

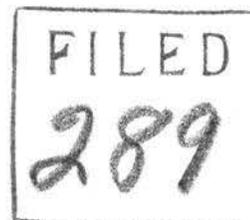
TRANSPORTATION OF BUILDINGS:
OVER OR ACROSS PUBLIC HIGHWAYS:
TELEPHONE WIRES: RAISING:

Holder of permit to move building across or over public highway under Section 229.230 to 229.260 RSMo. 1959, unauthorized to require company with telephone wires along building transportation route to raise its wires to allow building to pass underneath. Telephone wires not "transmission lines" within meaning of sections, which sections are inapplicable to telephone wires. In its discretion, company may require cash deposit in advance from permit holder to cover expense of raising wires to allow building passage thereunder.

October 18, 1966

OPINION NO. 289

Honorable William C. Esely
Prosecuting Attorney
Harrison County
Bethany, Missouri



Dear Mr. Esely:

This office is in receipt of your request for an opinion as to whether or not telephone lines and/or wires are included under provisions of Section 229.240, 229.250 and 229.260 RSMo., 1959.

In your letter of June 3, 1966, you clarified your inquiry and said letter reads in part as follows:

"My question was asked by a party who is in the business of moving houses or other buildings. When a telephone company was requested to raise their lines so that a building could be moved under them, that company insisted that the house mover pay them for expenses they claimed before they (the telephone company) would raise the lines. In other words, they require deposit of cash covering such claimed expenses.

Section 229.260 does not specifically name telephone lines but does mention "transmission lines." My question is specifically whether a telephone company can refuse to raise its lines unless a cash or other deposit is made to them."

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We now understand the inquiry of the opinion request to be that stated in your last letter, a portion of which is quoted above, and which inquiry we have underscored.

Sections 229.230 to 229.290 RSMo., 1959, contain the statutory procedure for obtaining permits, to move houses, buildings or other structures upon, over or across public highways, outside the limits of cities of the first, second or third class, or charter cities in this state.

If it is specified in the application for permit to the county clerk, that it will be necessary to cut, remove, raise or in any way interfere with any electric wires, transmission lines, or the feed or trolley wires of any interurban railroad, or to move any poles bearing such wires or cables, it is the duty of the county clerk, under Section 229.250 to give at least five days notice to the owners or operators of such wires, feed wires, transmission wires or trolley wires of the time and place, when and where the removal of the poles, cutting, raising or otherwise interfering with said wires will be necessary.

Section 229.260, provides the procedure to be followed by the owner or operator in removing the poles, cutting, raising or otherwise interfering with its wires to permit the passage of the building or structure over or across the highway. The expense of the removal of poles, cutting, raising, etc., of wires shall be borne by the owner or operator of same. The mover of the building or other structure cannot remove any poles, or otherwise interfere with the cutting of or removal of any wires, except when the owner or operator, after proper notice, refuses to do so.

As indicated in your letter, Section 229.260 makes no mention of telephone wires, but does mention "transmission lines." However, "transmission lines" do not include telephone wires as we shall presently show.

Sections 229.230 to 229.290 RSMo., 1959, have been in effect in their present form for many years. This is particularly true as to Sections 229.230, 229.240, 229.260 and 229.280, which were formerly Sections 10739 to 10741 inclusive, RSMo., 1919. Said sections were construed by the Springfield Court of Appeals in the case of Southwestern Bell Telephone Company v. Drainage District No. 5, of Pemiscot County et al, 247 S.W. 494.

In this case plaintiff recovered a judgment of \$58.29 in the trial court for damages sustained when the defendants cut plaintiff's telephone wires on poles along a public road intersecting defendant's drainage ditch. At l.c. 495, the appellate court said:

"(3) There is another reason why defendant must fail on this appeal, and that is because Acts 1917, Sections 10739 to 10741, inclusive, nowhere provide for the removal of telephone wires. The act describes electric wires, transmission wires, and trolley wires. The headnote of the compiler of Section 10739 is not a part of the law and in no way binding. See State v. Maurer, 255 Mo. 152, 164 S.W. 531, Ann. Cos. 1915 C. 178. Respondent's attorneys have printed what they say is a copy of the Senate Journal, Forty-Ninth General Assembly, Regular Session 1917, pp. 1130, 1131, and not disputed by appellants' attorneys. From this it clearly appears that telephone wires, cable, etc., was stricken from the bill as originally introduced, and passed after such portion as referred to telephone and telegraph companies was stricken out. Probably the purpose of the bill was to provide for removal of wires carrying deadly electricity, and which, of course did not apply to telephone wires."

If the party referred to in the opinion request obtains the permit to move a house or other building or structure across a highway, as required by Section 229.230, he will be in no better position legally than before obtaining the permit, as such permit does not grant him the right to have raised, cut or removed any telephone wires or poles on the highway right of way, which interfere with his moving of a building over or across such highway.

In Southwestern Bell Telephone Company v. Drainage District No. 5, supra, the court specifically held that sections 229.240 to 229.260 RSMo., 1959, do not apply to telephone lines nor authorize removal of telephone wires. Consequently, a house mover, although he may have obtained the necessary permit, is not afforded any legal remedy under said sections by which he may force a telephone company to raise, cut or remove its telephone wires or poles, which prevent the passage of the moving building over the highway.

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In view of the foregoing, it is our thought that the telephone company referred to above, may in its discretion, refuse to raise its telephone wires located on the right of way of a public highway, to permit the moving of a building across said public highway, unless the mover makes a cash or other deposit in advance with the telephone company to cover expense of raising its said wires.

We do not consider the power, if any, of the Public Service Commission to regulate charges for raising telephone wires or the reasonableness of such charges.

CONCLUSION

It is the opinion of this office that the holder of a permit to move a building across or over a public highway under provisions of Sections 229.230 to 229.260 RSMo., 1959, is not authorized to require a company with telephone wires located along the building transportation route, to raise its wires sufficiently to allow the building to pass underneath, because telephone wires are not "transmission lines" within the meaning of said terms. Such company, in its discretion, may require a cash deposit in advance from the permit holder, to cover expense of raising its wires to allow such building passage thereunder.

The foregoing opinion, which I hereby approve was prepared by my assistant, Paul N. Chitwood.

Yours very truly,



NORMAN H. ANDERSON
Attorney General