

1973 S.C. Op. Atty. Gen. 345 (S.C.A.G.), 1973 S.C. Op. Atty. Gen. No. 3659, 1973 WL 21110

Office of the Attorney General

State of South Carolina

Opinion No. 3659

November 9, 1973

***1 The receipts from telephone calls that originate or terminate outside the State are not to be included in the tax levied by Section 65–609.**

Members

South Carolina Tax Commission

This office was requested to review the record of the bearing held by the Commission concerning the application of the tax provided for in Chapter 10 of Title 65 upon telephone companies that had all of their physical properties statute within the State of South Carolina. Specifically, the request was whether receipts by such companies for telephone calls originating outside of the State of South Carolina, but terminating within the State, or receipts for telephone calls originating within the State and terminating outside of the State, were to be included in the tax base under the provisions of Section 65–609. This Section provides in part that:

‘* * * there is hereby levied an annual license fee of three mills upon the entire gross receipts from business within this State during the calendar year next preceding by every * * * telephone company * * *.’

This office previously issued an opinion under date of January 29, 1970 that the term ‘the entire gross receipts from business within this State’ was limited to those receipts from business that began and ended within the geographical limits of the State.

The inquiry here arises because the physical facilities and properties of the telephone companies are located wholly within the State and the telephone calls that do not begin and end in the State are transmitted by way of connector lines or wavelengths with other telephone companies located both within and without the State of South Carolina. Such, however, does not in the opinion of this office alter the fact that the receipts from such calls would not be from business within this State. It appears well settled that the communications that cross State boundaries, whether transmitted by the facilities of the in-state telephone company or by connector line with other companies, either within or without the State, are in interstate commerce.

‘Even though plaintiff does not have communication facilities crossing state lines, the fact that the destination of the messages it handles is beyond state lines by connection with carriers in other states makes plaintiff’s activity one of interstate communication. [Ward v. Northern Ohio Tel. Co.](#), 300 F. 2d 816 (6th Cir. 1962). [New Jersey Bell Tel. Co. v. State Bd. of Taxes & Assessments](#), 280 U. S. 388, 74 L. Ed. 463. 50 S. Ct. 111 (1930); [Fisher’s Blend Station, Inc. v. Tax Commission](#), 297 U. S. 650, 80 L. Ed. 956, 56 S. Ct. 608 (1936).’ *Washington Telephone Co. v. Washington*, Washington Supreme Court, April 30, 1970. 6 STC, *Commerce Clearing House*, paragraphs 250–263.

It is also settled that a state may impose a privilege tax for doing a local business, but cannot impose the tax on the interstate activity of such a business.

‘While a state may tax the privilege of engaging in local business, as it may regulate local rates, it may not tax the privilege of engaging in interstate commerce. Taxation being one of the forms of regulation, [Lehigh Valley R. Co. v. Pennsylvania](#), 145 U.S. 192, 200, 12 S.Ct. 806, 36 L.Ed. 672, any tax laid directly upon the privilege is void, even in the absence of legislation by Congress or a finding of prejudice. * * *.’ [Pacific Telephone & Telegraph Co. v. Tax Commission of State of Washington](#), 56 S. Ct. 522.

*2 The opinion heretofore expressed is fortified by the fact that the telephone company is a common carrier and as such must transmit the messages or communications. *Ward v. Northern Ohio Telephone Co.*, 300 F. 2d 816. Additionally, under South Carolina law, the telephone companies may contract among themselves to furnish intrastate connector service, however, should they fail to do so, the Public Service Commission is authorized by statute to require the same for public convenience. See Section 58–8 of the 1962 Code of Laws.

The receipts from telephone calls that originate or terminate outside the State are therefore not to be included in the tax levied by Section 65–609.

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