

**Fences, On Railroad Right of Way — Assessment of  
County Assessor—State Board of Equalization.**

Fences along railroad rights of ways should not be assessed by the County Assessor, but will be included in assessments of State Board of Equalization.

May 20th, 1919.

State Board of Equalization,  
Helena, Mont.

Gentlemen:

Receipt is acknowledged of a letter written to your board from Mr. Frank Hunter, County Attorney of Custer County, regarding assessment of fences along railroad rights of way.

Under Section 2508, and Section 2584, subdivision 5, unquestionably fences along railroad rights of way were assessable by county assessors and not by the state board of equalization. However, all of Sections 2584 and 2592 inclusive, which prescribed and defined the powers and duties of the state board of equalization, were repealed by Chapter 48, Session Laws 1919, which defines and prescribes the duties of such board.

Subdivision 5 of Section 1 of said Chapter 48 makes it the duty of the State Board of Equalization to assess the franchise, roadway, roadbed, rails and rolling stock and all other property of railroads, \* \* \* constituting a single and continuous property operated in more than one county in the state, but expressly provides that lots and parcels of real estate, not included in right of way, with the buildings, structures and improvements thereon, power houses, depots, stations, shops and other buildings erected

upon right of way, furniture, machinery and other personal property shall not be considered as a part of any such single and continuous property, but shall be considered as separate and distinct therefrom and shall be assessed by the county assessor of the county wherein they are situate.

In the case of Northern Pacific Railway Company vs. Brogan, 52 Mont. 461, 158 Pac. 820, our supreme court held that a telegraph line used in the operation and dispatching of trains, and which was constructed on the right of way, was assessable by the county assessor and not by the State Board of Equalization, while in the case of Chicago, Milwaukee & St. Paul Railway Co. vs. Murray, 5 Mont. —, 174 Pac. 704, our supreme court held that the electrification system of the plaintiff should be divided, the trolley line being assessed by the state board of equalization as a part of the roadbed while the transmission system, not being a part of the roadbed although constructed on the right of way, being assessed by the county assessor.

A telegraph line constructed along a railroad right of way, the whole of an electrification system, fences along rights of way, and like property adds to the value of the entire line of railroad, not merely to the value of that portion of the railroad situated in any one particular county, and constitutes a part of a continuous property, and it is evident that the legislature intended by subdivision 5 of Chapter 48, Session Laws 1919, to provide that all such property should be assessed by the state board of equalization, rather than by the county assessors. This seems clear for the reason that in such subdivision certain property is enumerated as being assessable by county assessors, but such enumeration does not include telegraph lines, electrification systems or fences along rights of way, these being evidently considered as a part of a single and continuous property to be assessed by the State Board of Equalization.

You are, therefore, advised that fences along railroad rights of way should not be assessed by county assessors, but that the same will be included in the assessments of railroads made by the state board of equalization.

Respectfully,

S. C. FORD,

Attorney General.