

BUS AND TRUCK LAW:

When a violation of the same.

✓
August 25, 1933



Honorable James S. Rooney
Prosecuting Attorney
Clay County
Liberty, Missouri

Dear Sir:

This Department acknowledges receipt of your letter of July 31, 1933 requesting an opinion relating to a motor truck. Your letter is as follows:

"I would be pleased to have your opinion as to whether or not the driver of a motor truck, under the following facts, would be operating the truck in violation of law.

The owner of the truck does not have a certificate of convenience and necessity from the Public Service Commission, but he carried a tractor on the truck from a point within the city limits of Liberty to a point near Excelsior Springs, Missouri, but to a farm home which was not within the city limits. He, also, picked up another tractor and carried it on his truck from a point approximately four miles north of Liberty, Missouri, to the same farm home near Excelsior Springs. He was not operating between terminals.

As I understand it, he undoubtedly would be guilty if he were carrying freight for hire between terminals, but I would appreciate an expression of your opinion on this question where he is not operating between terminals.

Thanking you in advance, I am."

August 25, 1933

The question presented in your letter is not a new one as most every lawyer in private practice has had the same question presented to him, since the passage of the Motor Bus and Truck Law in 1931.

Section 5265, Laws of Missouri 1931, page 306, is as follows:

"The provisions of this act shall not apply to any motor vehicle of a carrying capacity of not to exceed five persons, or one ton of freight, when operated under contract with the federal government for carrying the United States mail and when on the trip provided in said contract; nor any motor vehicle owned, controlled or operated as a school bus; nor taxicab, as herein defined; nor to motor vehicles used exclusively in transporting farm and dairy products from the farm or dairy to warehouse, creamery, or other original storage or market; nor to motor vehicles used exclusively in the distribution of newspapers from the publisher to subscribers or distributors. No provision of this act shall be so construed as to deprive any county or municipality within this state of the right of police control over the use of its public highways, or the state highway commission of the right of police control over the use of state highways. This act shall not apply to trucks used in work for the state or any civil subdivision thereof."

Construing the facts as outlined in your letter, there is no provision in the exemption statute which would exempt the operator of the truck in question. The term "motor carrier" is defined as follows under Section 5264, Laws of Missouri 1931, page 304:

"(b) 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. Provided, however, this act shall not be so construed as to apply to motor vehicles used in the transportation of passengers or property for hire, operating over and along regular routes within any municipal corporation or a municipal corporation and the suburban territory adjacent thereto, forming a part of transportation system within such municipal corporation or such municipal corporation and the adjacent suburban territory, where the major part of such system is within the limits of such municipal corporation."

Section 5268, Laws of Missouri 1931, page 307, quoting the part which applies to the question, is as follows:

"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****."

Under paragraph c of Section 5272, Laws of Missouri 1931, page 312,

"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 inter-
state 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
More than 2 and not more than 3 tons . .	65.00
More than 3 and not more than 4 tons . .	100.00
More than 4 and not more than 5 tons . .	135.00
More than 5 and not more than 6 tons . .	175.00
More than 6 and not more than 7 tons . .	225.00
More than 7 and not more than 8 tons . .	275.00
More than 8 and not more than 9 tons . .	350.00
More than 9 tons	500.00,"

we find that if the truck operator in question had a rated load capacity of more than one and one-half tons, he would be subject to the tax and would be subject to the provisions of the Bus and Truck Law. He was hauling freight, the character of which is not exempted and we assume that he was doing it for hire.

It is therefore the opinion of this Department that he would be guilty of violation of the Bus and Truck Laws of the State of Missouri.

As stated herein the interpretation of the bus and Truck Law has always been difficult for lawyers and we do not know what interpretation, if any, the Public Service Commission has made in a case as your letter presents, but interpreting the statutes in the cold language we are forced to the above conclusion.

Yours very truly,

OLLIVER W. NOLEN
Assistant Attorney General.

APPROVED:

ROY MCKITTRICK
Attorney General.

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