

License, on Telegraph Instruments. Telegraph Instruments, License On. Tax, on Telegraph Instruments, Interstate Business, no License.

Chap. 61, Laws of 1911, does not impose a license tax upon telegraph instruments used in interstate business. The burden of proof, however, in case of contest is upon the telegraph company to show that the instrument taxed was used in interstate business.

June 23, 1911.

Hon. C. E. Kumpe,
State Examiner,
Helena, Mont.

Dear Sir:

I acknowledge receipt of your favor of May 29th, in which you request an opinion from this office concerning the collection of license tax upon telegraph instruments under the provisions of Chap. 1, Sec. 3, Laws of the Twelfth Legislative Assembly. I have delayed answer-

ing your communication on account of the pendency in the supreme court of this state of the case of the state of Montana v. Western Union Telegraph Company, thinking that perhaps the decision of the supreme court in that case would have some bearing upon the proposition presented by your letter. However, that case has been determined, but the question involved here was not there passed upon.

By the provisions of Sec. 3, Chap. 61, Laws of 1911, every telegraph company doing business in this state shall pay a license of five dollars per quarter for each instrument in use. From the correspondence enclosed with your communication, from the offices of the Western Union Telegraph Company at Salt Lake, it is apparent that the company contends that as their telegraph instruments are used in interstate commerce, that the same are not subject to the license tax provided for in said section. However, in view of the opinion rendered by the supreme court of this state in the case of State v. Rocky Mountain Bell Telephone Company, 27 Mont. 394, this question was passed upon and the rule laid down by the supreme court with reference to a similar tax, the tax in that case, however involving a law similar to section 2 of said Chap. 61, Laws of 1911, relating to telephone instruments, in which case the supreme court uses the following language:

"Our conclusion, therefore, is that the evident intention of the legislature in passing Section 4071 (Sec. 2773 Revised Codes, above) was to impose a license tax of seventy five cents on each telephone instrument used in purely local or intrastate business, and that as to those used in interstate business it was intended to have no application whatever."

Construing then, said Chapter 61, Laws of 1911, in the same manner, it is my opinion that the evident intention of said chapter with reference to telegraph instruments, was to impose a license tax of five dollars a quarter upon each telegraph instrument used in purely local or intrastate business, and that such license tax does not apply to instruments used in interstate business. In this connection, however, it is my opinion that the burden of proof is upon the telegraph company to show what, if any of its instruments, are used in interstate business, and the county, in collecting the tax, should impose same only upon the instruments used in local business.

I herewith return the correspondence transmitted with your letter, in accordance with your request.

Very truly yours,

ALBERT J. GALEN,

Attorney General.