

MAINE STATE LEGISLATURE

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4th November 1915.

Hon. E. C. McIntire,
Chairman Board of State Assessors,
Augusta, Maine.

Dear Sir:

Referring to the question submitted by your board to me, namely, as to whether the poles and wires used by power companies for the transmission of electricity should be taxed as real or personal property, there is no provision of statute governing the question and I do not find any decided case in our state exactly covering this point.

In the case of Telephone Company vs. Cyr, 95 Maine 287, the Court held that as between debtor and creditor, the telephone lines of the company consisting of poles, wires and insulators were personal property. That line being erected in the highway and the company occupying the highway under a mere license revokable at the will of the municipal officers so far as any particular portion of the highway is concerned and not having a permanent vested interest in the land itself. Undoubtedly a portion of the transmission lines of power companies are erected under conditions similar to those discussed by the Court in this case. On the other hand, a great portion of the same transmission lines are erected on private land of which and over which the power company has gained permanent right to erect poles and carry wires.

In which latter case, the lines could hardly be construed to be anything but permanent fixtures and hence would be real estate and not personal property. It is to be noted that in the case of the Telephone Company vs. Cyr, where the Court held that certain poles and wires were personal property as between debtor and creditor, the Court said "that other and different circumstances might be involved in determining their character for the purpose of taxation."

To apply to the transmission lines of power companies the general rules of law with regard to real and personal property might lead to the conclusion that such lines when permanently located were real estate and when located along highways under the authority of municipal officers were personal property. Such a construction of the law might be technically correct. It would, however, lead to so much confusion that the practical difficulty in the way of enforcing the law would be almost insurmountable.

I should advise that until some different construction had been adopted by our Court, your board should act upon the assumption that the poles, wires and insulators constituting the transmission lines of the various power companies be considered real estate for taxation purposes. I would also suggest the advisability of your board presenting to the next legislature some statute definitely covering this point in order that the duties of local assessors may be made clearer to them and possible litigation prevented.

Yours very truly,

Attorney General