

DIVISION OF HEALTH: (A burial permit is necessary to accompany dead bodies moved out of this state by private conveyance but it is not necessary to have a transit permit to accompany such bodies transported out of this state by a private conveyance.

December 30, 1949

1/4/50

Mr. Clyde A. Bridger
Director, Bureau of Vital Statistics
Division of Health
Jefferson City, Missouri



Dear Sir:

I.

We are in receipt of your letter of December 20, 1949, in which you request an opinion of this department upon the following question:

"I would like to have an opinion on whether a transit permit is necessary to accompany bodies moved out of state by private conveyance."

II.

Laws of Missouri, 1947, Volume 2, page 238, enacted new laws in regard to the registration of births and deaths in the state of Missouri, to be known as the Uniform Vital Statistics Act, and repealed Sections 9760 to 9783 inclusive. Section 28 of this new Act provides:

"When a death or still birth occurs or a dead body is found the body shall not be disposed of or removed from the registration district until a permit has been issued by the local registrar."

Section 38 of this same Act provides in subsection 2 thereof as follows:

"Any person who knowingly transports or accepts for transportation, interment or other disposition a dead body without an accompanying permit issued in accordance with the provisions of this act, shall be fined not more than \$500."

Mr. Clyde A. Bridger

Section 9792, R. S. Mo. 1939, provides:

"It shall be the duty of the board of health, or health department, or (if no such board of health or health department exist) the town clerk of any city, town or village in the state of Missouri (or in the event there be no such existing officer, then any registered physician), to issue transit permit for each dead human body to be shipped from that city, town or village: Provided, it must appear that the body to be shipped has been prepared for shipment in accordance with the provisions of this article. The transit permit must show where and by whom issued, the name of the deceased, the age, the time and place of death, the cause of death (and whether contagious or infectious disease), the name of the physician or coroner making certificate, the name of the person preparing the body for shipment, and the destination thereof."

Section 9793, R. S. Mo. 1939, provides:

"No dead human body shall be offered to or accepted by any common carrier for transportation unless it is in a burial case, coffin or casket that is securely closed, and the burial case, coffin, or casket containing the body is in a wooden, metal or metal-lined box that is securely closed, and on the top of the box must appear the name of the deceased, the destination, the time and place of death, the cause of death, the name of the attending physician or coroner, the name of the person who prepared the body for shipment, and the body is accompanied by a transit permit as herein provided for."

Section 9794, R. S. Mo. 1939, provides:

"Any person, firm, company or corporation, or agent thereof, who shall fail, refuse or neglect to comply with any of the provisions of this article, or any part of such provisions, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined in the sum of not less than twenty-five dollars nor more than five hundred dollars, or by imprison-

Mr. Clyde A. Bridger

ment in the county jail for not less than thirty days nor more than sixty days, or by both such fine and imprisonment."

Section 38 cited above, makes it a criminal offense for anybody to transport or accept for transportation a dead body without a permit issued in accordance with the provisions of the Uniform Vital Statistics Act, therefore, a permit must be obtained in accordance with the requirements of Section 28 of the Uniform Vital Statistics Act before a dead human body may be moved within this state or from this state by any means of transportation.

Sections 9792, 9793, 9794 relate to the transportation of dead human bodies by common carrier. Article III of chapter 57, of the Revised Statutes of Missouri, 1939, was enacted in 1909 (Laws 1909, page 664). The title of the original Act was "An Act relating to the transportation by common carrier of dead human bodies; * * *"

While the title of an act of the Legislature is no part of the law, it may be given consideration in determining the legislative intent as to the scope of the Act. At the time the Act was passed the usual method of transportation of bodies was by common carrier. Transportation by private conveyance, except locally, was rare. The clear intent of the General Assembly was to regulate the transportation of bodies by common carrier and not otherwise.

The United States circuit court of appeals in the case of Arnold v. United States, 115 Fed(2d) 553, had for consideration the construction of a criminal statute making it a criminal offense for any person who shall knowingly ship or cause to be shipped, intoxicating liquor in interstate commerce without labeling the packages on the outside so as to show the name of the consignee, the nature of the contents, and the quantity contained in the package. The court held:

"* * *The primary idea of the verb 'ship' is to place on board a ship or vessel for transportation. It is defined in Webster's International Dictionary to mean, 'To commit to any conveyance for transportation.' It is very commonly used as meaning the act of delivering to a carrier for shipment. * * *The words 'ship' and 'shipment' are now generally used to express the idea of goods delivered to carriers for the purpose of being transported from one place to another, and such signification is given to them by lexicographers generally. Webster's International Dict.; the Century Dict. The law dictionaries give substantially the same definitions. * * * It is true that the word is susceptible of meaning to carry or transport, but that is

Mr. Clyde A. Bridger

neither its primary nor ordinary meaning, and here we are considering a criminal statute. If this section be construed as referring only to one who delivers to a carrier goods for transportation, then the entire act seems to be a reasonable regulation of both the carrier and the shipper of intoxicating liquor. In view of the evils sought to be remedied and the situation existing at the time of the adoption of this act, we think it should be limited to the preparation and delivery of packages of intoxicating liquor to a common carrier for transportation in interstate commerce. One Truck Load of Whisky v. United States, 6 Cir., 274 F. 99; United States v. Eighty-seven Barrels of Wine, D.C. Vt. 180 F. 215; United States v. Freeman, 239 U.S. 117, 36 S.Ct. 32, 60 L. Ed. 172. The evidence is undisputed that the transportation here under consideration was not by common carrier. As we have pointed out, at the time this statute was enacted, the evil sought to be remedied arose entirely through interstate transportation of intoxicating liquor by common carrier. * * *

"The words 'ship' or 'cause to be shipped' ordinarily apply to transportation by common carrier, and at least at the time of the adoption of this law were intended to apply only to common carriers. If, therefore, private carriers are to be included, it must be effected solely by judicial construction. However desirable it might be to have the law include private carriers, it is not the province of the court in a criminal case to create an offense by construction. * * *"

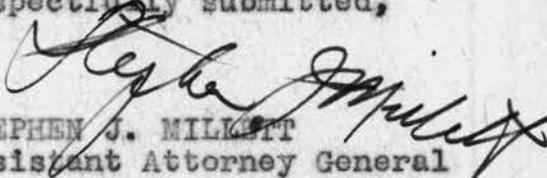
We believe that the words "to be shipped" as used in Section 9792 and the words "shipped" and "shipment" as used in that section and in Section 9793 apply only to the transportation of dead human bodies by common carrier. This Article III of chapter 57 of the Revised Statutes of Missouri, 1939, was enacted to protect the public from disease that might be communicated by the shipment of dead bodies. Since it is a criminal violation under Section 9794 to ship a dead body without a transit permit then we construe the verb "to ship" to mean transportation by common carrier and not by private conveyance.

Mr. Clyde A. Bridger

CONCLUSION

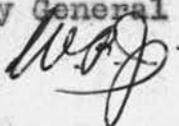
A burial permit is necessary to accompany dead bodies moved out of this state by private conveyance but it is not necessary to have a transit permit to accompany such bodies transported out of this state by a private conveyance.

Respectfully submitted,


STEPHEN J. MILLETT
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General


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