Competing Telephone Companies, Physical Connection of.

The public utilities commission has no power to order a physical connection of two competing telephone companies.

September 29th, 1913.

Honorable Public Service Commission,
Helena, Montana.

Gentlemen:

I beg to acknowledge receipt of yours of the 19th instant, submitting for my consideration the question as to whether your commission as the right to order a physical connection made between two competing telephone companies, under the provisions of Sec. 19, Chap. 52, of the Session Laws of 1913.

As you observe, I held in an opinion to you, under date of May 29th, 1913, that the statute creating the public utility commission did not give you authority to order such a connection. I am still of the same opinion. Such a power as you speak of, contemplating as it does a very far reaching regulation as to the use of private property, must either be found in an express delegation from the legislature or by such clear implication that no other construction of the language is reasonably possible. The Wisconsin law has a provision which is word for word identical with that portion of Chapter 19 of the Montana law quoted by you. In addition to this, the Wisconsin law has an express provision providing that the commission may order a joint or common use of facilities, when in their judgment the same is feasible and for the public benefit. Sec. 1797, M. 4, Chap. 499, Laws 1909 (Wis.) Nowhere in the Montana law do we find any express power lodged in the commission to order such a connection. At most it can only be implied, or inferred from the language of Sec. 19.

As I understand the question involved in the case submitted by you, no complaint is made that the rates charged by either of the companies separately are subject to any of the criticisms enumerated in Sec. 19 of Chap. 52, Session Laws of 1913. The only complaint made is that the residents of Hamilton are put to the necessity of subscribing to two phones. This is not the fault of any law or of any "regulation, rate, practice, act or service" imposed, done or carried on by either of these companies as a separate entity. It can hardly be said that a refusal of one company to connect its lines with another is an unreasonable regulation, practice or act. The law provides a sufficient means by which one company may gain the right to use the facilities of the other in transmitting messages, to-wit: that of eminent domain. It was held by Judge Hunt in a case before the federal court (Billings Independent Telephone Co. v. Rocky Mountain Bell Telephone Co., 155 Fed. 207) that such an action would lie, and a court might decide what under the circumstances was proper compensation for such use.

You are, therefore, advised that because Chap. 52 of the Laws of 1913 does not expressly give to your commission the power to order a connection made between two competing telephone lines, and

for the reason that Secs. 4401 and 4402 prohibit the consolidation of such companies, and expressly provide that one company may, in a proper proceeding, condemn a right to use the facilities of a competing company, and for the reason that the language of Sec. 19 of said Chap. 52 refers to the service acts and regulations of separate and individual companies, and cannot be by a reasonable implication held to repeal Secs. 4401 and 4402 of the Revised Codes, I am of the opinion that your commission has no power, under the provisions of said Chap. 52 of the Session Laws of the Thirteenth Legislative Assembly to order such a connection made.

Yours very truly,

D. M. KELLY,
Attorney General.