

**Railroad and Public Service Commission, Jurisdiction of to Determine Law Questions. Crossing, Power of Railroad Commission to Order.**

The Railroad Commission of this State has no judicial powers; in cases where it is called upon to act,—it can only determine the question of the reasonableness of the complaint, and if the facts warrant an order, make such order as is provided for in the statute.

February 4, 1915.

Hon. Railroad and Public Service Commission,  
Helena, Montana.

Gentlemen:

I am in receipt of your letter of the 11th ult., together with a portion of the transcript of the proceedings had at a hearing by your Commission at the town of Scobey, touching the necessity for a certain crossing over the tracks of the Great Northern Railway Company at that point. The transcript shows the motion made by counsel for the railroad company wherein he attacks the authority of the Commission to make and order requiring the railroad company to open and maintain any crossing over its tracks, and alleging also that the Act of the legislature giving such power to the Commission is unconstitutional and void. You ask my opinion as to the jurisdiction of the Commission in the matter.

In reply I will say that the act creating the Railroad Commission gives it no judicial powers. You cannot do more than to take the law as you find it upon the statute books. If, after due notice to all parties, and a hearing, you find that such a crossing is necessary, the provisions of Chap. 65, Laws of 1913 authorize you to make such an order. If the railroad company feels that the order is beyond your jurisdiction, or is unreasonable, it may appeal to the courts, which are the proper tribunals to pass upon the constitutionality of legislation.

With reference to the question raised by counsel for the railroad company, you are respectfully referred to an opinion heretofore rendered you under date January 7th, 1914, found in Vol. 5, Opinions of the Attorney General, p. 396.

Yours very truly,

D. M. KELLY,  
Attorney General.