

MOTOR VEHICLES: ) A person engaged in transporting property over  
TRUCKS: ) the highways of this State must have license  
to do so as contract hauler.

1-14  
January 10, 1935.



Mr. J. W. Kirtley  
c/o Burrus & Burrus  
Attorneys at Law  
Hill Building  
Independence, Missouri

Dear Sir:

This is to acknowledge your letter as follows:

"Will you please advise whether a truck owned by a private individual engaged in the hauling of coal for a coal operator from the mine to the coal yard comes within the provisions of the Public Service laws of the State of Missouri, and is required to have a permit to operate upon the highways?"

Laws of Missouri, 1931, page 304, Article 8, pertains to transportation of property by Motor Vehicles." Said article and sections were before the District Court of the Western District of Missouri, Central Division, in the case of Schwartzman Service, Inc., v. Stahl et al., 60 F. (2d) 1034. Judge Reeves, District Judge, in writing the opinion said the following (l. c. 1035):

"The original act may be found in article 8 of chapter 33, Revised Statutes of Missouri 1929, but the General Assembly of the state, at its session in 1931 (Laws 1931, p. 304 (Mo. St. Ann. Secs. 5264-5280)), amended said law by repealing the whole of said article 8 and enacting in lieu thereof seventeen new sections, numbered 5264 to 5280, both inclusive. The new article was thereafter designated

as article 8, and was intended 'for the supervision, regulation and licensing of transportation of persons and property for hire over the public highways of the state of Missouri by motor vehicles; conferring jurisdiction upon the public service commission to license, regulate and supervise such transportation; providing for the enforcement of the provisions of this act and for the punishment for violation thereof.'

Your letter is not specific enough as to facts, so that in writing this opinion we are forced to assume certain major premises. We assume that the truck in question is not exempted by Sections 5265 and 5280, Laws of Missouri, 1931, which we will hereinafter quote and refer to. We further assume that the person who owns the truck and engaged in the hauling of coal does so for compensation or hire and as his principal business and uses the highways in doing such.

The court in the Schwartzman case, supra, at page 1037, said the following:

"At the outset it must be acknowledged that the state has the power to regulate and control the movements of motor vehicles over its highways. This it may do in the interest of public convenience and safety and for the protection of the highways."

And further,

"The highways belong to the state. It may make provisions appropriate for securing the safety and convenience of the public in the use of them."

And further,

"Assuming, therefore, the power and right of the state to regulate and supervise its highways, such right cannot be hampered or restricted within narrow bounds. On

the contrary, to the end that such right might be fully enjoyed and exercised, there is a constant recognition of the principle that the state 'has a broad discretion in classification in the exercise of its power of regulation.' *Smith v. Cahoon*, 283 U. S. 553, loc. cit. 566, 51 S. Ct. 582, 587, 75 L. Ed. 1264. Upon such classification, no person can interpose an objection, save only in those cases where the classification or discrimination is entirely arbitrary."

Section 5264, Article 8, Laws of Missouri, 1931, page 305, Paragraph "(c)", provides as follows:

"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 of said article provides 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."

Section 5280 provides as follows:

"It is hereby declared that the legislation herein contained is enacted for the sole purpose of promoting and conserving the interests and convenience of the public, and that no right, privilege, or permit granted or obtained under or by virtue of this act shall ever be construed as a vested right, privilege, or permit; and the general assembly retains full legislative power over, concerning and pertaining to the subject or subjects legislated upon in this act and the power and right to alter, amend or repeal this act at its pleasure. Provided, the provision of this act shall not apply to trucks of one and one-half ton capacity and less."

A reading of the above sections shows that the Legislature defined a "contract holder" as one transporting property or persons over the highways for hire, with certain exemptions, however, namely: (1) A common carrier; (2) not operating in the corporate limits of a city or town or its suburban territory as defined; (3) exemptions provided in Section 5265, supra, and (4) this exemption found in Section 5280, supra, namely, "Provided, the provision of this act shall not apply to trucks of one and one-half ton capacity and less."

As stated hereinbefore, for the purpose of this opinion, we assume that the truck that is hauling coal from the mine to the coal yard is one of greater capacity than one and one-half tons.

Section 5271, Paragraph "(a)", in part provides as follows:

"It is hereby declared unlawful for any contract hauler except as provided in section 5265 of this act to operate or furnish transportation for persons or property, or both, for hire over the highways of this state, without first have (having) obtained from the commission a contract hauler's permit."

In the Schwartzman case, supra, page 1035, the court said the following pertaining to that section:

"Section 5271 imposes upon such contract haulers the duty to obtain permits from the Public Service Commission. This permit is characterized as a 'contract hauler permit.' The object of such permit is to enable the Public Service Commission to determine the need for such service and the effect of such added transportation facility 'upon other transportation service being rendered.' All contract haulers are required by said enactment to file an application for a permit in writing; to give information concerning the ownership, financial condition, equipment to be used, and the physical property of the applicant, as well as a statement as to the complete route over which the applicant desires to operate or the territory to be served, and to which shall be added a schedule or schedules of proposed rates."

In your letter you state that an individual owning a truck is engaged in transporting property, namely, coal, over the highways and we assume for compensation or hire and as his principal business, and you desire to know if he must have a permit to do such.

Mr. J. W. Kirtley

-6-

Jan. 10, 1935.

In our opinion such person must obtain a permit from the Public Service Commission and is subject to its rules and regulations for the reason that such person is a contract hauler as defined by Paragraph "(c)" of Section 5264, supra.

Yours very truly,

James L. HornBostel  
Assistant Attorney-General.

APPROVED:

---

ROY McKITTRICK  
Attorney-General.

JLH:EG