

MOTOR VEHICLES: If a person in good faith leases motor vehicle to transport property belonging to him over the highways, then neither lessor or lessee are subject to regulation of Public Service Commission.

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August 13, 1935.



Hon. B. M. Casteel
Superintendent
Missouri State Highway Patrol
Jefferson City, Missouri

Dear Colonel:

This is to acknowledge your letter as follows:

"The inclosed letter from Capt. Lewis B. Howard, Commanding Officer of Troop "D" of the Missouri State Highway Patrol is self-explanatory.

"Will you kindly furnish this Department with an opinion on the points mentioned."

Captain Howard's letter provides as follows:

"1. Request that a ruling be obtained from the Attorney General as to the legality of leases on motor trucks for a period of ten days or less, as to whether or not the lessor of the truck would come under the supervision of the Public Service Commission, taking it for granted that he receives compensation for this truck during the period of the lease.

"2. We give you two specific cases as follow:

"(a) Ashley Mixon Company, who handles canning machinery, leased a truck for a period of five days from John Doe to haul a quantity of canning factory machinery from Springfield to

Southeast Missouri, and was to pay John Doe on a mileage basis. The machinery belonged to the Ashley Nixon Company and this Company hired the driver for this truck. Would either the lessor or the lessee be subject to the laws of the Public Service Commission?

"(b) The Ajax Pipe Line Company leased an Oklahoma truck, which was also bearing Missouri license plates, for a period of ten days, to move a quantity of pipe belonging to the Ajax Pipe Line Company from Dixon to Washington. In this case the lessor of the truck continued to drive same for a fixed amount a day for his services and the services of the truck. Would either the lessor or the lessee in this case be subject to the laws of the Public Service Commission?"

In the case of Schwartzman Service v. Stahl et al., 60 F. (2d) 1034, the District Court of the Western District of Missouri, Central Division, said, in construing the Act pertaining to the transportation of persons and property by motor vehicles, page 1037:

"It is obvious, in view of the evidence before the court, that it was needful legislation not only to limit the number of motor vehicles in use on the highways, both as common carriers and contract haulers, but in like manner to supervise and regulate them in the matter of the size of the trucks, the character of business done, and the responsibility of the operators."

The Public Service Commission has the right to regulate the transportation of persons and property for hire by motor vehicles over the highways of this State. Laws of Missouri, 1931, page 304.

Section 5264, Laws of Missouri, 1931, page 304, provides in part as follows:

"(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. * * * * *

"The term 'contract hauler,' when used in this act, means any person, firm or corporation engaged, as his or its principal business, in the transportation for compensation or hire of persons and/or property for a particular person, persons, or corporation to or from a particular place or places under special or individual agreement or agreements and not operating as a common carrier and not operating exclusively within the corporate limits of an incorporated city or town, or exclusively within the corporate limits of such city or town and its suburban territory as herein defined."

Section 5265 provides for certain exemptions to which the provisions of the Act do not apply. Section 5280, Laws of Missouri, 1931, page 316, provides in part as follows:

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

For the purpose of this opinion we assume that the trucks mentioned in your letter were of greater capacity than one and one-half tons, and when we allude to a truck hereafter we assume that it is a truck not within the exemption of Section 5280.

The Act giving the Public Service Commission the right to regulate the transportation of persons or property for hire over the highways of this State did not give the Commission any right to regulate individuals in transporting property belonging to such. In other words, if a person owns a truck such may transport his property without complying with the provisions of the act. A person owning a truck might likewise lease said truck to an individual and as long as said lease agreement was a bona fide and good faith transaction and not a mere subterfuge in order to circumvent the Public Service Commission Act, then, in our opinion, the person leasing the truck, or the person to whom the truck was leased, would not be subject to the laws of the Public Service Commission.

Applying the above premise to the question asked it would be our opinion that neither the lessor or the lessee of the truck, which hauled the machinery belonging to the Ashley Nixon Company, would be subject to the Public Service Commission, as we assume that the Ashley Nixon Company in good faith leased said truck and hauled its own materials.

Our answer to your second question will be the same as to the first.

As to whether or not the leasing of a truck by the owner to another in order to avoid the jurisdiction of the Public Service Commission would be a question of fact to determine the good faith of such arrangement. If the owner of a truck is engaged in the business of leasing same solely to avoid regulation by the Public Service Commission, then, in our opinion, said person would be a "motor carrier" within the meaning of the act because said act provides specifically, "or of providing or furnishing such transportation service, for hire as a common carrier." If you find any owner who leases trucks as a subterfuge to avoid regulation by the Public Service Commission, then it would be your duty to cause said person to comply with the provisions of the act. However, an isolated case (as we understand your present inquiry) would not bring the lessor of the truck within the provisions of the act.

Hon. B. M. Casteel

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As to the lessee procuring license plates, if such has the use of the truck under lease agreement for a period greater than ten days, see our opinions dated December 31, 1934, and June 20, 1935, to Honorable B. M. Casteel and Honorable V. H. Steward, respectively. Copies of these opinions will be supplied if desired.

Yours very truly,

James L. HornBostel
Assistant Attorney-General

APPROVED:

ROY McKITTRICK
Attorney-General

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