

Railroads, Regulation of. Nine Hour Law, Application of.
Application, of Nine Hour Law to Railroads Doing Interstate
Business.

Chapter 108, Session Laws of the Thirteenth Legislative Assembly, is inapplicable to women employed as telegraph operators in the offices of railroads engaged in interstate commerce, because congress by the act of March 4th, 1907, (34 Stats. at Large, 1415) made a regulation concerning this matter.

March 16th, 1914.

Honorable Railroad and Public Service Commission,
Helena, Montana.

Gentlemen:

I am in receipt of your communication under date of the 3rd instant, submitting for my opinion the question of whether Chap. 108, Session Laws of the Thirteenth Legislative Assembly, which is
"An act regulating and limiting the hours of employment for
female employes * * *"

Is applicable to women employed as telegraph operators in railroad work, in view of the federal act of March 4th, 1907, 34 Statutes at Large, 1415? The last named act permits telegraph operators being on duty not to exceed thirteen hours at stations operated only during the daytime. The Supreme Court of the United States has many times decided that matters which are expressly within the jurisdiction of congress, under the terms of the federal constitution, are not within the jurisdiction of the state legislature, when once congress has exercised the power delegated to it. Interstate commerce is distinctly one of the matters over which the federal congress has exclusive jurisdiction, and state legislatures cannot legislate in regard thereto, if congress has passed any law or regulation regarding the same; nor is state legislation upon such subjects of any force or effect after congress acts, even though the state law upon the subject precedes the federal act in point of time. An act of congress upon subjects within its delegated powers supersedes all state enactments upon the same subject.

The Supreme Court of the United States has in a very recent case passed upon a similar subject, to-wit: the sixteen hour law, relating to railroad employes, passed by the legislature of the State of Washington.

"The right of a state to apply its police power for the purpose of regulating interstate commerce in a case like this exists only from the silence of congress on the subject, and ceases when congress acts on the subject or manifests its purpose to call into play its exclusive power."

N. P. Ry. Co. v. Wash., 222 U. S. 376, approving State v. N. P. Ry. Co., 111 S. W. 500, and State v. C. M. & St. P. Ry. Co., 136 Wis. 401.

In a very recent case our own supreme court in the case of State v. Harper, 138 Pac. 493, has followed the doctrine laid down in the quotation above. You are therefore advised that Chap. 108, Session Laws of the Thirteenth Legislative Assembly, in so far as it attempts to regulate the hours of employes whose employers are engaged in interstate commerce, is of no effect, in view of the fact that the federal congress had previously passed an act covering the same subject.

Yours very truly,

D. M. KELLY,
Attorney General.