

**OPINION
47-200**

August 19, 1947 (OPINION)

RAILROAD

RE: Full Train Crew Law

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Your letter under date of August 13, 1947, addressed to the North Dakota Public Service Commission, has been referred to the attorney general's office for attention and reply.

In your letter you say that the Midland Continental Railroad Company operates "four regular mixed trains, caboose used for handling express, mail and passengers"; that the same crew consisting of one engineer, one conductor, and one brakeman operate these trains and that on occasions the company runs a bus manned by one employee and in addition operates a freight train as an extra, Jamestown to Edgeley and return; that this bus is equipped with draw bars and is capable of pulling one or more standard railroad cars.

You desire to be informed whether the operation of trains, as described in your letter, by the Midland Continental Railroad Company meets with the full crew requirements of chapter 49-13, of the 1943 Revised Code.

Sections 49-1309, 49-1310, and 49-1311 prescribe the number of persons who shall constitute train crews. Each section is applicable only to railroads which operate more than four trains in twenty-four hours. Section 49-1309 prescribes the train crews for freight trains of over forty cars; section 49-1310 prescribes the train crew required for the operation of freight or mixed trains of under forty cars and also prescribes the crew required for the operation of a light engine; and section 49-1311 prescribes the crew required for the operation of "any passenger train consisting of more than four passenger or other cars".

But as stated, each section (sections 49-1309, 49-1310, and 49-1311) is applicable to railroads which operate "more than four trains in any twenty-four consecutive hours". It would, therefore, appear that the so-called "full train crew" provisions of chapter 49-13, of the 1943 Revised Code, are not applicable to railroads which operate four trains or less in any twenty-four consecutive hours. And if I read your correctly, the Midland Continental Railroad Company does not operate more than four trains in any twenty-four consecutive hours.

Section 49-1312 of the 1943 Revised Code provides:

"Any railroad corporation doing business in this state which shall send out, or cause or permit to be sent out or operated on its road, any train which is not manned in accordance with section 49-1309, 49-1310, and 49-1311 shall be liable in treble damages for any sickness, injury, loss, disability, or accident resulting from or caused by the violation of any of the

provisions of the sections therein mentioned ****."

Section 49-1315, of the 1943 Revised Code prescribes the penalty for violation of safety regulations of the provisions of various sections of chapter 49-13. But as stated, the full crew requirements of said chapter relate to railroads operating more than four trains in any twenty-four hours. Therefore, in the absence of a showing that the Midland Continental Railroad Company operates more than four trains in "any twenty-four consecutive hours", it is my opinion that the full crew law is not being violated by this railroad company.

NELS G. JOHNSON

Attorney General