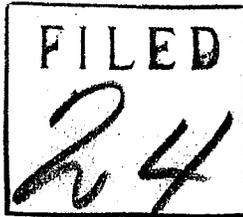


TAXATION:
CORPORATIONS:

Corporation organized under Chapter 351, RSMo 1949, engaged in operating telephone exchanges subject to original assessment by Missouri State Tax Commission.



April 26, 1954

Honorable J. Morgan Donelson
Prosecuting Attorney
Mercer County
Princeton, Missouri

Dear Sir:

Reference is made to your request for an official opinion of this department reading as follows:

"Grand River Mutual Telephone Corporation, being a mutual type of company financed under the Telephone Act of the Rural Electrification Administration, has recently acquired numerous telephone properties in this and surrounding counties. The telephone properties acquired have in the past been assessed by the State Tax Commission.

"Grand River Mutual Telephone Corporation contend that they should be assessed by the local assessor, which in Mercer County, being under township organization, would be the township assessor in each township wherein their lines are located. They contend that they are of exactly the same status as are the REA electric cooperatives of Missouri and that since sole ownership is vested in the telephone subscribers, each subscriber being limited but compelled to own one share of common stock of the telephone corporation, that their tax assessment should be on the same basis and they

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should not be assessed by the State Tax Commission. I find no precedent covering telephone companies and therefore, would appreciate if you would render an opinion advising as to whether or not the local assessor should proceed with this assessment or should the assessment be made by the State Tax Commission, as was the practice of the predecessor companies.

"Your promptness in furnishing this opinion will be appreciated."

You have further advised us in a subsequent communication that the corporation referred to in your letter of inquiry was organized under the general and business corporation code, found Chapter 351, RSMo 1949. We are further advised by the Public Service Commission of the State of Missouri that the corporation referred to in your letter of inquiry is operating under a certificate of convenience and necessity issued by that department.

The liability for taxation of the property of the corporation being conceded we will not stop to point out the constitutional and statutory provisions imposing such liability. We believe that the answer to your inquiry is found in Subsection 1 of Section 138.420, RSMo 1949, reading as follows:

"1. 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." (Emphasis ours.)

It is noted in your request for this opinion that the contention is being made by the corporation that it should occupy the same status as rural electrification cooperatives organized under the provisions of Chapter 394, RSMo 1949. However, in view of the information given to us that the corporation about which you have inquired is one organized

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under the general and business corporation code and is engaged in business as a public utility, it is apparent that a clear distinction exists between such a corporation and a rural electric cooperative.

CONCLUSION

In the premises we are of the opinion that a corporation organized under the general and business corporation code of the State of Missouri and furnishing telephone service for hire to the public generally is liable for assessment by the State Tax Commission under the provisions of Section 138.420, RSMo 1949.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Will F. Berry, Jr.

Very truly yours,

JOHN M. DALTON
Attorney General

WFB:vlw