

**Weights and Measures, Applicability to Railroads Operating
in the State.**

Railroad companies doing an interstate business are exempt from the payment of the inspection fee required by the weights and measures law.

August 21, 1912.

Honorable C. L. Crum,
County Attorney,
Forsyth, Montana.

Dear Sir:

I am in receipt of your letter of August 9th relating to,

“The application of the weights and measures law of the State of Montana as contained in Chapter 34, Laws of 1911, to railroads operating within or through the State of Montana.

This question has been the subject of such consideration in this office and we have not heretofore given any official opinion relating

thereto for the reason that we thought some adjustment might be made or agreement reached with the railroad companies that would obviate any conflict, for it must be admitted that the law is at least uncertain as to just what it does apply. Sec. 9 of the Act makes the provisions applicable to,

"Instruments or measurements used or employed within the State * * * * in determining the size, quantity, extent, area, or measurement of quantities, things, produce, articles for distribution or consumption offered or submitted by such person or persons for sale, for hire or award."

The words "sale," "hire" and "award" seem to be the controlling words in this section in the granting of power and authority therein given to the Sealer of Weights and Measures. Each of these terms has a specific meaning both in law and in business transactions and none of these meanings include transportation or freight charges.

35 Cyc 25;

7 Words and Phrases 6291;

21 Cyc 437;

4 Words and Phrases; 3309;

Wheeler vs. Clinton Co., 60 N. W. 207; 92 Ia. 44;

4 Cyc 1076;

1 Words and Phrases 656;

Goods left with a railroad company for transportation are neither sold hired nor awarded within the commonly accepted and legal meaning of these terms and if the context of said Chap. 34 gives to these words a different meaning from that employed in business transactions or in legal procedure or interpretation of law so as to make them include for the purposes of the Act freight charges, and it is possible that the language of the Act may do this, then the chapter is applicable to roads operating wholly within the state, that is, intrastate roads, but as applied to transcontinental lines or interstate roads the question of interstate commerce is injected which throws additional doubt upon the question as applied to the latter class of railroads. And we must here keep in mind the fact that this is a penal statute and must be strictly construed. There is almost a dearth of decisions relating to the construction of such statutes. We have only been able to find two decisions having direct reference to the construction of the power and authority vested by such statutes and these are largely on the question of strict construction.

S. W. R. R. Co. vs. Cohen, 49 Ga. 627.

Jos. Hettenback vs. N. Y. Cen. & Hudson R. R. Co., 25 N.

Y. 129; 18 Hun. 129.

However, the Supreme Court of Montana it seems to us has considered a somewhat similar question in *State vs. Rocky Mountain Bell Telephone Co.*, 27 Mont. 394. The Court held that a telephone instrument used in interstate business was not subject to the state license tax, and from the language of the court in its endorsement of quotations of decisions from other courts, the holding seems to be made that where an instrument is used for both interstate and intrastate business

it is still exempt from the state license tax unless the law imposes a tax upon only that part of the business within the State. We are not able to see any difference in the principle between a telephone instrument or a weighing or measuring instrument, and are, therefore, forced to the conclusion that while we may be able to enforce the provisions of this law as to intrastate roads that we will not be able to enforce its provisions as to interstate roads.

However, if you desire to bring an action to test this law we will not in any manner hamper your efforts but we will be glad to render you such assistance as we may be able, but the above is the conclusion reached here relative to the construction and operation of this statute.

Yours very truly,

ALBERT J. GALEN,

Attorney General.