

**BUS AND TRUCK LAW:** Irregular route permit does not authorize servicing points serviced by regular route permit holders. Venue is in any county through which goods are illegally hauled.

January 7, 1936



Honorable John A. Eversole,  
Prosecuting Attorney,  
Washington County,  
Potosi, Missouri.

Dear Sir:

We are in receipt of your letter of December 12, 1935, wherein you state as follows:

"I have a rather unusual question submitted to me and since I am not sure what to do I have decided to put the facts up to you.

"We have two truck lines operating between Potosi and St. Louis over route 21 to 61 and 61 into St. Louis. They are operating under a common carriers permit under the bus and truck law of 1931.

"We also have the Park Transportation Company of St. Louis, Missouri, operated under a contract haulers permit over irregular routes issued by the public service commission giving specialized service.

"Recently the U. S. A. government under the W.P.A. let a contract to Evans and Howard Clay Products Company of St. Louis, Missouri, to furnish sewer pipe to construct a sewer system in Potosi, Missouri, said pipe to be delivered by the Howard Clay Products Co. in Potosi, before being accepted or paid for by the Government.

"Later the Evans and Howard Clay Products Company let a contract with Park Transportation Company of St. Louis for the delivery of said pipes to Potosi.

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"While in the act of delivering said pipe, that is part of them, on Monday, December 9th, 1935, the drivers of Park Transportation Company were arrested in Potosi for operating trucks for hire under a contract haulers permit over a regular route, used by a common carrier. The complaint was made by a State Highway Patrolman who also made the arrest.

"The case has been set for trial Monday, December 16, and since I am not at all sure what authority, if any, I have to ask a conviction, I am having the cases continued until I can get your opinion on the matter."

We are also in receipt of your letter supplemental thereto in which you state that the Park Transportation Company does not have a contract with the parties furnishing these pipes for the hauling.

We have examined the records of the Public Service Commission and they show that the Park Transportation Company was granted a permit No. T753X, with authority to

"operate over an irregular route in intrastate commerce as follows: St. Louis to and from any point in the State of Missouri, subject to the limitations contained in the Missouri Bus and Truck Law of 1931 concerning the operation of a motor truck as a common carrier for hire over an irregular route \* \* \*."

Section 5264, Laws of Missouri, 1931, pages 304-305, sub-section (g) states:

"The term 'regular route,' when used in this act, means that portion of the public highway over which a motor carrier usually or ordinarily operates or provides motor transportation service."

Sub-section (h) thereof states:

"The term 'irregular route,' when used in this act, means that portion of the public highways over which a regular route has not been established."

Section 5267, in part, provides as follows:

"(a) The public service commission is hereby vested with power and authority, and it shall be its duty to license, supervise and regulate every motor carrier in this state to fix or approve the rates, fares, charges, classifications, and rules and regulations pertaining thereto; \* \* \* and to supervise and regulate motor carriers in all matters affecting the relationship between such motor carriers and the public."

The rights of holders of permits for regular routes and for irregular routes are set forth in Section 5267, as follows:

"(d) A motor carrier not operating over a regular route may, within the territory permitted to be served by him, receive persons or property at a point located on a regular route and destined to a point not located on a regular route, and receive persons or property at a point not located on a regular route and destined to points on a regular route.

"(e) It shall be unlawful for any motor carrier, except one having a certificate of convenience and necessity authorizing such service, to accept persons or property for transportation from a point on a regular route destined to a point on a regular route, or where through or joint service is being operated between such points, and any motor carrier so offending shall be guilty of a misdemeanor and punished as provided by section 5275 of this act."

Section 5270, in part, provides as follows:

"(b) The public service commission shall have power and authority by general order or otherwise to prescribe rules and regulations governing all contract haulers as herein defined.

"(c) Article 6 of the public service commission law is hereby made applicable to all such contract haulers.

"(d) A contract hauler may receive persons or property at a point located on a regular route and destined to a point not located on a regular route and receive persons or property at a point not located on a regular route and destined to points on a regular route.

"(e) It shall be unlawful for a contract hauler to accept persons or property for transportation from a point on a regular route destined to a point on a regular route, or where through or joint service is being operated between such points and any contract hauler so offending shall be guilty of a misdemeanor and punished as provided by section 5275 of this act."

Section 5275 provides as follows:

"Every owner, officer, agent, or employee of any motor carrier, contract hauler, and every other person, who violates or fails to comply with or who procures, aids or abets in the violation of any provision of this act, or who fails to obey, observe or comply with any order, decision, rule or regulation, direction, demand or requirement of the commission, and who procures, aids, or abets any corporation or person in his failure to obey, observe or comply with any such order, decision, rule, direction, demand or regulation thereof shall be guilty of a misdemeanor and punishable by a fine not exceeding one thousand dollars or by imprisonment in the county jail not exceeding one year, or by both such fine and imprisonment."

The Motor Vehicle Law of Missouri with reference to the right of the State to declare classifications of uses of its highways has been upheld as constitutional by the Federal Court.

In the case of Schwartzman Service, Inc. v. Stahl, 60 Fed. (2d) 1034, 1. c. 1037, the court said:

"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 F. (2d) 509.

"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 clause or the equal protection clause.' *Packard v. Banton*, 264 U. S. 140, loc. cit. 144, 44 S. Ct. 257, 68 L. Ed. 596.

"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.

"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.

"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."'

"With the foregoing principles of law in mind as postulates, the constitutionality of the provision assailed may be considered. The alleged discriminatory or unequal provisions apply alike in favor of both common carriers and contract haulers when their

motor vehicles are 'used exclusively in transporting farm and dairy products from the farm or dairy to warehouse, creamery, or other original storage or market.'"

The authority of the Legislature to delegate to the Public Service Commission power to prescribe and promulgate reasonable rules and regulations has been upheld in the cases following:

State ex inf. Killam v. Colbert, 201 S. W. 52, 273 Mo. 198;  
State ex rel. City of Sedalia v. Public Service Com. of Mo., 204 S. W. 497, 275 Mo. 201;  
State ex rel. City of Sedalia v. Public Service Com. of Mo., 40 S. Ct. 342, 251 U. S. 547, 64 L. Ed. 408;  
City of St. Louis v. Public Service Com. of Mo., 207 S. W. 799, 276 Mo. 309;  
City of St. Louis v. Public Service Com. of Mo., 207 S. W. 805;  
State v. Freeland, 300 S. W. 675, 318 Mo. 560;  
Arnold v. Hanna, 290 S. W. 416, 315 Mo. 823, Judgment affirmed (1928), 48 S. Ct. 212, 276 U. S. 591, 72 L. Ed. 721;  
State ex rel. v. Thompson, 60 S. W. 1077, 160 Mo. 333, 54 L. R. A. 950, 83 Am. St. Rep. 468.

The Public Service Commission of Missouri in interpreting the Bus and Truck Act of 1931, Section 5267, sub-section (e), states:

"It is deemed that a certificated carrier operating on a regular route who fails to offer specialized service, such as refrigeration, uncrated furniture hauling, hauling of heavy machinery and the like, is not operating as a common carrier as to such service, and an irregular carrier who does offer such specialized service may be licensed by the Commission to perform such service from point to point on the route of such certificated carrier."

It does not appear that the materials transported in the instant case come within the classification set forth in the rule or interpretation set forth next hereabove.

And for the purpose of this opinion, we take it for granted that the holders of regular route permits are equipped to service and ready to service the public in transporting the material under consideration from St. Louis to Potosi, and that this is an intrastate shipment.

The route from St. Louis to Potosi being a regular route for one or more holders of such permits, and the route or permit granted to the Park Transportation Company being an irregular route, it follows that the Park Transportation Company does not have the legal right to transport goods or materials over said regular route from St. Louis to Potosi and deliver them to points thereon that are serviced by the regular route permit holders.

While Section 5270 (e) prescribes that it shall be unlawful for a contract hauler to "accept" property for transportation from a point on a regular route destined to a point on a regular route, etc., and that the offending person is punishable as provided by Section 5275, said sub-section (e) does not appear to be the only penalty section for violation of the Bus and Truck Law, and, moreover, it covers only contract haulers. Section 5275 is the general penalty section (and indeed is the section prescribing the amount of penalty for contract haulers) and defines the prohibited class to be any person who

"violates or fails to comply with or who procures, aids or abets in the violation of any provision of this act, or who fails to obey, observe or comply with any order, decision, rule or regulation, direction, demand or requirement of the Commission, \* \* \* shall be guilty of a misdemeanor and punishable by a fine not exceeding one thousand dollars or by imprisonment in the county jail not exceeding one year, or by both such fine and imprisonment."

Under this provision, any person who violates this law may be punished, and the criminal act is the prohibited transporting of the material as well as the acceptance of the material for such purpose, and the party so offending may be

Honorable John A. Eversole

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prosecuted in any county through or into which he so illegally transports the material. The transporting of the material for ever so short a distance within a county under such conditions is an illegal act for which the offending person may be prosecuted.

CONCLUSION

It therefore appears that the route over which the Park Transportation Company is transporting the materials in question is serviced by holders of regular route permits, and that the Park Transportation Company is not authorized by law to so transport said materials from St. Louis to Potosi, Missouri, and that if it is so transporting them, it is subject to prosecution therefor, and the venue for such prosecution may be in any county into or through which such goods are so illegally transported.

Yours very truly,

DRAKE WATSON,  
Assistant Attorney General.

APPROVED:

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

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