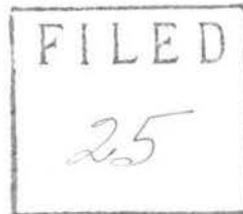


IN RE: Privately owned motor vehicles used in mail service require
Missouri license plates. ✓

April 18th, 1933



Hon. Lewis Ellis, Sup't.,
Missouri State Highway Patrol,
Jefferson City, Missouri.

Dear Sir:-

Your letter of April 15th, 1933 directed to the Attorney General in which you make the following inquiry,

" Please advise whether a privately owned truck, used exclusively for hauling United States mail under contract, is required to have state automobile license."

has been handed to the undersigned for attention.

You are of course familiar with the statutory provisions requiring the payment of a license fee for the operators of motor vehicles upon the highways of the State and of the penalty provided for the failure to procure such license.

The fee required under our statute is not a tax strictly speaking, but is a charge for the privilege of operating an automobile upon the highways. For the purpose of your inquiry, we are assuming that the title to the automobile is in the contractor and not in the Government.

While it is true that a State may not directly tax the property of the Federal Government or the instrumentalities which it uses to discharge any of its constitutional functions, nor may a State by taxation or otherwise materially interfere with the expeditious and orderly procedure of the Government while in the exercise of its constitutional powers, these fundamentals will not protect or exonerate the carrier of mail from a payment of our State license fee.

The immunity of the Government from State taxation is not negotiable to the extent that it can transfer that immunity to every person who contracts with it to do an act for the furtherance of Governmental business.

The license fee here is directly on the owner of the automobile and affects the Government only indirectly and incidentally and does not come within the inhibition hereinabove referred to.

In the case of *Commonwealth v. Closson*, 118 N. E., p. 653, it was held that one in charge of a vehicle transporting United States mail is not exempt from the operation of state statutes and municipal ordinances regulating traffic on the highways, although by Federal statutes the highways are post roads. In that case Closson was arrested for violating a state statute concerning the conduct and operation of motor vehicles on the public highways. He defended on the ground that, being employed as a mail carrier, using a vehicle for the delivery of mail, he was immune from prosecution and punishment under the statute. The court said:

"The designated streets or ways are not, however, instrumentalities created by the general government, where 'exemption from state control is essential to the independent sovereign authority of the United States within the sphere of their delegated powers.' . . . Nor do the facilities thereby afforded for transportation of the mails confer extraordinary rights upon the mail carriers to use the ways as they please, or necessarily, or impliedly, do away with the power of supervision, and control inherent in the state."

In the case of *Ex parte Marshall*, 75 Fla. 97, the defendant Marshall was operating under a contract in the transportation of United States soldiers from the Government camp to the City of Jacksonville. He was arrested for not complying with a certain state law imposing a license tax similar to that involved in this query. He sought a writ of habeas corpus on the ground that he was engaged in the business of the United States government, and was its constituted agent for the purpose of transporting soldiers. The court in denying the writ held that the defendant did not come under the protection of the fundamental law as hereinabove set out.

In the case of *Fidelity & Deposit Company of Maryland v. Commonwealth of Pennsylvania*, 38 Sup. Ct. Reporter 398; 240 U. S. 319, it is held that a surety company does not by becoming surety on bonds required by United States act as a Federal instrumentality so as to be exempt from a State tax on the premiums received, exacted from corporations for the privilege of doing business within the State.

In the case of *State of Washington v. Frederick F. Wiles* reported in 199 Pac., p. 749, we find a case involving the identical question which you propound and which in our opinion is controlling of the fundamental law and the ruling of which sustains our opinion. In that case, the defendant prior to his arrest had entered into a written contract with the United States Government whereby for certain considerations he agreed to carry the United States mail in the City of Seattle, Washington, between the various depots, wharves, docks, post office and

substations therein. In carrying out his contract with the Government, he used various motor trucks including the one which he was accused of operating without first having obtained a license. The truck was used by the defendant only in the business of carrying the mail under his contract. It had painted thereon the usual insignia of vehicles used for that purpose including the words "United States Mail". The terms of his contract required him to provide vehicles for the carriage of the mail and to keep them properly equipped and in repair and he was required also to furnish all necessary oil, gasoline, tires, upkeep and drivers. The contract further provided that such trucks should be used only in the business of carrying United States mail. At the time of his arrest the appellant was in the exercise of the duties imposed upon him under his contract.

From a conviction under the above state of facts, the defendant appealed and the judgment of the lower court was affirmed. In substance, the court held that one contracting to transport United States mail was not absolved from the duty of obtaining state licenses for motor trucks used in the business; that such a person was not a direct instrumentality of the Government or a representative or integral part of it, but merely a personal contractor doing certain work for it at a fixed compensation.

It is stated in the course of this opinion that,

"A person building a state road is nothing but a contractor; he is no part of the state or its agencies, and does not thereby inherit the various immunities of the state. There is nothing in appellant's contract which indicates that the government intended to pass its immunities on to him. Under these circumstances it should be presumed that it was the intention that he should be subject to the general laws of the state."

From what has been said above, we are of the opinion that a privately owned truck used exclusively for hauling United States mail under contract should be required to have a state automobile license before the privilege of using the highways of this state should be extended to him.

Yours very truly,

CARL C. ABINGTON
Assistant Attorney-General.

APPROVED: _____
ROY McKITTRICK
Attorney-General.

CCA:nh