

Board of Railroad Commissioners, Authority of Over Electric Street Railways. Electric Street Railways, Authority of Railway Commission Over.

At the time of the passage of Sec. 4373 of the Revised Codes, Street Railways were being operated in many of the cities of the state, but the legislature omitted to expressly include them within the jurisdiction of the railroad commission. The terms of the statute are not broad enough to include them unless expressly mentioned, therefore, the commission has no jurisdiction over street railway lines operated within the limits of a city or town.

December 28th, 1912.

Railroad Commission of Montana,

Helena, Montana.

Gentlemen:

I am in receipt of your letter of the 20th inst., requesting my official opinion as to whether or not your commission has jurisdiction over electric street railways.

Sec. 4373 of the Revised Codes provides as follows:

"The provisions of this act shall apply to the transportation of passengers and property between points within this state, and to the receiving, switching, delivering, storing and handling of such property, and to all charges connected therewith, and shall apply to railroad companies, express companies, car companies, sleeping car companies, freight and freight line companies, and to any shipments of property made from any point within this state to any other point within this state, whether the transportation of the same shall be wholly within this state, or partly within this state and partly within an adjoining state or states. The term 'transportation' shall include all instrumentalities of shipment or carriage. The term 'railroad' shall be taken to mean any corporation, company or individual owning or operating any railroad, in whole or in part, in this state. It shall also include express companies and sleeping car companies. The term 'board' in this act shall be taken to mean the board of railroad commissioners

of the State of Montana. The provisions of this act shall apply to all persons, firms or companies, incorporated or otherwise, that shall do business as common carriers upon any of the lines of railroad in this state."

It is apparent the controlling feature of this section is that the powers of the railroad commission apply only to the "transportation of passengers and property between points within this state." The word "points," as used in this section, must be construed to mean the same as "places." A city or town is regarded in law as one place or point, and, therefore, the transportation of persons or property by street railway, regardless of the motive power, within the limits of a city or town would not be transportation between points within this state, and the railroad commission would have no jurisdiction over it.

At the time of the passage of this act by the Legislative Assembly, street railways were being operated in many of the cities of the state, but the Legislature omitted to expressly include them within the jurisdiction of the railroad commission, and as the terms of the statute are not broad enough to include them, unless expressly mentioned, it is my opinion that your commission has no jurisdiction over street railway lines operated within the limits of a city or town.

See Board of Railway Commissioners v. Market, 64 Pac. 1065.

San Francisco Electric Railway Company v. Scott, 75 Pac. 575.

Very truly yours,

D. M. KELLY,
Attorney General.