

Railroad Commission—Power to Compel Railroad Commission to Construct an Overhead Crossing—Overhead Crossing.

When the proceedings of the Board of County Commissioners ordering a railroad crossing to be constructed by a railroad company in accordance with Chap. 65, Laws of 1913, has been certified to the Railroad Commission and demand is made upon the Commission for the enforcement of the order, the Railroad Commission has the authority to order a hearing for the purpose of determining whether or not such a crossing is necessary.

Dec. 12th, 1917.

Railroad & Public Service Commission,
Helena, Montana.

Gentlemen:

I have your letter of the 22nd Ult. in which you submit to me all the papers and files in the matter of the County Commissioners of Gallatin County vs. The Northern Pacific Railway Company, relative to an overhead crossing which the Board of County Commissioners of Gallatin has ordered the Railway Company to construct at a point about two miles west of the City of Bozeman where the tracks of the Railroad company crosses a public highway.

You request my opinion as to whether or not you have authority to compel the Railroad Company to construct an overhead crossing where there is an established public highway, when notified by the Board of County Commissioners, in accordance with Chapter 65 of the Session Laws of 1913.

Section 2 of Chapter 65, Laws of 1913, insofar as material here, provides:

"And in case crossings are ordered by the Board of County Commissioners at intersections on highways in the country districts as herein provided for, they, the Board of County Commissioners, may notify the State board of Railroad Commissioners of the State of Montana, by a notice containing a description of the kind of crossing desired and it shall be thereupon the duty of said Board of Railroad Commissioners to enforce the provisions of this Act by appropriate proceedings in a summary manner."

When the proceedings of the Board of County Commissioners ordering a railroad crossing to be constructed by a railroad company in accordance with Chapter 65, Laws of 1913, has been certified to you, and demand is made upon you for the enforcement of such order, it is my opinion that you have authority to and should order a hearing for the purpose of determining whether or not a crossing of the character ordered by the Board of County Commissioners is necessary. After hearing the matter you may order the Railroad Company to construct a crossing which complies with the order of the Board of County Commissioners or you may order the Railroad Company to construct such crossings as you may deem necessary and proper for the public safety, convenience, and welfare.

In giving your notice of hearing to the Railroad Company you should attach a copy of the records of the proceedings of the Board of County Commissioners which they have certified to you, and make the same a part of your notice of hearing.

Respectfully,

S. C. FORD,

Attorney General.