

January 27, 1961

Honorable Harry Ackerman
Pima County Attorney
Tucson, Arizona

LAW LIBRARY
ARIZONA ATTORNEY GENERAL

Dear Mr. Ackerman:

We have received your letter of January 6, 1961, asking for an Attorney General's opinion in answer to this question:

Must the Mountain States Telephone and Telegraph Company obtain a franchise under the provisions of A.R.S. §40-283 in order to use and occupy county highways and rights-of-way (for operation of transportation or transmission lines?)

A.R.S. §40-283 (A) reads:

"A. Any person engaged in transportation or transmission business within the state may construct and operate lines connect- at the state boundary with like lines, except that within the confines of municipal corporations the use and occupancy of streets shall be under rights acquired by franchises according to law, and subject to control and regulation by the municipal authorities. The use of highways, except state highways, by public utilities not within any incorporated city or town, shall be regulated by the board of supervisors of the county by license or franchise."

The shoulder is a part of a "highway." Sweet v. State, 89 N.Y.S. 2d. 506, 516; Panzer v. Hesse, 24 N.W. 2d. 613; Burton v. Oldefield, 79 S.E. 2d. 660; Scaff v. Eicher, 53 P.2d. 368.

A right of way is not a road in the legal sense of the term. Green v. Morris & E.R. Co., 24 N.J.L. 486.

The term "road" is not synonymous with the term "right of way". Collan-Potosi Mining Co. v. Hened, 3 Nev. 361.

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The above statute plainly includes county highways, but since the term highway is not synonymous with and does not include "right of way" the Attorney General is of the opinion that the Mountain States Telephone & Telegraph Co. must obtain a license or franchise from the county board of supervisors to use and occupy county highways, roads, and the shoulders thereto, but need not obtain a license or franchise for use of that portion of the county highway right of way which is neither used as the road itself nor as a shoulder to the road.

Very truly yours,

ROBERT W. PICKRELL
The Attorney General

MORRIS ROZAR
Assistant Attorney General

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