

BUS AND TRUCK LAW: (1) A truck domiciled in a foreign State and operating as a contract hauler in interstate commerce over the highways of this State comes within the Act.
(2) Contract hauler domiciled in foreign State and operating in interstate commerce through Missouri must obtain a contract hauler's permit.

5-29
May 28, 1935.



Hon. W. P. Wilkerson
Prosecuting Attorney
Scott County
Benton, Missouri

Dear Sir:

This will acknowledge receipt of your letter requesting an opinion from this office which reads as follows:

"The above identified defendant has been arrested and brought into our court by a highway weight officer, charged with operating a motor carrier in interstate commerce without a permit from the Public Service Commission so to do, and in another affidavit is charged as operating as a contract hauler in interstate commerce without a permit from the Public Service Commission so to do. This defendant claims that he is operating as a contract hauler, and has been advised by counsel that he does not have to secure a permit from the Public Service Commission so to do.

"This same defendant was recently brought into our court on this same charge, and I dismissed the case, for the reason that Section 5268B declares it unlawful for any motor carrier to operate as above, without a permit, and

Section 5264B describes a motor carrier as a common carrier, in effect. Because I could not prove that he was operating as a common carrier, I dismissed the case. The Public Service Commission men and the highway patrol have criticized me severely for this action, stating that conviction could have been had, and stating that the Public Service Commission instructs them to the effect that any person operating any sort of a vehicle for hire is subject to the provisions of Article 8, Chapter 33, Laws of 1929.

"There has been considerable discussion of these cases here with five or six lawyers in it, and they seem to divide about fifty-fifty in their opinion.

"I wish you would please advise me,

"(1) whether a truck, domiciled in a foreign state, and operating as a contract hauler in interstate commerce, falls within the act, and if so, please give me citations.

"(2) whether you believe that a contract hauler, domiciled in a foreign state, and operating in interstate commerce through Missouri must obtain a certificate of public convenience and necessity, an interstate permit, or must, in fact, recognize the authority of the Missouri Public Service Commission in any way.

"I trust that these matters have already been threshed out by your Department, and I would greatly appreciate you sending me copies of your opinions, together with any other opinions that bear upon this subject, and which you think might be of use to me."

The Act about which you inquire was formerly found in Article 8, Chapter 33 of Revised Statutes of Missouri, 1929. The General Assembly, at its regular session in 1931 (Laws of Mo. 1931, page 304) amended said law by repealing the whole of said article and enacting in lieu thereof seventeen new sections, numbered 5264 to 5280 inclusive; said new

article being designated Article VIII, 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."

The Act divided the use of such motor vehicles into two classes; the one designated as "motor carrier", which was given a meaning equivalent to that of a common carrier; and the other designated as a "contract hauler".

"Contract hauler" is defined by paragraph "c" of Section 5264, as follows:

"(c) 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 5270, Laws of Missouri, 1931, page 309, specifically applies to contract haulers and gives the Public Service Commission the power and authority "to license, supervise and regulate every contract hauler in this State, except as provided in Section 5265 of this Act." Said section gives the Public Service Commission "the power and authority by general order or otherwise to prescribe rules and regulations governing all contract haulers as herein defined."

Section 5271, Laws of Missouri, 1931, page 310, provides in part 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 having obtained from the commission a contract hauler's permit. *****

The above section makes no distinction between a contract hauler operating in interstate commerce and one operating in intrastate commerce.

Section 5273, R. S. Mo. 1929, (Laws of Mo. 1931, page 314), provides that no certificate of convenience and necessity or contract hauler's permit shall be issued by the Public Service Commission until and after such carrier shall have filed with, and the same has been approved, by the commission of this state a liability insurance policy or bond in some reliable insurance company or association or other insurer's certificate to the commission and authorized to transact insurance business in this State, in such sum and upon such conditions as the commission may deem necessary to adequately protect the interest of the public in the use of the public highways, which liability insurance shall bind the obligors thereunder to make compensation for injuries to persons and loss of or damage to property resulting from the negligent operation of such motor carrier or contract hauler. Said section, however, contains the following proviso:

"Provided, that subsection 'b' of section 5268 of this act, relating to liability insurance policy shall apply to interstate contract haulers."

The above proviso makes it plain that the Legislature intended that the act should apply to contract haulers engaged in interstate commerce as well as those engaged in intrastate commerce.

Judge Reeves in the case of Schwartzman Service v. Stahl, 60 Fed. (2d) loc. cit. 1037, in upholding the constitutionality of the act in question said:

"(1) 1. 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. **** Provisions of this character have been uniformly sustained. *Buck v. Kuykendall*, 267 U. S. 307, loc. cit. 314, 45 S. Ct. 324, 69 L. Ed. 623, 38 A. L. R. 286; *Stephenson v. Binford et al.* (D. C.) 53 Fed. (2d) 509.

"(2) Moreover, while 'a citizen may have, under the Fourteenth Amendment, the right to travel and transport his property upon them by auto vehicle,' yet 'he has no right to make the highways his place of business by using them as a common carrier for hire. Such use is a privilege which may be granted or withheld by the state in its discretion, without violating either the due process or the equal protection clause.' *Packard v. Banton*, 264 U. S. 140 loc. cit. 144, 44 S. Ct. 257, 68 L. Ed. 596.

"(3) 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. *Kane v. State of New Jersey*, 242 U. S. 160, 37 S. Ct. 30, 61 L. Ed. 222.

"(4) 2. 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.' *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.

"(5-7) 3. Every presumption must be indulged in favor of the constitutionality of the law. While validity of a statute cannot stand upon legislative declaration alone, yet the rule is that the legislative declaration

of purpose and policy is entitled to gravest consideration, and, unless clearly overthrown by facts of record, must prevail.' Foster Packing Co. v. Haydel, 278 U. S. 1, 49 S. Ct. 1, 73 L. Ed. 147; Stephenson v. Binford, (D. C.) 53 F. (2d) 509, loc. cit. 514.

"The rule was well stated in Continental Baking Co., v. Woodring (D. C.) 55 F. (2d) 347, loc. cit. 353, wherein Judge McDermott of the Tenth Circuit said: 'When the Legislature acts within the scope of its legislative power, when no facts are disclosed as to the reasons which actuated the legislation, the presumption of constitutionality stands, unless no fair reason can be ascribed for the legislative action. Hardware Dealers' Ins. Co. v. Glidden (284 U. S. 151), 52 S. Ct. 69, 76 L. Ed. 214; O'Gorman v. Hartford Ins. Co., 282 U. S. 251, 51 S. Ct. 130, 75 L. Ed. 324; Standard Oil Co. v. Marysville, 279 U. S. 582, 49 S. Ct. 430, 73 L. Ed. 856, That a legislative classification should stand, 'if any state of facts reasonably can be conceived that would sustain it'; that the burden is on the assailant to show that the classification is 'essentially arbitrary.'"

The purpose of the legislation in question is clearly expressed in the message delivered by the Governor to the General Assembly requesting said legislation. In the Schwartzman case, supra, the Court, quoted from the Governor's message as follows:

"Today the state highways, which are the property of the people and a matter of great pride and concern to them, are being more and more crowded with busses and trucks, which, by reason of their great length, width and weight, bid fair, unless restrained, to crowd off the private vehicles, to accommodate which, primarily, the highways have been constructed. * * *

"The trucks are serving as a convenience

to farmers and shippers generally, and the busses are an accommodation to the traveling public. Their use of the highways, however, should be restricted and regulated to protect those traveling in private vehicles, and limitations should be placed on their equipment to prevent damage to the highways and to protect citizens using the highways."

The court, after quoting from said message, at loc. cit. 1037, said:

"The whole enactment, in view of the foregoing, appears to be designed to accomplish the legislative purpose as declared by it 'of promoting and conserving the interests and convenience of the public.'

"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."

It has been held on numerous occasions that a State may, in the exercise of its police power, regulate the use of its highways by vehicles engaged in both interstate and intrastate commerce. In the case of Bradley v. Public Utilities Com. 289 U. S. loc. cit. pages 95 and 98; 77 Law Ed. loc. cit. 1056, the Court said:

"Protection against accidents, as against crime, presents ordinarily a local problem. Regulation to ensure safety is an exercise of the police power. It is primarily a State function, whether the locus be private property or the public highways. Congress has not dealt with the subject. Hence, even where the motor cars are used exclusively in interstate commerce, a State may freely exact registra-

tion of the vehicle and an operator's license, *Hendrick v. Maryland*, 235 U. S. 610, 623, 59 L. ed. 385, 390, 35 S. Ct. 140; *Clark v. Poor*, 274 U. S. 554, 557, 71 L. ed. 1199, 1200, 47 S. Ct. 702; *Sprout v. South Bend*, 277 U. S. 163, 169, 72 L. ed. 833, 836, 48 S. Ct. 502, 62 A.L.R. 45, may require the appointment of an agent upon whom process can be served in an action arising out of operation of the vehicle within the State, *Kane v. New Jersey*, 242 U. S. 160, 61 L. ed. 323, 37 S. Ct. 30; *Hess v. Pawloski*, 274 U. S. 352, 356, 71 L. ed. 1091, 1094, 47 S. Ct. 632, and may require carriers to file contracts providing adequate insurance for the payment of judgments recovered for certain injuries resulting from their operations. *Continental Baking Co. v. Woodring*, 286 U. S. 352, 365, 366, 76 L. ed. 1155, 1163, 1164, 52 S. Ct. 595, 81 A. L. R. 1402. Compare *Packard v. Banton*, 264 U. S. 140, 68 L. ed. 596, 44 S. Ct. 257; *Sprout v. South Bend*, 277 U. S. 163, 171, 172, 72 L. ed. 833, 837, 838, 48 S. Ct. 502, 62 A. L. R. 45; *Hodge Drive-It-Yourself Co. v. Cincinnati*, 284 U. S. 335, 337, 76 L. ed. 323, 326, 52 S. Ct. 144. The State may exclude from the public highways vehicles engaged exclusively in interstate commerce, if of a size deemed dangerous to the public safety, *Morris v. Doby*, 274 U. S. 135, 144, 71 L. ed. 966, 971, 47 S. Ct. 548; *Sproles v. Binford*, 286 U. S. 374, 389, 390, 76 L. ed. 1167, 1179, 1180, 52 S. Ct. 581. Safety may require that no additional vehicle be admitted to the highway. The Commerce Clause is not violated by denial of the certificate to the appellant, if upon adequate evidence denial is deemed necessary to promote the public safety. Compare *Hammond v. Schappi Bus Line*, 275 U. S. 164, 170, 171, 72 L. ed. 218, 220, 221, 48 S. Ct. 66."

Bearing all of the above in mind, we will now answer

your questions in the order in which you ask them.

I.

It is the opinion of this department that a truck domiciled in a foreign state and operating as a contract hauler in interstate commerce over the highways of this state comes within the Act.

II.

It is the further opinion of this Department that the provisions of Article 8, do not require a contract hauler domiciled in a foreign state and operating in interstate commerce through Missouri to obtain a certificate of public convenience and necessity or an interstate permit, but that Section 5271 of Article 8, does require such a contract hauler to obtain a contract hauler's permit from the Public Service Commission. It is our further opinion that such a contract hauler is subject to the provisions of Article 8, which apply to contract haulers and must recognize the authority conferred by said article upon the Public Service Commission of the State of Missouri.

Yours very truly,

APPROVED:

J. E. TAYLOR
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ROY McKITTRICK
Attorney-General.

JET/afj