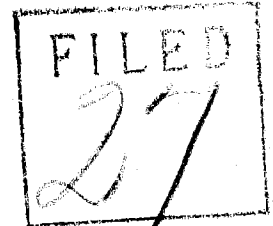


TAXATION:
ASSESSMENT:
INTERSTATE BUS AND TRUCK:

The State Tax Commission has power to assess property of common carrier interstate bus and truck lines because they are public utilities, but does not have power to assess property of contract hauler interstate bus and truck lines September 9, 1940 because they are not public utilities.

Mr. Clarence Evans
Chairman
State Tax Commission
Jefferson City, Missouri



Dear Sir:

This is in reply to your letter dated May 22, 1940, in which, in the following terms you request our opinion:

"By the provisions of Section 10,066, Laws of Mo. 1939, page 872, it is the duty of the State Tax Commission to assess interstate bus and truck lines.

"The State Tax Commission interprets this section as vesting power in it to assess bus and truck lines doing business as common carriers, but is uncertain whether or not it has power to assess truck lines classified by the Public Service Commission as contract haulers - regular or irregular.

"Will you kindly advise us as to our powers and duties in assessing interstate bus and truck lines under this section?"

Section 10066 R. S. Missouri, 1929, as amended Laws 1939, page 872, sec. 1, Mo. Stat. Ann. 3057, provides:

September 9, 1940

"All bridges over streams dividing this state from any other state owned, controlled, managed or leased by any person, corporation, railroad company or joint stock company, and all bridges across or over navigable streams within this state, where the charge is made for crossing the same, which are now constructed, which are in the course of construction, or which shall hereafter be constructed, and all property, real and personal, including the franchises owned by telegraph, telephone, electric power and light companies, electric transmission lines, oil pipe lines, gas pipe lines, gasoline pipe lines, interstate bus and truck lines, and express companies, shall be subject to taxation for state, county, municipal and other local purposes to the same extent as the property of private persons. And taxes levied thereon shall be levied and collected in the manner as is now or may hereafter be provided by law for the taxation of railroad property in this state, and county courts, and the county and state boards of equalization are hereby required to perform the same duties and are given the same powers in assessing, equalizing and adjusting the taxes on the property set forth in this section as the said courts and boards of equalization have or may hereafter be empowered with in assessing, equalizing, and adjusting the taxes on railroad property; and the president or other chief officer of any such bridge, telegraph, telephone, electric power and light companies, electric transmission lines, oil pipe lines, gas pipe lines, gasoline pipe lines,

interstate bus and truck lines, or express company or the owner of any such toll bridge, is hereby required to render statements of the property of such bridge, telegraph, telephone, electric power and light companies, electric transmission lines, oil pipe lines, gas pipe lines, gasoline pipe lines, interstate bus and truck lines, or express companies in like manner as the president, or other chief officer of the railroad company is now or may hereafter be required to render for the taxation of railroad property."

It is especially noted that said Section 10066 provides that taxes shall be levied and collected on the property of interstate bus and truck lines, and on the property of electric transmission lines, in the same manner as for railroads.

Provision is made for assessment of railroad property by the State Tax Commission in Section 9854 (6) R. S. 1929, Mo. St. Ann. page 7931, which is as follows:

"The commission shall have the exclusive power of original assessment of railroads, railroad cars, rolling stock, street railroads, bridges, telegraph, telephone, express companies, and other similar public utility corporations, companies and firms now possessed and exercised by the state board of equalization. Said commission shall also have all powers of original assessment of real and personal property now possessed by any assessing officer, subject only to the rights given by the Constitution to the state board of equalization."

From the foregoing, it is clear that with reference to assessment of property, interstate bus and truck lines, and electric transmission lines are placed in the same legal situation. The principles which apply to electric transmission lines will likewise apply to interstate bus and truck lines. The principle is established that not all electric transmission lines are subject to assessment by the State Tax Commission; that only such lines which are public utilities are subject to assessment by said Commission. It was so ruled in *State ex rel Buchanan County Power Transmission Company vs. Baker* 9 S. W. (2nd) 589, l.c. 591, 320 Mo. 1146 where the Supreme Court of Missouri said:

"Relator's electric transmission line is subject to taxation. The question for solution is the location of the authority to assess said property. Respondents contend it is lodged with the tax commission, and relator contends it is lodged with the county assessor. If it is a public utility, the tax commission has authority to assess it. If it is not a public utility, we are to determine with whom the authority is lodged."

In that case, after quoting section 12847 and section 13056, R. S. Mo. 1919, (now sections 9854 and 10066 R. S. Mo., 1929, respectively) the court further ruled at l.c. 592-593 of the same volume:

"We think the word 'manner', as used in said section, covers not only the method of assessment of electric transmission lines, but also locates the authority to make the assessment with the tax commission. *State ex rel. Union Electric Light & Power Co. et al. v. Gehner et al.*, 315 Mo. 666, 286 S. W. loc. cit. 119; *State ex rel Union Electric Light & Power Co. v.*

Baker et al., 316 Mo. 853, 293 S. W. loc. cit. 402. The power of original assessment over purely local property is fixed by section 10, article 10, of the Constitution, in the following words:

'The General Assembly shall not impose taxes upon counties, cities, towns or other municipal corporations or upon the inhabitants or property thereof, for county, city, town or other municipal purposes, but may, by general laws, vest in the corporate authorities thereof the power to assess and collect taxes for such purposes.'

Thus it appears that local property must be assessed by local authorities. If, therefore, the Legislature intended by the amendment of 1923 to section 13056 to confer upon the tax commission the power of original assessment over local property devoted to private use, then said amendment is violative of this section of the Constitution. *Laclede Land & Improvement Co. v. State Tax Commission*, 295 Mo. 298, loc. cit. 305, 243 S. W. 887. However, if the Legislature only intended to confer on the tax commission the power of original assessment over public utility electric transmission lines, then said amendment is a valid law. We will not assume that the Legislature undertook the enactment of an unconstitutional law. Rather, we hold that by the amendment the Legislature intended to confer upon the tax commission the power of original assessment over only public utilities."

Under these principles an interstate bus and truck line

which is a public utility is subject to assessment by the State Tax Commission; such a line which is not a public utility is not subject to assessment by said Commission.

In Section 5122 (9) R. S. 1929, Mo. St. Ann. page 6533, the term "common carrier" is defined as "railroad corporations . . . and every corporation . . . or . . . person . . . operating . . . any such agency for public use in the conveyance of persons or property * * *." (Underlining ours) And, subdivision 25 of the same section (Mo. Stat. Ann. page 6536) provides in part that, "The term 'public utility' . . . includes every common carrier * * *." In State ex rel Anderson v. Witthaus 102 S. W. (2nd) 99, 1.c. 101, 102, 340 Mo. 1004, the Supreme Court of Missouri quoted with approval the following definitions of a common carrier:

"If a man holds himself out to do it for every one who asks him, he is a common carrier; but if he does not do it for every one, but carries for you and me only, that is a matter of special contract.' * * * * *
We express a doctrine universally sanctioned when we say that anyone who holds himself out to the public as ready to undertake for hire or reward the transportation of goods from place to place, and so invites custom of the public, is in the estimation of the law a common carrier.
* * * * * The test is whether he has invited the trade of the public."

In the definition of a public utility found in 4 Words & Phrases (3rd Series) 425, it is said that, "common carrier railroads are 'public utilities'". It necessarily follows that a common carrier interstate bus and truck line is a public utility, and therefore is subject to assessment by the State Tax Commission.

For the purposes of this opinion, in determining

whether either a common carrier or a contract hauler interstate bus and truck line is a public utility, we are guided by the test stated in the following terms in 4 Words & Phrases (5th Series) 1137:

"Test for determining whether corporation is assessable as 'public utility' is whether plant, equipment, or portion thereof is used to furnish heat, light, or power to public. St. 1931, Section 76.02(8). Union Falls Power Co. v. City of Oconto Falls, 265 N. W. 722, 221 Wis. 457.

The term 'public utility' implies a public use * * * "

And, a leading authority is summarized in these words in 6 Words & Phrases (3rd Series) 424:

"A taxicab company is a common carrier within the meaning of the act of March 4, 1913 (37 Stat. at L. 938, chap. 150), Section 8, and hence subject to the jurisdiction of the Public Utilities Commission of the District of Columbia as a 'public utility' in respect of its exercise of its exclusive right.

* * * to solicit livery and taxicab business from persons passing to or from trains, and of its exclusive right under contracts with certain Washington hotels to solicit taxicab business from guests, but that part of its business which consists in furnishing automobiles from its central garage on individual orders, generally by telephone, cannot be regarded as a public utility, and the rates charged for such service are therefore not open to inquiry by the Commission. Terminal Taxicab Co. v. Kutz, 36 S. Ct. 583, 584, 241 U. S. 252, 60 L. Ed. 984."

It appears that the test whether a thing is a common carrier and whether it is a public utility is the same - devotion of property to a public use. It is found in both. In *State ex rel Anderson v. Witthaus, supra*, at l.c. 102 of 102 S. W. (2nd) it was further ruled:

"The essential feature of a public use is that it is not confined to privileged individuals, but is open to the indefinite public. It is this indefinite or unrestricted quality that gives it its public character. *White v. Smith*, 189 Pa. 222, 42 A. 125, 43 L.R.A. 498."

The property of a contract hauler is not devoted to a public use. Such hauler is defined as follows in Section 5264(c) Mo. Stat. Ann. page 6679, 6680:

"(c) The term 'contract hauler,' when used in this act, means any person, firm or corporation engaged, as his or its principal business, in the transportation for compensation or hire of persons and/or property for a particular person, persons, or corporation to or from a particular place or places under special or individual agreement or agreements and not operating as a common carrier and not operating exclusively within the corporate limits of an incorporated city or town, or exclusively within the corporate limits of such city or town, and its suburban territory as herein defined." (Underlining ours)

According to that definition, such a hauler does not hold himself out to do it for everyone who asks him; he does not hold himself out to the public or invite its trade.

Certainly he does not furnish service to the public at large. The essential feature of the use of his property is that it is confined to individuals so privileged by contract and by special agreements; he does not operate as a common carrier. His property is not devoted to a public use. In 3 Words & Phrases (4th Series) 276, it is said:

"Individual or corporation does not become 'public utility,' unless owning, operating, managing, or controlling plant or system for public use * * ."

Also, in 6 Words & Phrases (3rd Series) 421, the rule is stated:

"A corporation becomes a public service corporation, and therefore subject to regulation as a public utility, only when and to the extent that the business of such corporation becomes devoted to a public use."

In the light of these principles, a contract hauler interstate bus and truck line is not subject to assessment by the State Tax Commission because it is not a public utility.

The Public Service Commission does regulate contract haulers by authority delegated by the legislature (e. g. Section 5270 et seq R. S. 1929, Mo. Stat. Ann. page 6687 et seq, as amended Laws 1937, page 436, Section 1). The authority for the exercise of such control and regulation is not that contract haulers are public utilities. It is that the state has the power to regulate the use of its public highways by anyone. In State v. Dixon 73 S. W. (2nd) 385, l.c. 387, 335 Mo. 478, the Supreme Court of Missouri said:

"Without a discussion of the point or citation of authority we may assume and

begin with the proposition that the Legislature had the power and authority to establish a commission for the purpose of regulating the public utilities of the state, and also for the purpose of regulating the transportation for hire by bus and trucks of passengers and freight. * * * * * It is settled law that the highways are built primarily for the convenience of the citizens of the state. The transportation for hire of passengers and freight may be prohibited entirely, or the right may be granted with such restrictions as the state may deem necessary to impose."

CONCLUSION

The State Tax Commission has power to assess property of common carrier interstate bus and truck lines because they are public utilities, but does not have power to assess property of contract hauler interstate bus and truck lines because they are not public utilities.

Respectfully submitted,

LAWRENCE L. BRADLEY
Assistant Attorney General

APPROVED:

COVELL F. HEWITT
(Acting) Attorney General

EH:RT