business it was intended to have no application whatever.

The reports of the companies above named show that all of the cars used by them were used in interstate business and that they operated no sleeping cars in purely local or intrastate business within the period of time covered by the report. There is nothing for you to do but to receive and file the report, no license tax being required under the act in question for either of the cars referred to in either of the reports.

I return you herewith the reports which accompanied your letter.

Yours very truly,

ALBERT J. GALEN,

Attorney General.