

TAXATION:
PUBLIC UTILITIES:
STATE TAX COMMISSION:

The State Tax Commission has the power of original assessment only over public utilities; whether an incorporated mutual telephone company is a public utility, in whole or in part, is a question of fact to be determined by reference to the actual operation of the company.



May 20, 1958

Honorable Lewis B. Hoff
Prosecuting Attorney
Cedar County
Stockton, Missouri

Dear Mr. Hoff:

Reference is made to your request for an official opinion, which request reads as follows:

"I have a question I wish to propound and perhaps you have already rendered an opinion covering the situation, but if not, I would like to have your official opinion as to whether the State Tax Commission has the power of original assessment over the Stockton Mutual Telephone Company on the basis of the following facts:

The Stockton Mutual Telephone Company was organized and incorporated in 1949 following an ice storm which demolished the old mutual system. Nineteen businessmen and farmers were the original incorporators. The company was organized as a mutual telephone company and was not intended to operate for profit and no profit has been received by the incorporators. Being a mutual telephone company, it has not been regulated by the Public Service Commission and has not been recognized as a public utility.

The Bell Telephone Company, by order of the Public Service Commission, did build a toll line to the city limits of Stockton where it was attached to the cables of the local company.

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For the past several years, the telephone company has filed its reports to the State Tax Commission and was assessed by the commission. The State Tax Commission insists that it has jurisdiction to assess the local mutual company, and the clerk, Mr. Towson, gives as its reasons the fact that the Bell long distance line connects with our company lines, making us a public utility to the extent that gives the State Tax Commission jurisdiction.

In view of the holding of the Supreme Court in the case of State ex rel vs. Baker, 9 SW2nd, 589 in which the Court held that the State Tax Commission had the power of original assessment over public utilities only and the case of State ex rel Lohman and Farmers Mutual Telephone Company vs. Brown et al, 19 SW2nd, 1048 in which the Court held that a mutual company might be a public utility as respect to its long distance lines and no further as to its general operation (and in this case the long distance lines are not the property of the mutual telephone company), I am unable to see how the Commission could claim the power of original assessment of this company."

Section 138.420, RSMo 1949, provides that the State Tax Commission shall have the exclusive power of original assessment of telephone companies in the following language:

"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."

Section 153.030, RSMo 1949, relating specifically to telephone companies, provides in part as follows:

"1. 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

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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 tangible personal, owned by telegraph, telephone, electric power and light companies, electric transmission lines, pipe line companies 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.

"2. 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, county boards of equalization and the state tax commission 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 and state tax commission have or may hereafter be empowered with, in assessing, equalizing, and adjusting the taxes on railroad property; * * *"

In considering the above-noted statutory provisions, the Supreme Court of Missouri en Banc, in the case of State ex rel. v. Baker, 320 Mo. 1146, 9 SW 2d 589, held that the Legislature only intended to confer upon the State Tax Commission the power of original assessment over "public utilities." The Court stated, 9 SW 2d, 1.c. 593:

"* * * 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."

In the case of State ex rel v. Brown, 19 SW 2d 1048, the Supreme Court of Missouri had before it the question as to whether an unincorporated mutual telephone company was a public utility and thereby subject to regulations by the Public Service Commission. In holding that the particular company in question was a public utility in regard to a part of its operation and not a public utility as to the remainder of its operation, the Court stated:

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"* * * whether it is a public utility is to be determined from what it does; * * *"

The Court held that insofar as it operated a telephone exchange for itself (members), it was not a public utility.

The fact that the company apparently did not operate for a profit was not given consideration by the Court in determining whether or not it was a public utility.

In the case of State v. Baker, supra, a power transmission company contended that it was not a public utility because it did not have charter authority to serve the public; did not have a franchise; and had never exercised the power of eminent domain. The Court stated that these factors might be considered in determining if a company is a public utility but stated that the

"* * * absence of charter authority to serve the public is not determinative of the question."

Note the following from the case of State ex rel. v. Public Service Commission, 275 Mo. 483, 493, 205 SW 36, 39:

"In determining whether a corporation is or is not a public utility, the important thing is, not what its charter says it may do, but what it actually does. Terminal Taxicab Co. v. Kutz, 241 U.S. 252 [36 S. Co. 583, 60 L. Ed. 984.]"

We are of the opinion that the fact that the Stockton Mutual Telephone Company is incorporated as a mutual telephone company; the fact that it was not intended to operate at a profit; the fact that the incorporators have received no profit; or the fact that the company has not been regulated by the Public Service Commission are not singularly or together determinative of the question as to whether the company is a public utility, but that such fact can only be determined by reference to the actual operations of the company, what it does. Is its property or any part thereof dedicated to the public use? Is the public invited to use its properties? These are all questions of fact which should be and are deferred to the Missouri State Tax Commission as the proper administrative fact-finding body.

In order to prevent the necessity of further legal opinions, we wish to state that in our opinion the mere fact that a long distance line of another public utility company connects with the line of the

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Stockton Mutual Telephone Company would not make the latter company a public utility if it were not otherwise such. See State ex rel. v. Brown, 19 SW 2d 1048.

CONCLUSION

Therefore, in the premises, it is the opinion of this office that the State Tax Commission has the power of original assessment only over public utilities; whether an incorporated mutual telephone company is a public utility, in whole or in part, is a question of fact to be determined by reference to the actual operation of the company.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Donal D. Guffey.

Very truly yours,

John M. Dalton
Attorney General

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