

**Interstate Commerce, What Is. Railroad Commission, Powers of. Interstate Shipments, Railroad Commission Has No Power Over.**

A shipment of freight having its initial and terminal points within the state of Montana is interstate commerce if any portion of the route over which it passes lies without the boundaries of this state, and the railroad commission would have no authority to make rates concerning it.

May 13, 1914.

Hon. Board of Railroad Commissioners,  
Helena, Montana.

Gentlemen:

I am in receipt of your communication under date of the 6th instant, asking for my opinion as to whether a shipment having its initial and terminal points within the State of Montana, but which is carried for a portion of the distance through an adjoining state, is subject to the regulation of your commission in the matter of rates.

I note that you quote that portion of Section 11 of Chapter 37, Laws of 1907, which says that the provisions of the act shall apply:

“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.”

I note also that the distance of the shipment in the adjoining state in the case mentioned by you is only four or five miles. An examination of the authorities upon this subject shows that the courts and the interstate commerce commission have held in several cases that such a state of facts constitutes such a shipment interstate commerce, and that a state commission can have no authority over such shipments. It was held by the Supreme Court of the United States in one case that a railway company operating such a line, can maintain an action for equitable relief, restraining the state commission from fixing and enforcing rates between points within the state when the transportation is partly without the state, under conditions which showed that sixty-two out of one hundred and sixteen miles of such transportation were in another state.

Hanley vs. Kansas City, Southern Railway Co., 187 U. S.  
617;

It is hard to see how the comparative distance traveled in another state could affect the principle here involved, which is that as soon as a shipment passes without the borders of this state, the authorities of this state lose all control or regulation over it. The principle is the same whether the mileage in the adjoining state be large or small. It applies as well to a distance of one mile as to a thousand.

I am, therefore, of the opinion that such transportation would be interstate commerce, and that your commission would have no authority to fix the rates for such transportation. Other cases sustaining this view, are found in

18 Fed., 10.

7 I. C. C. Rep. 92, 160;

190 U. S. 273.

Yours very truly,

D. M. KELLY,  
Attorney General