

PUBLIC SERVICE COMMISSION - TRUCK PERMIT -

MOTOR VEHICLES:

Trucks of one and one-half ton capacity and less not required to pay truck permit license. Capacity measured how.

12-27
December 12, 1933



Honorable John S. Phillips
Prosecuting Attorney
Poplar Bluff, Missouri

Dear Sir:

This department acknowledges receipt of your letter dated November 23, 1933, as follows:

"I have a matter here which I am unable to find any law on, and I wish you would give me your opinion as to this matter, if the cases have ever been passed on. We have a man in this territory who owns a chevrolet ton and a half truck and is in the transfer business but has no regular route to run over. If a man wants any property moved he merely goes to him and tells him and this man takes his property in his truck to the designated place for a certain amount of money.

Under Section 5372, the Laws of Missouri, 1931, subsection C, it says that the annual license fee on each motor vehicle, trailer or semi-trailer operating under the certificate of convenience and necessity shall pay an annual license fee. Further on the first classification of motor vehicles that is under this section is those trucks which weigh more than one and one-half tons and not more than two tons, on which trucks there shall be a \$25.00 license fee paid.

I would like to have your opinion as to whether or not the truck this man has, which as I told you is a ton and a half Chevrolet truck, is required to have this annual license fee of \$25.00 or not?

I do not understand whether or not a ton and a half truck shall pay on the classification given it by the manufacturer, or whether it means a truck that carries one and one-half tons on it.

This question has arisen three or four times in this county, and I would like to have your opinion on it.

Thanking you in advance for an early reply, I am. "

We assume that your letter refers to Section 5272 Laws 1931, page 311, instead of Section 5372.

The only case we have been able to find construing the act referred to is Schwartzman Service, Inc., v. Stahl, et al. 60 Fed. (2) 1034, but that case does not in any way determine the question you present by your letter. Subdivision (b) of Section 5264 Laws 1931 page 304, defines "motor carrier" as follows:

"The term 'motor carrier,' when used in this act, means any person, firm, partnership, association, joint-stock company, corporation, lessee, trustee, or receiver appointed by any court whatsoever, operating any motor vehicle with or without trailer or trailers attached, upon any public highway for the transportation of persons or property or both or of providing or furnishing such transportation service, for hire as a common carrier."

Section 5268 of the act provides:

"It is hereby declared unlawful for any motor carrier to operate or furnish service as a common carrier within this state without first having obtained from the commission a certificate declaring that public convenience and necessity will be promoted by such operation. * * *"

Section 5272, in part, reads:

"In addition to the regular registration license fee imposed on all

motor vehicles in this state, and its personal property tax, every motor carrier, except as provided in section 5265 of this act shall, at the time of the issuance of a certificate of convenience and necessity and/or an interstate permit, and annually thereafter, on or between January 1 and January 15 of each calendar year, pay to the state treasurer of the state of Missouri the annual license fee, as set out in this act, for the maintenance and repair of the public highways; * * * * "

Subdivision (c) of Section 5272 further provides:

"In computing the annual license fee on each motor vehicle, trailer or semi-trailer, operating under a certificate of convenience and necessity or interstate permit as a freight carrying vehicle, the vehicle shall be rated on the manufacturer's rated load capacity or the actual weight carrying capacity of the vehicle, which capacity shall be determined by the public service commission at the time a certificate of convenience and necessity or interstate permit is issued. For each motor vehicle operating under a certificate of convenience and necessity or interstate permit as a freight carrying vehicle, the annual license fee shall be as follows:

More than 1½ and not more than 2 tons. . \$25.00.**"

By the quoted part of Subdivision (c) of Section 5272 the license fee to be paid by the owner of the truck referred to in your letter, or whether he is required to pay a license fee at all, is to be determined or rated on the manufacturer's rated load capacity or the actual weight carrying capacity of the vehicle, and the capacity shall be determined by the Public Service

Commission at the time a certificate of convenience and necessity or interstate permit is issued. Assuming the validity of the provision of the section giving the Public Service Commission the right to determine the capacity, the Legislature apparently intended to authorize the Public Service Commission to determine the capacity either by the manufacturer's rated load capacity or by determining the actual weight carrying capacity of the vehicle.

Section 5280 in part is:

"Provided, the provision of this act shall not apply to trucks of one and one-half ton capacity and less."

If the truck under consideration, by applying either the rating of the manufacturer or its actual weight carrying capacity, is not in excess of one and one-half ton, then such a truck is not controlled by the act found in Laws 1931 at page 304. If, by applying either of the standards set forth in subdivision (c) of Section 5272, and assuming the right of the Public Service Commission to use either standard, the truck in question is more than a one and one-half ton truck the owner is entitled to pay an annual license fee thereon of \$25.00.

I understand that the Public Service Commission has promulgated some rules with reference to subdivision (c) of Section 5272 and we suggest that you write Honorable Sam O. Hargis, Chief Counsel, Public Service Commission, with reference thereto.

Very truly yours,

GILBERT LAMB
Assistant Attorney General,

APPROVED:

ROY McKITTRICK
Attorney General.

GL:LC