

DEAD BODIES - Definition of common carrier of, under R.S.Mo. 1929, Chap. 52, Art. 3.

12-27
December 18, 1934.

Mr. Fred A. Thompson, Secretary,
The State Board of Embalming,
1776 Main Street,
Madison, Mo.



Dear Sir:

A request for an opinion has been received from you under date of November 23, 1934, such request being in the following terms:

"We are having some discussion over what is a 'common carrier of dead human bodies'.

For instance, Section 9067 is not clear--as it was written in the transportation ruling, some years ago; and revised in 1919, as section 5823.

Section 9072 seems to comply only to the shipment of dead human bodies on railroads, and classes the railroad as 'common carrier'.

Here is what we want to know; a great many bodies are being disinterred and removed from one cemetery to another, maybe from one state to another. Is an auto hearse, or a truck or a wagon, classed under this law as a 'common carrier'?

Thanking you for your ruling on this, I am"

There is no definition in the statutes of this State of the term "common carrier" which applies to such term wherever it appears in the statutes. Such term is defined in the Public Service Commission law (R.S.Mo. 1929, Chap. 33, Sec. 5122, Par. 9), but such definition only applies to the term "common carrier" when used in that chapter and, of course, the statutes relating to the transportation by a common carrier of dead human bodies are not in that chapter. Therefore, the common law definition of this term must be sought.

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The term "common carrier" at common law applies to one having a peculiar position with respect to members of the public, both as to privileges and as to duties. In the case of *Collier v. Langan & Taylor Storage & Moving Co.*, 147 Mo. App. 700, 722, 127 S. W. 435, (1910), the court says:

"Says Chancellor Kent, 2 Kent (14 Ed.), *p. 599, 'common carriers are those who undertake generally, and not as a casual occupation, and for all people indifferently, to convey goods, and deliver them at a place appointed, for hire as a business, and with or without a special agreement as to price;' and he enumerates among those adjudged to be common carriers, wagoners, teamsters, cartmen and porters."

The part of the statutes with which you are concerned, that relating to the transportation of dead bodies (R.S.Mo.1929, Chap. 52, Art. 3), uses the term "common carrier" several times, but does not contain any definition of the term, nor is there anything in such article which by implication would restrict the meaning of the term "common carrier" to railroads or any other particular form of conveyance. At the time of the enactment of such article motor carriers operating on the highways of this State had not come into general use, and perhaps the General Assembly had in mind railroads only, but the Act itself does not say so, so that there is nothing in such article which would be in derogation of the common law definition.

The term "common carrier" came into use long before railroads were invented, and although a railroad perhaps is the most usual type of common carrier, the term "common carrier" of itself does not apply to railroads any more than to any other vehicle, and the above quotation would of itself indicate that the type of motive power has nothing to do with whether or not a person or other legal entity is a common carrier.

In conclusion, it is our opinion that a person, partnership, corporation or other entity holding itself out to the public as a common conveyor of dead human bodies, whether it be by railroad, motor vehicle or otherwise, is a common carrier within the meaning of the provisions of R. S. Mo. 1929, Chap.52, Article 3.

Very truly yours,

APPROVED:

EDWARD H. MILLER
Assistant Attorney-General

ROY MCKITTRICK
Attorney-General