

OPINION
55-130

April 20, 1955 (OPINION)

TAXATION

RE: Special Assessments - Business Property

This opinion is issued in response to your letter of April 12, 1955, asking whether a lot in Dunseith, North Dakota, owned by Northwestern Bell Telephone Company and on which the telephone company's dial house and certain operating equipment are located "should be assessed as real estate or as tangible personal property". Your problem seems to have arisen in connection with "assessments for special improvements, due to a watermain improvement district in the city of Dunseith."

The lot in question is clearly operative property of the telephone company within the meaning of section 57-0603 of the N.D.R.C. of 1943, and as such is assessed annually by the state board of equalization as required by section 57-0605 of the N.D.R.C. of 1943 and Section 179 of the State Constitution. Section 57-0622 provides that "The property of a company assessed under the provisions of this chapter, for the purpose of assessment and taxation and the collection of taxes, shall be considered personal property." This lot is, of course, assessed under chapter 57-06 and "for the purpose of assessment and taxation and the collection of taxes" the Legislature has classified the lot as personal property.

In Minneapolis, St. Paul & Sault Ste. Marie Railway Company v. Dickey County, 11 N.D. 107, 112, 90 N.W. 260, the court with respect to a similar statute providing for the assessment and taxation of railroad property as personal property said:

"The language of this section is explicit that such railroad property shall be taxed as personal property. It is therefore personal property for purposes of taxation, although it may be in part, as a fact and for other purposes, real estate. It is within the power of the Legislature to provide that such fixtures as are described in the complaint may be taxed as personal property."

See also Cooley on Taxation, Fourth Edition, page 2146 and 61 C.J. 178, section 135.

Is it therefore my opinion that for purposes of ad valorem assessment and taxation by the state board of equalization the lot in question is personal property.

However, it is my further opinion that this lot is real estate for the purposes of assessment of benefits by the city of Dunseith for special improvements effected by installation of a watermain. This is evident from a study of section 40-2307, as amended, 40-2309, 40-2403, 40-2412, 40-2416, and chapter 40-25 which provide for exemptions of lots from special assessments, assessment list, liens,

entry in real estate assessment book, extension on real estate tax lists, collection of special assessments in the manner provided for collection of real estate taxes, and redemption from tax sale in the manner provided for redemption from real estate tax sales.

I know of no principle or rule of law which would prohibit the Legislature from classifying the same lot or tract of land as personal property for general property tax purposes and as real estate for purposes of assessing special benefits against the lot or tract.

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