

Railroads, Assessment Of. Assessment of Railroads. State Board of Equalization, Power of Assessment.

A projected line of railroad or one in process of building is not taxable by the State Board of Equalization until it is completed so as to come within the meaning of the term "railroad."

Helena, Montana, May 22, 1907.

State Board of Equalization,
Helena, Montana.

Gentlemen:—

I am in receipt of the letter addressed to you by the Tax Commissioner of the Great Northern Railway Company, which you have turned over to this department, and submit the proposition as to how the property named in the letter should be returned for taxation.

It appears from the facts stated in the letter that a 'line of railroad

between Billings and Great Falls, which will extend through the counties of Yellowstone, Meagher, Fergus and Cascade," is now being constructed by "The Billings and Northern Railway Company." I also understand that this road was on the first Monday in March, 1907, not completed to the extent of permitting the passage of trains over the same. I am not informed as to whether this particular road is a part of the Great Northern Railway Company's property, or whether it is owned by an independent company, but it is rather indicated from the statement that it is the property of "The Billings and Northern Railway Company."

The question arising is "should such property be returned for taxation as a railroad, or should it be returned to the county assessors of the various counties and be assessed for taxation as other similar property is assessed in said counties."

Section 3737, Political Code, provides for the assessment of railroad property by the State Board, and contains many requirements which could not be complied with by a company owning a road in process of construction.

"The common understanding of a railroad is that it is a graded road or way on which rails of iron or steel are laid for the wheels of cars to run upon, carrying heavy loads, usually propelled by steam."

Funks vs. St. Paul City Railway Co., 61 Minn. 435, 52 Am. St. Repts. 608.

And this definition, except as to the motive power, was impliedly adopted by the Supreme Court of Montana in *Daly Bank and Trust Co. vs. Great Falls Street Railway Co.*, 32 Mont. 298.

In *Peoria & P. U. Ry. Co. vs. Tamplin*, 156 Ill. 285, 40 N. E. 960, the court said:

"A railroad is a road especially laid out and graded, having parallel rails of iron or steel for the wheels of carriages or cars, drawn by steam or other motive power, to run upon."

And it has also been said:

"In a broader sense a railroad includes all the land, works, buildings and machinery required for the support and use of the road and way, with its rails."

Chicago St. L. & P. R. vs. Eisert, 127 Ind. 156, 26 N. E. 759.

It is quite apparent from the statute and decisions above referred to that the mere fact that the company owns a strip of land through the country, on which grading is being done, and along which ties and rails are being distributed, does not constitute a railroad. Nor would the fact that some of the ties or rails have been put in place, or that the company owned rolling stock to be used upon the road when completed, necessarily make of it a railroad. But we take it that before the way can be properly classed as a railroad the "parallel rails" must be placed in position so as to admit of "the wheels of carriages" passing over them when drawn by motive power.

From the above statement of facts and law the conclusion is reached that the property of said company should be returned to the

county assessors to be assessed in the same manner that other similar property situated in the county is assessed, and that it is not within the province of the State Board to make any assessment thereof.

Very truly yours,

ALBERT J. GALEN,

Attorney General.