TAXATION: The mode of assessing gas companies for tax purposes.

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Honorable Clarence Evans, Chairman
State Tax Commission
Jefferson City, Missouri

Dear Sir:

This is in reply to yours of recent date wherein you submit to this department a request for an opinion which reads as follows:

> "For many years it has been the recognized practice for the Assessor of the City of St. Louis to assess all the property of the Laclede Gas Light Company. Now, however, the Laclede Gas Light Company, through their Vice President, Robert W. Otto, has filed a statement with the Missouri State Tax Commission in which he claims that, under the law, it is the duty of the Missouri State Tax Commission to assess the distributable property owned by gas companies. We would be greatly pleased if you will give us your opinion as to whether the Assessor of the City of St. Louis should continue to assess all this property, or whether, as the Laclede Gas Light Company contends, it should be assessed by the Missouri State Tax Commission.
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> "For your convenience, we are attaching herewith letter of Mr. Otto, in which he cites several reasons why the State Tax Commission should assess the property. Among other citations he quotes sub-section 12 of section 15 of House Bill 528, which was enacted by the 63rd General Assembly."

The question propounded involves the mode of assessment of the Laclede Gas Light Company of St. Louis. We have examined the memorandum submitted by the gas company to your department and which was sent by you to this department. It appears from this memorandum that the gas company is of the opinion that the tax on its plant in St. Louis should be assessed by the State Tax Commission. To support its contention, it relies principally upon the provisions of

sub-section 12 of section 15 of House Bill 538, enacted by the 63rd General Assembly and signed by the Governor on December 19, 1945. This sub-section reads 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. * * *"

In the memorandum submitted by the gas company, the case of State ex rel. Koeln v. Lesser, 141 S.W. 888,889, is cited because it lays down a principle on the authority of taxing authorities to assess and collect taxes. The principle is:

> "It is not left to the tax assessor or tax collector to say what property or what interests in property are to be taxed. Under our system of taxation, there can be no lawful collection of a tax until there is a lawful assessment, and there can be no lawful assessment except in the manner prescribed by law and of property designated by law for that purpose."

With this principle in mind, we will refer to various statutes authorizing assessment of properties similar to the one here under consideration. The gas company has taken the position that it comes within the classification of "other similar public utility corporations" referred to in said sub-section 12 of section 15, supra. This section does seem to indicate that the tax commission would have exclusive power of original assessment of the businesses named in that section, and the question here is, "Does the gas company come within the classification as another similar public utility corporation?" Neither the foregoing section nor section 11027 R. S. Mo. 1939, which was the source of section 15 of said House Bill 528, sets out in what manner assessments against the businesses named therein shall be made. For the purpose of ascertaining how such assessments shall be made, we must refer to H.C.S.H.B. 538 of the 63rd General Assembly, approved April 11, 1946, by which section 11295 R. S. Mo. 1939 was repealed and re-enacted in said House Bill in the following language:

> "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 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. 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 Comaission have or may hereafter be empowered with in assessing, equalizing, and adjusting the taxes on railroad property; and the president or other authorized officer of any such bridge, telegraph, telephone, electric power and light companies, electric transmission lines, pipe line companies, 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, pipe line companies, or express companies in like manner as the president, or other authorized officer of the railroad company is now or may hereafter be required to render for the taxation of railroad property. On or before the first day of May in the year 1946 and each year thereafter the president or other authorized officer of each such company shall furnish the State Tax Commission a statement, duly subscribed and sworn to by said president or other authorized officer, showing the full amount of all real and tangible personal property owned by each such

> company on January 1st of the year in which the report is due. In case the report from any such company, as required by this section, is not received by May 1st of the year in which it is due the State Tax Commission may, at its discretion, increase by four per cent the total assessed valuation of any such company."

It will be noted by reference to this section that the General Assembly has not seen fit to include within its provisions gas companies or water companies. If they were included in this section, then we think there would be no question that the tax commission would have jurisdiction to assess them.

The Laclede Gas Company, in its memorandum to your department, cites the case of State ex rel. Buchanan County Power Company v. Baker, 9 S.W. (2d) 589, in support of its contention that all utilities are subject to assessment by the tax comission. In this opinion, l. c. 591, Judge Gantt, speaking for the court en banc on the question of the taxability of the electric line there under consideration, said:

> "If it is a public utility, the Tax Commission has authority to assess it."

On account of this statement, the Laclede Gas Company contends that any business which is a public utility is under the jurisdiction of the State Tax Commission for assessing purposes. We doubt the correctness of that assumption because we do not think all public utilities are under the jurisdiction of the State Tax Commission for tax purposes. In looking through Words and Phrases, we find a number of businesses which courts of different states have determined to be public utilities and we know that the Legislature of Missouri has not placed them under the jurisdiction of the State Tax Commission for assessment. A list of the businesses and states respectively follows: wharves, Texas; aviation fields, Nebraska; bathing pools, Texas; canal companies, Wisconsin; cemeteries owned by the city, Oklahoma; fire departments, Oklahoma; garbage disposal, Texas; golf links, Iowa; convention halls for the public, Oklahoma; ice plants owned by the city, Texas; electric plants owned by the city, Texas; navigation companies, Hawaii; public parks, Oklahoma; and public warehouses, Illinois.

In the case of Parsons v. Detroit, 15 Fed. Supp. 986, 987, a public utility is defined as:

> "A public utility is a business organization which regularly supplies the public with some commodity or service."

Therefore, just because some business may be classed as a public utility, it does not necessarily mean that it would be under the jurisdiction of the State Tax Commission for assessment purposes, unless there is legislation conferring on the tax commission such jurisdiction. From an examination of the laws and cases, it seems that local authorities have been assessing properties of gas and water companies in this state. The case of State ex rel. Sedalia Water Company v. Harnsberger, Collector of Revenue, 14 S.W. (2d) 554, was before the Missouri Supreme Court, Division 2, in 1928. The question in that case was the mode of assessment of a water plant which had water mains extending throughout the city of Sedalia. In that case, the water company contended that the water mains extending throughout the city were not a part of the plant and could not be assessed as an appurtenance to the real estate upon which the plant was situated. To get a full picture of the contention of the taxing authorities in that case, we quote as follows, l. c. 556:

> "* * * The respondent contends that those water mains are appurtenant to the plant because they would be useless and the plant would be useless unless the water could be pumped into the mains from the plant and constantly used by the company for the purpose of supplying the city of Sedalia with water; that the mains and the plant all consist of one system; and that the valuation placed upon the tract of land upon which the plant is located includes not only the machinery located upon the land but the water mains that lead from it. The 45 acres is described as a tract of land and no mention is made of the plant machinery or buildings upon it. The appellant contends that in the middle of the street in Sedalia are personal property and not appurtenant to the plant, and therefore it is taxable as a separate item."

In treating this subject, the court, at l. c. 557, said:

> "Our statute, section 12967, defines what shall be considered real estate for the purpose of taxation to include not only the land itself but also all buildings, structures, and improvements and other permanent fixtures of whatever kind, 'and all other property <u>belonging to</u>, manufactories of whatever kind, * * * <u>and all rights and privileges</u> belonging

or in any wise pertaining thereto, except where the same may be otherwise denominated by this chapter.' And personal property includes in its definition: 'Every tangible thing being subject to ownership, whether animate or inanimate, and not forming part or any parcel of real property as hereinbefore defined.'

"Appellant cites Mulrooney v. Obear, 171 Mo. 613, 71 S.W. 1019. In that case the Hodiamont Realty Improvement Company platted a subdivision adjoining the city of St. Louis, and, in order to make the lots salable, obtained a water supply from the city and laid a supply pipe on the road known as Maple avenue and connected with it water pipes leading to the lots, which were sold. It was held that the pipes leading to the separate lots were real estate and appurtenant to the lots on which and to which they were laid.* * *"

* * * * *

"In this case the water mains in the streets of Sedalia are practically worthless considered as personal property, separated from the soil. They are 'necessary to the full enjoyment of the property.' The plant located upon the land of the relator would be absolutely worthless without the pipes and the pipes would be worthless without the plant which supplies them with water. They are appurtenant. 'An appurtenance is a thing used with and related to or dependent upon something else which is its principal.' Words and Phrases. There could be no case in which one thing is more completely dependent upon another for its value and utility than the water mains are dependent upon the plant which supplies them with water.

"The statute noted says real estate shall include 'rights and privileges pertaining to' the land and fixtures thereon. The dictionary meaning of 'pertaining' is 'to belong,' 'have connection with,' or 'be dependent upon' something. The participle 'pertaining' as used in the statute includes the relationship of an appurtenance.

> It includes all rights and privileges connected with the plant situated upon the tract of land described, and must include the right to lay water mains in the street. The land was acquired and the plant established for the purpose of that service. The right to lay pipes in the street was an absolute necessity inseparably connected with the plant and inseparably connected with the water mains laid under and by virtue of that right. That right is appurtenant to that plant--pertains to it. How is it possible to separate that right from the improvement made in pursuance of it? How could one say that the right in this case belongs to and is connected with the power plant, as an appurtenance, and at the same time say that the pipes laid by virtue of that right are not connected with it? How can you separate the exercise of a privilege from the privilege itself? How can you separate the water mains laid in the street from the right to lay such mains so far as the character of the property is concerned?
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> "Upon both reason and authority the water mains in the streets in the city of Sedalia are appurtenant to the land upon which the plant is located, and therefore should be valued as a part of the real estate, and were so valued by the tax commission."

The same principle was applied by the Missouri Supreme Court in Division I in the case of Joplin Waterworks Company v. Jasper County et al., 58 S.W. (2d) 1068, and it was held that the water distribution system of the Joplin Waterworks Company was appurtenant to the water plant and should be taxed as a part reality upon which the waterworks plant was situated. That opinion was rendered in 1931. From a reading of these cases, it will be seen that the court based its ruling on the ways that the term "real estate" as defined in the tax statutes included property belonging to and pertaining to such real estate. The 63rd General Assembly, in section 3 of sub-section D, House Bill 471, defined the term "real estate" as follows:

> "Real property includes land itself, whether laid out in town lots or otherwise, and all growing crops, buildings, structures, improvements and fixtures of what-

ever kind thereon, and all rights and privileges belonging or appertaining thereto."

It will be noted that this definition of the term real property includes improvements and fixtures of whatever kind may be on such real estate and rights and privileges belonging or appertaining thereto. This definition of the term real estate, used in the aforesaid section under the ruling announced in the Sedalia and Jasper County cases, would be broad enough to include water distribution lines attached to a waterworks plant. The construction and distribution of a waterworks plant and system would be similar to that of a gas plant and distribution system; that is, insofar as the application of the "appurtenant" rule would be applicable.

Section 10 of H.C.S.H.B. 469 of the 63rd General Assembly, approved December 5, 1945, requires the county assessors to assess real and tangible personal property in their counties at its true value in money. This section requires the assessor to go to the office, place of business or residence of each person required to list their real and tangible personal property. This procedure for assessment is similar to that which was followed for assessment of real estate at the time of the rendering of the opinion in the Sedalia case, supra.

The Legislature has not seen fit to change the mode of assessment of gas and water companies since the Sedalia and Joplin opinions. The law, R. S. Mo. 1939, Section 11295, including businesses which were to be assessed and taxed by the State Tax Commission as railways were assessed, was repealed and re-enacted in H.C.S.H.B. 538 by the 63rd General Assembly. This section, as re-enacted in said House Bill, did not include gas companies or water companies as those businesses which would be taxed in the manner prescribed by said section 11295 of said House Bill 538.

Following the principle announced in the Lesser case, supra, we do not think that the statute, House Bill 538, would authorize the assessment of gas and water companies by the State Tax Commission. We think, however, that under the rulings of the Missouri Supreme Court in the cases cited in this opinion that such businesses may be taxed by the local taxing authorities under the rule that the distribution system of waterworks plants and gas plants is appurtenant to and a part of the main plant and should be taxed as a part of the reality upon which the plant is situated.

CONCLUSION

From the foregoing, it is the opinion of this department

that waterworks plants and gas plants, together with the distribution system, should be taxed by the local taxing authorities in the counties in which such plants are situated and we are further of the opinion that such plants and their distribution systems should be assessed in the county and district in which the plant is located.

Respectfully submitted,

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APPROVED:

J. E. TAYLOR
Attorney General