

Railroad Commissioners, Powers Of—Track Scales, Installation Of.

The Railroad Commission of this state is without authority to compel a railroad company to install track scales.

Oct. 9, 1919.

Montana Railroad Commission,
Building.

Gentlemen:

I have your letter in which you require an opinion as to whether or not you have the power to compel a railroad company to install track scales for the purpose of weighing or re-weighing of carload freight transported by said railroad company. Your letter has special reference to the Montana, Wyoming and Southern Railroad Company.

The powers which a Railroad Commission has and which it may exercise is derived solely from the Act creating it. Unless authority is found in the Act creating the Commission, it cannot be inferred. The general rule of law is stated as follows:

"It is universally held that a Railroad Commission is a mere administrative or advisory board created to carry out the will of the legislature and that before it can do any act, it must be able to point to its grant of power from the legislature, which power must affirmatively appear and must be given in clear and express terms and nothing will be had by inference."

Gulf and Sir Company vs. Railroad Commission, 94 Miss. 124, 49 So. 118;

Miss. R. Com. vs. Ill. Cent. R. Co. (Miss.) 74 So. 676.

Public Service Companies by Collier, Chapter 34.

I have carefully examined the statutes creating and regulating the Montana Railroad Commission. In these statutes I cannot find any language which, even by reasonable inference, would give the Railroad Commission power to compel a railroad to instal a track scale of any kind. The only mention made of a scale in the statutes governing the Railroad Commission is found in Section 4 of Chapter 26, Laws of 1913. This section reads as follows:

"Every railroad company shall allow suitable scales to be erected, either upon the platform or upon the grounds adjacent thereto, if upon their right of way, for weighing and shipping purposes."

This Act, of course, does not contemplate the kind of scale you have in mind, and even then it does not attempt to compel a railroad company to instal the kind of scale to which it has reference.

You are therefore advised that the Railroad Commission is without authority to compel a railroad to instal track scales.

Respectfully,

S. C. FORD,

Attorney General.