

Railroad Commission, Powers of. Cities, Towns and Villages, Highway Crossings in. Highway Crossings, Powers of Railroad Commissioners Over.

The Railroad Commission has power under Chapter 65 of the Session Laws of the Thirteenth Legislative Assembly to order highway crossings over railroads only in unincorporated communities, whether such communities have more or less than three hundred inhabitants.

February 19, 1915.

Hon. State Board of Railroad Commissioners,
Helena, Montana.

Gentlemen:

I am in receipt of your communication under date the 15th instant, asking for an interpretation of Chapter 65, Session Laws of the Thirteenth Legislative Assembly. The specific question put by you is:

Does paragraph 2 of Section 2, relate to unincorporated villages having less than three hundred inhabitants, and give your commission authority to act in regard to railway crossings in such places?"

The language of this Act is somewhat confusing, in as much as the title denotes it:

"An Act to require railroads to maintain more than one crossing where highways or streets intersect said railroads in unincorporated cities, villages and towns of more than three hundred (300) inhabitants."

The term "unincorporated cities or towns," seems to me to be an

anomaly. Section 3202, Revised Codes of Montana, 1907, says:

"A city or town is a body politic and corporate, with the general powers of a corporation, and the powers specified or necessarily implied in this title, or in special laws heretofore enacted."

The distinction between a city and a town is to be found in the next two sections. Section 3203 is:

"Every city has legislative, executive, and judicial power. Its legislative power is vested in a city council, its executive power in a mayor and his subordinate officers, and its judicial power in a police court."

Section 3204:

"Every town has legislative, executive and judicial power. Its legislative power is vested in a town council, its executive power in a mayor and his subordinate officers, and its judicial power in justices of the peace of the township in which the town is situated."

It will be noted that the two organizations are very similar, the chief difference being found in the placing of the judicial power. Examining the various legislative powers of these two classes of organizations, we find that the same powers are given to town councils, as are to city councils. Section 3259, Revised Codes of Montana, 1907. Also the executive officers are the same. Sec. 3249, R. C., 1907. Referring to Section 3259, Revised Codes, again, we find it in part as follows:

"The city or town council has power.

(8) To provide for and regulate street crossings, curbs, and gutters; to regulate and prevent the use of obstruction of streets, sidewalks and public grounds by signs, poles, wires, posting handbills or advertisements, or any obstruction.

(11) To regulate and control the laying of railroad tracts, and prohibit the use of engines and locomotives propelled by steam or otherwise, or to regulate the speed thereof when used.

(12) * * * to require the construction of crossings on the line of any railroad track or route within the city or town, the cars of which are propelled by steam or otherwise where the said tract intersects or crosses any street, alley or public highway."

From these provisions of the Code, it will be seen that there is no essential difference between cities and towns with regard to the subject matter of your letter. Cities are classified according to population from one thousand inhabitants up; towns are municipal corporations having more than three hundred and less than one thousand inhabitants. Section 3206, Revised Codes, 1907.

Under date of October 11th, 1913, I rendered an opinion in which I held that your commission had not authority to make an order requiring railroads to maintain more than one crossing in unincorporated cities or towns. In addition to the reason stated there, to-wit: that the Act in question did not include such bodies, there is the further one to be noted, that this power is expressly given to cities and towns by the sections of the Code quoted above. It follows, therefore, that your

commission has power under the Act, only in unincorporated communities. By other provisions of the Code, the power over these public highways is vested in various Boards of County Commissioners. What power your commission has over these is, therefore, concurrent or supplemental to that of the Boards of County Commissioners, and would include jurisdiction over all crossings in unincorporated communities, whether having more or less than three hundred inhabitants. This, of course, would include villages of less than three hundred inhabitants, since they could under no circumstances become incorporated.

Yours very truly,

D. M. KELLY,

Attorney General.