

Bond Case Briefs

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PUBLIC UTILITIES - NEW HAMPSHIRE

Northern New England Telephone Operations, LLC v. Town of Acworth

Supreme Court of New Hampshire - November 6, 2020 - A.3d - 2020 WL 6534452

Telecommunications company brought actions against several towns and cities, alleging claims of ultra vires taxation and disproportionate taxation arising out of company's use of municipal rights-of-way for poles, conduits, and other equipment.

After consolidation of cases into a "test case" structure, the Superior Court granted summary judgment for company on most of its claims of ultra vires taxation, and, following trial, entered judgment for company on its tax abatement claims. Towns appealed.

The Supreme Court held that:

- Licenses must include requirement to pay personal and real estate taxes;
- Nature of use did not constitute a perpetual lease which gave rise to an independently taxable property interest;
- Court's decisions to credit various expert opinions were reasonable; and
- Guy wires and anchors were not taxable as "structures."

Licenses to place telecommunications equipment in public rights-of-way arising pursuant to statute providing that certain poles, structures, conduits, and related property in a location which becomes a public highway shall "be deemed legally licensed" must, as a matter of law, include requirement to pay personal and real estate taxes, as, without such tax payment requirements, licenses would not be legal.

Purpose of statute providing that telecommunications poles, cables, and other equipment approved by a local land use board shall be deemed legally permitted or licensed if the location of the equipment becomes a public highway is to place the utility in the same position it would have been had it applied for a license, without the need for further proceedings.

Nature of telecommunications company's use or occupation of municipal rights-of-way as an owner of telephone poles, conduits, and related property did not constitute a perpetual lease as a matter of law which gave rise to an independently taxable property interest, but rather was pursuant to a license or permit.

Trial court's decisions to credit various opinions of telecommunications company's expert as to value of company's poles and conduits, and on company's use or occupation of municipal rights-of-way, and to reject those of towns' expert were reasonable based upon the evidence presented at trial on company's tax abatement claim; court did not accept company's expert's valuations carte blanche, but engaged in a mindful evaluation of her opinions, even rejecting some.

Telecommunications company's guy wires and anchors were not taxable as "structures" under statute providing for real estate taxes for "structures, poles, towers, and conduits employed in the

transmission of telecommunication” services; as licensing statute for erecting or installing structures in public highways authorized a licensee “to place upon such poles and structures the necessary and proper guys, cross-arms, fixtures, transformers and other attachments and appurtenances,” the guy wires and anchors could not be considered “structures,” but rather were items placed upon the structures.