

**OPINION
43-112**

December 14, 1943 (OPINION)

TAXATION

RE: Telephone Property

I have your letter of December 8th in which you state that sometimes property of a commercial telephone company is sold for delinquent taxes.

Since property of a telephone company is assessed as personal property there is no sale of any land, and if a building, for example, standing upon land owned by a telephone company were sold by the sheriff it would be sold as personal property and the purchaser would have no title to it as real estate. You ask what can be done in such a situation.

In this instance where such a telephone company owned land upon which there was a building, or owned land with some other structure on it, or even bare land without a structure, nevertheless it is assessed as though it were personal property under the provisions of section 15 of chapter 291, Session Laws of 1931. Even a building could be sold as personal property and the purchaser would have a reasonable length of time within which to remove the building from the premises. If the land were owned by another party, I think he would be presumed to have known that a building put on it by the telephone company would be personal property, since he is presumed to know the law which states that such property shall be assessed as personal property and that the method of enforcing collection of the tax is as though it were personal property, which means it may be sold after distraint by the sheriff.

If the building or other personal property assessed is on real property belonging to the telephone company, then we believe that the personal property tax, if it is not paid, should be spread as a lien against that real estate in the manner provided by section 2174, Compiled Laws of 1913, as amended by chapter 242, Session Laws of 1929, and chapter 281, Session Laws of 1931. When this has been done then the property can be sold as real property as it should be. It appears to me that it would be up to the auditor and the county commissioners of the county to determine the situation in each case and handle it in this manner.

ALVIN C. STRUTZ
Attorney General