

Telephone Lines, Construction Of. Highways, Telephone Lines Constructed On.

Section 1000, Civil Code, as amended, gives authority to corporations and persons to construct telephone lines along public highways. The County Commissioners have no authority in such matter except to provide reasonable regulations as to the manner of constructing same.

Query as to right of an individual to construct a private line for exclusive use.

Helena, Montana, Aug. 24, 1907.

Hon. W. L. Ford,
County Attorney,
White Sulphur Springs, Mont.

Dear Sir:—

Your letter of the 17th inst., requesting an opinion of this office upon the following question, received:

“Has the Board of County Commissionres any power, either express or implied, to grant a license to a private individual to construct a telephone line along a public highway, that is in said public highway but along the outer edge of same?”

A corporation or a person was given the right to construct telephone lines from point to point along and upon the public highways in the State by Section 1000 of the Civil Code of Montana. This section was construed by the Supreme Court in the case of State vs. City of Red Lodge, 76 Pac. 758. Thereafter the section was amended by Chap. 55, Laws 1905, and the section as thus amended was construed by the Supreme Court in the case of State vs. City of Helena, 85 Pac. 744. And thereafter, to meet certain defects pointed out by such decision, the section was again amended by Chapter 192, Laws 1907.

From the above decisions, and from the section as it now stands, it is apparent that no license or authority need be procured from the Board of County Cimmissioners in order for a corporation or a private individual to construct a public telephone line from point to point along and upon any of the public roads, streets and highways in the State of Montana; provided, they are so constructed as not to incommode or endanger the public in the use of said roads, streets or highways.

The only authority the Board of County Commissioners would have in this matter would be that of regulating the height of the poles, or the distance same should be set from the edge of the highway so that the wires overhead would not interfere with passing vehicles or that the poles would not be placed too near the center of the road. In other words, the commissioners cannot prohibit the construction of telephone lines along the public highways, but simply have authority to make reasonable regulations regarding the manner of constructing same.

A mutual telephone, that is a telephone line constructed by a number of farmers for their own use and benefit, and for the use of persons wishing to talk to any of them, would no doubt be a public telephone the same as a road established for the use of a number of farmres is sufficient to make it a public highway.

As to whether said section 1000 was intended to authorize a person to construct a private telephone for his own use exclusively, has not been decided, nor do we find any decisions of other states upon that question. However, we are of the opinion that the law was intended to cover only public telephones or those maintained by a sufficient number of individuals to give them a quasi-public character. In any event, the law does not give the county commissioners either express or implied authority to grant a license to construct telephone lines. If

the line is a public or quasi-public line the parties constructing the same are given authority to do so by said Section 1000, subject only to reasonable regulations as to the manner of constructing the same as stated above. If said law was not intended to authorize a person to construct a private line for his exclusive use, the commissioners have no authority under any other law to grant a private person a license so to do, and if they permitted a person to construct such a private line it could be only during the pleasure of the County Commissioners and would be subject to removal at any time upon the order of the Board, whenever in the opinion of the Board, or upon a sufficient showing from persons using the highway, the same incommoded or injured the public use of such highway.

Yours very truly,

ALBERT J. GALEN,

Attorney General.