

Railroad and Public Service Commission, Authority of in Certain Cases. Telephone Systems, Consolidation of. Consolidation, of Telephone Systems.

Under the provisions of Section 4402, Revised Codes, telegraph or telephone companies are not permitted to consolidate, with or hold controlling interests in the stocks or bonds of a

competing line. There is no objection to two or more companies connecting their lines for the convenience of patrons. The railroad and public service commission has no authority to compel a connection, but if a connection should be made, the commission would have authority to establish a joint rate.

May 29th, 1913.

Hon. Railroad and Public Service Commission,
Helena, Montana.

Gentlemen:

I beg to acknowledge receipt of your communication under date of the 27th instant, advising me that there are two telephone systems operating in the City of Hamilton, Ravalli County, to-wit: the Bell and Independent, and that the citizens of that community have requested your honorable commission to cause the companies to be consolidated in order that the citizens may not be compelled to pay for the two services. You have requested my opinion as to whether or not you have such authority. You correctly note in your letter that the statute creating the public utility commission does not give you express authority to compel or even to authorize such a consolidation. In my opinion such a power can not be inferred from any provision in the public utilities act. In this connection I call your attention to Secs. 4401 and 4402 of the Revised Codes, providing as follows:

"Any association or corporation, or the lessees or managers thereof, organized for the purpose, or any individual, shall have the right to construct and maintain lines of telegraph or telephone within this state, and connect the same with other lines, and in case such persons or corporations cannot agree as to the compensation to be paid for the privilege of such connection, the acquiring of the right by the one to use the line of the other may be had in proceedings under the Code of Civil Procedure, and the damage assessed and the right of connection granted, as provided in the Code of Civil Procedure.

"No telegraph or telephone company shall consolidate with, or hold a controlling interest in the stock or bonds of any other telegraph or telephone company owning or having the control of a competing line, or acquire by purchase or otherwise any other competing line of telegraph or telephone."

The above sections have not been expressly repealed by any subsequent act of the Legislature, and in my opinion they have not been repealed by implication. They, therefore, remain the law of the state, and forbid the consolidation of competing telephone lines. You will observe, however, from the section first quoted that there is no objection to the two companies connecting their lines so that the patrons of the one line may be able to telephone to patrons on the other, and thus be relieved of the burden and cost of maintaining a double service, with its attendant inconveniences, concerning which

complaint is made, and from which relief is sought. While I am of the opinion that your honorable commission has no power to compel a connection between competing telephone lines, I am also of the opinion that if the connection be made, your commission will have authority, under Sec. 17 of Chap. 52, Laws of 1913, to establish a joint rate.

Very truly yours,

D. M. KELLY,
Attorney General.