

License Tax, Telephone Line. Telephone Company, License of.

Whether or not a telephone company is conducting its business within the corporate limits of a city in such manner as to render it liable for the payment of a license tax is a question of fact which must be determined from the circumstances. Mere matter of accommodation or courtesy extended by one Line to another is not of itself sufficient to render the company liable for the tax but must be a substantial part of the business for which the corporation was organized.

October 31, 1911.

Hon. Fred L. Gibson,
County Attorney,
Livingston, Mont.

Dear Sir:

I am in receipt of your letter submitting the question as to whether or not a rural telephone line in operation in your county and extending from Livingston to Clyde Park is subject to the payment of the license tax provided by Chap. 61, Session Laws of 1911.

It appears from the statement of facts that this line extends from Clyde Park to the city limits of the city of Livingston, and there makes connection with the Bell lines, but that none of the property or wires of the rural line and none of its physical property is within the limits of the city of Livingston. However, that by an arrangement with the Bell people for continuous messages, persons residing within the city of Livingston may converse with those outside of the city, and those outside of the city may talk with parties living within the city. I take it that this rural line is a public line open to the use of anyone who pays for the message sent. The provisions of said Chap. 61 relate to telephone lines and applies to every telephone company doing business within a city. If this rural line is, therefore, actually doing business within the city of Livingston, it is liable for the payment of the tax, and whether it is doing business so as to bring it within the meaning of the law is a question of fact. The decisions of the courts afford but little aid in solving the question.

"A foreign corporation having its whole road and traffic without the limits of this state, and having no office here is not a corporation doing business within this state, although tickets for passage over its road are sold by agents here."

Doty v. Mich. Cent. Ry. Co. (N. Y.) 8 Abbots Prac. 427.

"A foreign corporation leased an office in the state in which was kept about four thousand dollars worth of samples for its agents as incidental to the business of taking orders and making sales in New York. It also had an average balance of \$3470 in bank in said city. HELD, That the corporation was not doing business in the state within the law imposing a branch tax on foreign corporations doing business in the state."

People ex rel. Smith Co. v. Roberts, 50 N. Y. Sup. 355. 27 App. Div. 455.

"Doing business in this state should be construed to mean the doing of any substantial part of the business for which the corporation was organized."

People v. Mining Company, 105 N. Y. 76. 11 S. E. 155.

"A foreign corporation that consigns its goods to a commission merchant in the state, who sells them for the corporation and not for himself, the corporation not parting with the possession is 'doing business' within the state."

In re Nanantum Worsted Company, 15 Pa. Co. Ct. R. 125.

If the lines of this rural company do not enter the city of Livingston and it maintains no office therein and has no jurisdiction over the message within the city, but that the Bell people receive the messages from this company on their wires at the city limits, and the outgoing messages do not pass within the jurisdiction or control of the rural company until they pass out of the city, and there is no arrangement by which the rural company obtain pay for the messages within the city limits, then it is probably not doing business within the city, within the meaning of the law. If, however, the arrangement between the two companies is, in effect, a lease of the wire of the Bell people for the use of the rural line, so that the wires or business controlled by the rural line does extend within the city, then it is doing business within the city. Mere matter of accomodation, or courtesy, extended to the patrons of the rural line within the city would not constitute doing business, but it must be a substantial part of the business for which the corporation was organized.

It might aid some in determining the question, to ascertain whether there is an actual agency existing by which the Bell people handle business for the rural lines, or whether it is a mere matter of accomodation and courtesy, rather than an actual agency.

Very truly yours,

ALBERT J. GALEN,

Attorney General.