

**Opinion No. 62.****Public Service Commission—Common  
Carriers—Jurisdiction—Pipe Lines—  
Transportation for Hire—Re-  
fined Petroleum Products**

HELD: The Board of Railroad Commissioners has jurisdiction to regulate pipe lines transporting refined petroleum products for hire within the boundaries of the State of Montana.

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February 11, 1954.

Mr. James B. Patten  
Secretary-Counsel  
Board of Railroad Commissioners  
State Capitol Building  
Helena, Montana

Dear Mr. Patten:

Your predecessor has requested my opinion as follows:

"Is a proposed pipe line to be used for the carrying of refined petroleum products for hire a pipe line carrier subject to the jurisdiction of the Public Service Commission of Montana similar to pipe line carriers of crude petroleum?"

You state that a pipe line is to be constructed for the transportation of refined petroleum products on an intrastate basis. The line is to extend from Billings, Montana, to Spokane, Washington. The transportation will be initiated in Billings, Montana, and the products will be sold at various terminals along the line in Montana and Washington. A large portion of the products will be transported solely within the boundaries of the State of Montana. Three large reservoir centers are to be constructed in Bozeman, Helena and Missoula. From these reservoirs the products will be trucked to various points in Montana. The line

and its capacities will be available for use of all those who wish to utilize the facilities, and the products transported will be paid for in the manner and the mode of other transportation conveyances.

The question resolves itself as such: Is the proposed pipe line a common carrier for the intra-state transportation of refined petroleum products and as such is it subject to the jurisdiction of the Montana Public Service Commission?

In Chapter 2 of Title 8, R. C. M., 1947, jurisdiction over pipe line carriers is conferred upon the Board of Railroad Commissioners for the State of Montana. Section 8-201, R. C. M., 1947, defines common carriers of oil, but sub-sections (a), (b), (c) and (d) thereof apply specifically to the carriers of crude petroleum. However, sub-section (e) is more comprehensive, and is set forth as follows:

"8-201. Common Carriers Of Oil Defined. Every person, firm, corporation, limited partnership, joint-stock association or association of any kind whatever:

" \* \* \* \* \*

"(e) Made a common carrier by or under the terms of contract with or in pursuance of the law of the United States, is hereby declared to be a common carrier and subject to the provisions hereof, but the provisions of this Act shall not apply to those pipe lines which are limited in their use to the wells, stations, plants and refineries of the owner and which are not a part of the pipe line transportation system of any common carrier as herein defined; nor shall such provisions apply to any property of such a common carrier which is not a part of or necessarily incident to its pipe line transportation system." Emphasis supplied.)

The Interstate Commerce Act, as set forth in Title 49, U. S. C. A. defines common carriers and also those carriers subject to the jurisdiction of the Interstate Commerce Commission. Title 49, Chapter 1, Section 1, sub-section (1) (b) and sub-section (3) defines common carriers. The pertinent portions are herein set forth:

"(1) Carriers Subject to Regulation. The provisions of this chapter shall apply to common carriers engaged in—

" \* \* \* "

"(b) The transportation of oil or other commodity, except water and except natural or artificial gas, by pipe line, or partly by pipe line and partly by railroad or by water: or  
" \* \* \* ." (Emphasis supplied.)

"(3) Definitions. The term 'common carrier' as used in this chapter shall include all pipe-line companies; . . . and all persons, natural or artificial, engaged in such transportation or transmission as aforesaid as common carriers for hire . . ."

In view of the foregoing statutes, it is clear that the proposed pipe line is a common carrier of refined petroleum products for hire within the definition as set forth in Section 8-201, *supra*, as read in conjunction with the pertinent portions of Title 49, U. S. C. A., above quoted.

It is apparent that the Legislature, in enacting the statute in 1921 did not foresee the possibilities of transporting refined petroleum products by pipe line, but it appears by the statutes referred to that the referenced Legislature allowed sufficient latitude to control the situation which has now developed, although the principal intent of the chapter was to regulate the common carriers of crude petroleum.

It is, therefore, my opinion that the Board of Railroad Commissioners, ex-officio Public Service Commission for the State of Montana, has jurisdiction to regulate pipe lines transporting refined petroleum products for hire within the State of Montana.