

BUS AND TRUCK LAW:

A partnership engaged in transporting for hire, by special agreement, the property of the individual members of the partnership must have a contract hauler's permit.

March 30, 1936 4-1



Mr. C. Arthur Anderson  
Prosecuting Attorney  
St. Louis County  
Clayton, Missouri

Dear Sir:

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

"I would like to have an opinion from your office with reference to the following:

"The question has come up in our justice courts on several occasions as to whether a partnership formed for the purpose of operating a truck used exclusively for the hauling of goods for the members of the partnership would have to obtain a Public Service Permit. I am enclosing copy of the copartnership agreement entered into between several parties in this State and would like to have your opinion as to whether such a partnership would have to obtain a P. S. C. permit as a common carrier. "

The co-partnership agreement is long and it would serve no useful purpose to set same out in full. It briefly provides that the party of the First part, in consideration of two hundred forty dollars (\$240.00) paid by each of the parties of the Second part, sold, transferred and conveyed to each of said parties an undivided one-fifth interest in an International Motor Truck; that the purpose of the partnership is transporting property of the partners, exclusively;

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the rates for hauling such freight is to be determined by the parties to the agreement and the profits at the end of one year of operation are to be accounted for and each partner is to receive a dividend of the profits according to the amount invested. The truck used is to make three trips per week to the City of St. Louis, and more if necessary to handle and care for the business of the parties, and at any time that any partner may have a load of six thousand (6,000) pounds a special trip is to be made to take care of this particular load if it can not be cared for on the regular trips. The truck is to be driven by the party of the First part who is to receive a salary of sixty dollars (\$60.00) per month and operating expenses out of the income of said business. The parties of the Second part consist of four merchants of Fredericktown, Missouri.

You inquire as to whether such a partnership would have to obtain a P. S. C. Permit as a common carrier.

Section 5268, Laws of Missouri 1931, provides, in part,

"It is hereby declared unlawful for any motor carrier to operate or furnish service as a common carrier within this state without first having obtained from the Commission a certificate declaring that public convenience and necessity will be promoted by such operation."

Bouvier's Law Dictionary, Vol. I, Third Revision, defines 'Common Carriers' as follows:

"One whose business, occupation, or regular calling it is to carry chattels for all persons who may choose to employ and remunerate him. *Dwight v. Brewster*, 1 Pick. (Mass.) 50, 11 Am. Dec. 133; *Fish v. Chapman*, 2 Ga. 353, 46 Am. Dec. 393; *Schoul. Bailm. sec. 345*; *Naugatuck R. Co. v. Button Co.* 24 Conn. 479."

Taking the above agreement at its face value it is plain that the partnership is not operating as a common carrier.

It would, therefore, be unnecessary for the co-partnership to obtain a certificate of public convenience and necessity from the Public Service Commission.

Having determined that the partnership is not operating as a common carrier, the question arises as to whether they are operating as contract haulers.

Section 5271, Laws of Missouri 1931, provides:

"It is hereby declared unlawful for any 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 \* \* \* \*."

Sub-section (c) of Section 5264, Laws of Missouri 1931, page 305, reads 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 therein defined."

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There can be no doubt that a person, firm or corporation who transports his or its own property, exclusively, does not come within the provisions of the Act, and is not subject to the jurisdiction of the Public Service Commission.

The above partnership agreement is patently an attempt to avoid the necessity of obtaining a permit from the Public Service Commission and being subject to their jurisdiction. That the partnership is engaged as its principal business in the transportation, for compensation, of property for particular persons to or from particular places under special agreement and that they are not operating as a common carrier is plain from the co-partnership agreement. They therefore come within the definition of "contract hauler" and must obtain a contract hauler's permit unless it can be said that said partnership is engaged in transporting its own property exclusively. According to the agreement no property of the partnership is to be transported but only the individual property of the various members of the co-partnership. The property of the individual members of the partnership is transported by the partnership for compensation to or from a particular place of places under special agreement between the individual members of the co-partnership.

It is, therefore, our opinion that under the terms of the co-partnership agreement submitted to us that the partnership in question is engaged in operating its business as a contract hauler and must obtain a contract hauler's permit from the Public Service Commission before transporting the property, for hire, of the individual members of the partnership, over the highways of this State.

Yours very truly,

J. E. TAYLOR  
Assistant Attorney General

APPROVED:

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JOHN W. HOFFMAN, Jr.  
(Acting) Attorney General

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