

August 24th, 1934



Hon. Walter W. Graves,
Prosecuting Attorney,
Kansas City, Missouri.

Dear Sir:

This Department is in receipt of your letter of August 16th, relative to an opinion rendered by the writer to Hon. M. E. Montgomery, Prosecuting Attorney of Scott County, in relation to the venue of a possible prosecution under Section 5270, R. S. of Mo. 1929. In order that we may have a complete perspective of the matter, your letter is herewith incorporated:

"My attention has been called to the opinion of your assistant, Mr. Oliver W. Nolen, approved by you, dated September 19th, 1933, and given to M. E. Montgomery, Prosecuting Attorney of Scott County, in relation to prosecution of contract haulers for violation of paragraph (c) of Section 5270, Revised Statutes of Missouri 1929.

I believe you are correct in holding that said paragraph relates only to acceptance and not to transportation and that prosecution under said paragraph would have to be confined to the county in which said acceptance occurred. However, is it not true that Section 5271 makes it unlawful for a contract hauler 'to operate or furnish transportation for persons or property or both for hire over the highways of this State without first having obtained from the Commission a contract hauler's permit'. Fairly construed, does this not mean a haul in accordance with the permit. Section 5275 provides that 'every * * * contract hauler * * * who fails to obey, observe or comply with any order, decision, rule, regulation, direction or requirement of the Commission * * * shall be guilty of a misdemeanor'. It seems to me, therefore, that the contract hauler who hauls where the order gives him no right to haul is guilty of a violation in relation to the hauling, without respect to the acceptance, and can be punished under

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Section 5275 in any county in which he is thus found hauling in violation of the limitations of his permit. It seems to me that the only possible question which could arise is as to whether he can be thus prosecuted if he has already been prosecuted in the county where the shipment was unlawfully accepted, but if not prosecuted for the latter offense, certainly he can be prosecuted in any county in which he is actually engaged in making that part of his haul that is in violation of the permit. I understand that in northern Missouri several shippers have been prosecuted and fined for employing motor vehicles that were being operated without permit, and in this connection I draw your attention to the interpretation placed by the Commission upon Section 5275 in its 'Interpretations of the Missouri Bus and Truck Laws of 1931', issued December 27th, 1933. In said interpretation the Commission said:

'It is the opinion of the Commission that any person who knowingly employs an unlicensed carrier is engaged in violating the laws and may be punished under Section 5275 or under the general laws as an accessory to a violation of law.'

I would appreciate your advice as to whether my construction of Section 5275 is correct."

The writer is impressed with the logic contained in your letter and agrees with you with respect to prosecutions under Section 5275.

In the very recent case of State v. R. M. Dixon, #32846, as yet unpublished prosecutions under Section 5275 were involved. This case was argued the last term of the Supreme Court, transferred to the Court En Banc and has been recently adopted by the entire Court. The pertinent parts of the opinion are as follows:

" On June 24, 1932, the prosecuting attorney of Jefferson County, Missouri, filed an information in the circuit court of that county charging respondent with the violation of a traffic rule promulgated by the Public Service Commission. Respondent filed a demurrer to the information, the trial court sustained it and the state appealed. Respondent's contention, which the trial court sustained, was that the provisions of sections 5274 and 5275, Laws of

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Mo. 1931, page 314, so far as those sections authorized a conviction for the violation of an order or rule of the Public Service Commission, were unconstitutional and void."

The concluding part is as follows:

" So in the case at bar, the state legislature did not delegate to the Public Service Commission any legislative authority, neither did the commission exercise such authority when it enacted certain safety rules to be observed by the operators of trucks and buses. It was the legislature that enacted the law declaring the violations of these rules to be misdemeanors and prescribed the penalties to be inflicted. With these matters the Public Service Commission, under the law, had and has nothing to do. It follows that the trial court was in error when it sustained respondent's demurrer to the information.

The judgment of the trial court will, therefore, be reversed and the cause remanded for trial. It is so ordered."

CONCLUSION

We are of the opinion that in view of the above decision, the prosecutions can be instituted in the manner as detailed in your letter and any person who violates Section 5270 irrespective of the place of venue might be prosecuted for violating the rules as prescribed by the Public Service Commission.

With kindest regards, I am

Very truly yours,

OLLIVER W. NOLEN
Assistant Attorney-General

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APPROVED:

ROY. McKITTRICK