

Taxation, Franchise Subject to. Assessment, Franchise Subject to. Telephone Company, Franchise Subject to Assessment and Taxation.

Where a telephone company operates its lines through more than one county, the franchise granted by the state is subject to taxation in each county through which the telephone company operates.

Helena, Montana, August 5, 1909.

Hon. J. W. Suear,
County Attorney,
Great Falls, Montana.

Dear Sir:

I am in receipt of your letter of July 30, wherein you ask my opinion as to whether the franchise of the Rocky Mountain Bell Telephone Company is taxable in Cascade County.

I am of opinion that the franchise of the Rocky Mountain Bell Telephone Company is subject to taxation in your county.

Section 1, Article XII., of the constitution of the State of Montana, provides that all property in the state of Montana is subject to taxation, and section 16, of the same article of the constitution provides that,

"All property shall be assessed in the manner prescribed by law, except as is otherwise provided in this constitution."

Section 17, of the same article, provides as follows:

"The word property as used in this article is hereby declared

to include moneys, credits, bonds, stocks, franchises, and all matters and things," etc.

Section 2508, revised codes, after providing the manner in which railroad property shall be assessed, proceeds:

"Other franchises, if granted by the authorities of a county or city, must be assessed in the county or city within which they were granted; if granted by any other authority they must be assessed in the county in which the corporations, firms or persons owning or holding them have their principal place of business."

The interpretation to be placed on the above section seems to be that the situs of taxation of the Rocky Mountain Bell Telephone Company franchises is in the county where its principal place of business in Montana is located. However, section 2529, revised codes, provides:

"* * * telegraph, telephone and electric light lines and similar improvements, and the franchises; * * * must be listed and assessed in the county in which such property is located."

and further requires the corporation to return to the assessor a list containing the number of miles of such property operated in the county and the value thereof.

This section, standing alone, would seem to indicate that the franchise, as well as the physical property of the telephone company, is subject to taxation in any county through which it operates its lines. The franchise of the Rocky Mountain Bell Telephone Company is granted by the legislature of the state of Montana, through the provisions of section 4400, revised codes, and is not granted by the various counties through which it operates its lines. Therefore, there arises a conflict between the direction of section 2508 and that of section 2529, as to the situs of taxation of a telephone company's franchise, when the company operates in more than one county.

These two conflicting sections are both original code provisions, passed at the same time, and are included in same part, title and chapter of the code. Following the rule of construction that where two simultaneous enactments of the same law cannot be reconciled, that the later enactment shall prevail, I give it to you as my opinion that section 2529, revised codes, providing that telephone lines and the franchises must be listed and assessed in the county in which such property is located, and that the assessor of your county, when assessing the physical valuation of the telephone company's property in Cascade county, should fix a value upon its franchise to operate in that county notwithstanding the fact that the franchise is granted by the state and is not the gift of Cascade county.

In your letter of inquiry you refer me to R. M. B. Telephone Company v. City of Red Lodge, 30 Mont. 338, which you state seems to be authority for the proposition that it is unnecessary to procure a franchise to construct a telephone line in the city, and, therefore, the franchise, being of no value, would not be taxable. I do not believe the

opinion in this case is susceptible of the construction that it declares telephone companies' franchises to be valueless, but merely states the law to be that the franchise necessary for the construction of a telephone line through city streets is already granted by the state legislature through section 4400, which is simply an amendment of civil code section 1000, repeatedly referred to in the decision above mentioned.

Yours very truly,

ALBERT J. GALEN,

Attorney General.