

Railroad Commission—Power of Railroad Commission to Compel a Railway to Build Spur Tracks.

The Board of Railroad Commissioners have the power and authority after notice and hearing to compel railroad companies to construct spurs, not exceeding two miles in length, at stations.

Dec. 14th, 1917.

Railroad and Public Service Commission,
Helena, Montana.

Gentlemen:

I am in receipt of your letter of recent date in which you state:

"The Commission is in receipt of a query that we would be pleased to have you investigate and advise fully in regard to same, viz:

"Have you the authority to compel a railway company to build and operate a railroad to a coal mine, which is not to exceed one mile distant from another coal mine railway now built and in operation? Let me state that the grades are feasible, but it is probable that a right-of-way would have to be obtained by legal proceedings, and, as I understand it, the owner of a coal mine has no Right to Eminent Domain, therefore could not himself have said right-of-way condemned. Let me recapitulate:

"1st. Am I right that the owner of a coal mine has *not* the right to condemn a right-of-way for a railway of this kind?

"2nd. What rights have a railway company in such a case?

"3rd. What powers have your board to compel a railway company to go the limit of their rights to condemn such right-of-way and build such a railroad?"

In Section 7331, Revised Statutes of Montana, 1907, the Legislature has included among the public uses for which private property may be taken by the exercise of the right of eminent domain, roads, tunnels, ditches, flumes, pipes and dumping places for working mines, mills, etc. By the Constitution it is declared that all railroads shall be public highways, and all railroad companies shall be public carriers (Const. Art. 15, Sec. 5), and that all persons shall have equal right to have persons or property transported on and over any railroad (Const. Art. 15, Sec. 7).

In view of these express statutory and constitutional provisions, and in view of the cases decided by our supreme court discussing analogous questions, (*Butte, Anaconda & Pac. Ry. vs. Montana W. Ry. Co.* 16 Mont., 504; *Kipp vs. Davis-Daly Cop. Co.* 41 Mont., 509), I am of the opinion that an owner of a coal mine may exercise the power of eminent domain in securing a right-of-way for a railroad spur extending from his mine to a public highway, and a railroad company may acquire, by the exercise of the right of eminent domain, right-of-way for its lateral lines extending to mines and smelters, owned by private persons.

The Commission has power to require railroad companies operating in Montana to build spur tracks as is found in Section IV of Chapter 136, Session Laws of 1909, wherein the power and authority of the Commission is extended so as to include the power to require railroad companies to construct spurs and sidings in certain cases, said Act provides as follows:

"The Railroad Commission * * * shall have power and authority * * * to compel railroad companies operating in the state of Montana to construct industrial or commercial spurs to industries when there is or will be sufficient traffic to require such facilities, provided, however, that any such industrial or commercial spur will not exceed one mile in length from headlock to end of track, and shall be constructed pursuant to the usual and customary contract of the particular railroad company in constructing such spurs, and provided further, that such industrial or commercial spur shall not be ordered constructed except within the limits of extreme switches of stations or yards, or at sidings *unless such station, yards, sidings or spurs are more than seven miles apart*, nor unless such spurs can be so placed as to be reasonably safe and not unnecessarily interfere with main line operation."

The powers and authority of the Commission relative to the construction of spur tracks is further extended by the provisions of Sec. 1, Chapter 135, Act of 1917, which provides as follows:

"The Board of Railroad Commissioners of the State of Montana shall have power and authority to, after such investigation as they may deem necessary, and under such rules and regulations as they may establish with reference thereto, to compel railroads or railways or other companies or corporations operating or holding themselves out to be common carriers in the State of Montana, to extend or construct commercial or industrial spurs from constructed lines or tracks at stations or from within station limits; provided, the length of such commercial or industrial spur or tracks shall be not to exceed two miles from the headlock to end of track."

It is therefore my opinion that the Board of Railroad Commissioners has the power and authority, after notice and hearing, to compel railroad companies to construct spurs, not exceeding two miles in length, at stations.

Respectfully,

S. C. FORD,

Attorney General.