

Railroad and Public Service Commission, Authority of. Industrial Spurs, Construction of by Order.

The law of 1913 does not repeal, abrogate or limit the authority granted the commission by the law of 1909.

August 4th, 1913.

Railroad and Public Service Commission,
Helena, Montana.

Gentlemen:

I beg to acknowledge receipt of yours of the 1st instant, by R. F. McLaren, Secretary, submitting the question of whether Sec. 4 of Chap. 136, Laws of 1909, giving to you the authority to require industrial spurs to be constructed to industries under certain conditions, has been repealed, abrogated or limited by any subsequent enactment of the legislature, and especially by Chap. 105, Session Laws of 1913.

I have made a careful examination of the law relating to the subjects of spurs, switches, etc., giving especial attention to your authority over the same, and the two provisions mentioned are the only ones which deal directly with the matter. The question here involved is largely one of definition. The legislature has used the terms "industrial or commercial spurs" in the law of 1909, and the terms "public loading or unloading tracks" in the law of 1913. These terms seem to be somewhat technical, and while it may be said that all industrial or commercial spurs would be used for loading and unloading they would not necessarily be public, and it is more than probable that they would not be ordinarily. As I understand the term, an industrial spur would be one built from the line of the railroad to some specialized industry and for the purpose of serving that industry, as for example, a spur built to a brick yard, a quarry or a mine, while a public loading track would be one not built with the view of serving some one industry but for the use of the public generally.

In other words, when the legislature enacted the law of 1913 I think they had in mind a different matter than that covered by the law of 1909, and merely meant to extend the power of the commission in the matter of building loading tracks. It is to be observed that the law of 1913 gives the commission authority to compel railroads to construct or extend public loading tracks at stations, while the law of 1909 gives them power to order a spur built to an industry if such industry happens to be located at a point between stations which are seven or more miles apart.

You are therefore advised that the law of 1913 does not repeal, abrogate or limit the commission's authority granted by the law of 1909, and your construction thereon, as indicated in your letter, is correct.

Yours very truly,

D. M. KELLY,
Attorney General.