

Telephone Companies, License Of. License, of Telephone Companies. Cities, What Are. Towns, What Are.

Sec. 2, Chap. 61, Laws of 1911, has not any application to towns or municipalities, except cities.

Sec. 3202 and 3206, Revised Codes, defines "city," also a "town" and the rule is there given and distinguished between the two.

June 23, 1911.

Mr. D. W. Doyle,  
County Attorney,  
Chouteau, Mont.

Dear Sir:

I am in receipt of your letter 16th inst., submitting the question:

"Should a telephone company be charged a license under the provisions of Section 2, Chapter 61, Laws of 1911, for transacting business in towns?"

It is useless to attempt to draw a distinction between the meaning of the words, 'town' and "city." It is probably true that "the word 'town' is a generic word, while a city is only a particular kind of town." These words are differently used, and given different significance in different statutes and constitutions. (1 Black. Com. 114. City of Denver v. Coulehan, (Col.), 39 Pac. 425. People against Stephens, 62 Cal. 209, Abbot's Law Dict. under heading "Town.")

The particular meaning and application of the terms in any given case, must be taken from the statute then under consideration, if from their use, a specific meaning is given or a specific application made.

In California, where kindred questions have been considered, the court has based its conclusions upon the provisions of the California constitution, and by the provision of Chapter 24, Laws of 1883, of California, all municipalities in that state, "having a population of not exceeding 3,000, shall constitute 'a city of the sixth class.'" Under this statute, all municipalities of that character in the state of California, are cities notwithstanding they may be referred to as towns. The constitution of Montana repeatedly uses the words "city," and "town," (Article 8, Section 24, Article 13, Section 6), but the constitution does not attempt to distinguish between them. The two classes of municipalities, however, are clearly recognized. Section 3202, Revised Codes, gives a specific definition of a city, also a town, and in section 3206, the rule is given for distinguishing between the two.

"Every city having a population of less than 5,000, and more than 1,000 is a city of the third class, and every municipal corporation having a population of 300 and less than 1,000, is a town."

Section 3206, Revised Codes.

This latter section is a general statute, and was in full force at the time of the enactment of said chapter 61, Laws of 1911.

"All statutes are presumed to be enacted by the legislature with full knowledge of the existing condition of the law, and with reference to it."

36 Cyc 1146, S against Wilson 132 S. W. 626.

Section 2 of said Chapter 61, provides that telephone companies doing business in cities shall pay a license, which license is graduated in amount according to the classification of cities, made in this same Section 3206, although reference is not made to the section. Said section 2 says nothing about towns, "in cities of less than 5,000 population, etc." is the last utterance of that section. Neither is the section connected in its subject matter with any other section. However, in Section 4 of the same act, reference is made to towns, in fixing license for selling water. Had it been the intention of the legislature to include towns in said section 2, that term could have been used therein as easily as it was used in said section 4 of the same act. The language of the said section is not in any manner ambiguous or un-

certain. The word "town" is not "in terms of any substance contained therein," and we cannot "insert what has been omitted," or "omit what has been inserted." Section 7875, Revised Codes.

For the reasons herein stated, I cannot reach the conclusion that said section 2 of Chapter 61, Laws of 1911, has any application to towns or to municipalities except to cities. I am therefore of the opinion that telephone companies doing business in towns as distinguished from cities, are not subject to this license tax.

Yours very truly,

ALBERT J. GALEN,

Attorney General.