

**Railroad Commission, Powers of. Powers, of Railroad Commission. Telephones, Power of Commission to Require in Railway Depots.**

Under the statutes of this State, the Railroad Commission is without authority to order railroad companies, express companies or telegraph companies to maintain at their expense, telephones in their offices.

January 26, 1915.

Hon. Board of Railroad & Public Service Commissioners,

Helena, Montana.

Gentlemen:

I am in receipt of your communication under date the 22nd instant, in which you state that since the rendering of my opinion of March 30th, 1914, in relation to the right of telephone companies to remove telephones from railway depots, express offices and telegraph offices, several telephone companies have removed their instruments from such offices. You now ask whether it is within the authority of your commission to require common carriers to maintain telephones in their offices in the interests of reasonable service to the public. The provisions of the Code relating to the powers and duties of the Board of Railroad Commissioners, deal with the authority of the Board over rates. In addition to this, the board is given authority to investigate accidents, and by Section 4382, to require reasonable service.

"The Board shall have the power, and it shall be its duty to compel any and all railroads subject hereto, to provide, maintain and operate a sufficient train service, both freight and passenger for the proper and reasonable accommodation of the public, and to provide and maintain suitable waiting rooms for passengers and suitable rooms for freight and baggage at all stations."

The provision of the Code in regard to telephones in railroad offices, is Section 4340, Revised Codes of Montana, 1907. As pointed out in my former opinion, this section is chiefly a prohibition against not allowing telephones in such offices. There is a proviso in it, however, which it may be well to quote:

"Provided, however, that such railroad, telegraph and express companies, shall not, in the absence of an agreement to the effect be required to bear the expense incident to the installation of said telephones, or to any charges for the use thereof."

By this proviso, railroad companies, express companies and telegraph companies are expressly relieved from the burden of maintaining telephones in their offices. This must be taken as a declaration of the policy of the legislature upon this question, and I am of the opinion that in view of the language, your commission would be without authority to order railroad companies, express companies or telegraph companies to maintain at their expense such conveniences.

Yours very truly,

D. M. KELLY,

Attorney General.