

PUBLIC SERVICE COMMISSION: Hauler under irregular route permit may pick up property at a point on a regular route and discharge property along a regular route so long as it is not a point described in a regular route permit.

August 31, 1938

Honorable Lamkin James
Prosecuting Attorney
Saline County
Marshall, Missouri



Dear Sir:

This is to acknowledge receipt of your letter of August 11, 1938, requesting an opinion from this department, which is as follows:

"This is written to ask your opinion concerning Section 5267, Sub-Section E, as amended by Laws 1935.

"Upon affidavit of Missouri State Highway Patrolman we have charged a trucker with violation of this section in that he hauled property for hire from Marshall, Missouri, over an irregular route. The Brooks Truck Company has a Public Service Commission certificate authorizing transportation of property over a regular route from Marshall, Missouri, to Concordia, Missouri. The person charged with hauling over the Brooks Truck Company regular route on his irregular permit did not haul into the city limits of Concordia, but hauled a skating rink from Marshall and unloaded it a short distance outside the city limits of Concordia. We are confronted with the question as to whether or not he has violated the above section by reason of the fact that he did not actually haul the property into the corporate limits of the city which constitutes the termination of the above regular route.

"This case is being continued pending your construction of the above section, and I would appreciate it if you would advise me of your opinion at your earliest opportunity."

Paragraph (d) of Section 5267, Session Laws 1935, page 322, reads as follows:

"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."

Paragraph (e) of the same section reads as follows:

"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."

The Legislature, in Session Laws 1931, Section 5264, p. 305, paragraph (g), defined "regular route" as follows:

"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."

Paragraph (h) of the same section defined "irregular route" as follows:

"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."

As described in your request, I am presuming that a regular route has not been granted to any carrier between Marshall and a point near the city limits of Concordia. The Certificate of Convenience and Necessity No. T1365 which was granted to the Brooks Truck Company does not show a special permit to pick up or discharge property along the route between Marshall and Concordia. Some certificates give this special permit and in some cases require this service. The Public Service Commission, through its attorney, Daniel C. Rogers, states that it is permissible to haul, as stated in your request, where the hauler did not complete the haul from point to point.

In construing statutes, one must seek and enforce the intention of the Legislature and the purpose of its enactment. This was so held in the case of *Fischbach Brewing Co. v. City of St. Louis*, 95 S. W. (2d) 335, 1. c. 338, where the court said:

"In determining the meaning and intent of a statute it is proper to consider the time of its enactment, the surrounding facts and circumstances, the purpose for which the law was enacted, the cause or necessity which induced its enactment, the prior condition of the law, the mischief sought to be remedied, contemporaneous and prior historical events which may have influenced the enactment; in other words, the judicial interpreters of the law should put themselves as near in the position of the makers of the law as possible in order to more correctly ascertain their intent in its enactment. Sutherland on Statutory Construction (2d Ed.) sec. 456, p. 864, sec. 471, p. 883."

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It will be noticed that paragraph (e) of Section 5267, supra, specifically says, "or where through or joint service is being operated between such points." It clearly was the intention of the Legislature that holders of irregular permits should be permitted to haul on routes that are not serviced by the holder of a regular route permit. The paragraph does not state "any place along said route", but specifically states "between such points", meaning between such towns or locations set out in the certificate of convenience and necessity.

The defendant in your case has complied with all the rules and regulations as set out in paragraph (d) of Section 5267, Laws of 1935, page 322. He has delivered a skating rink from Marshall to a point not located on a regular route. He could also have loaded the skating rink at the place where he discharged it and hauled it to Marshall if the point near Concordia is not a point on a regular route. The Brooks Truck Company, under their certificate of convenience and necessity, could not have been compelled by the Public Service Commission to accept the skating rink if it had been located at a point near Concordia, for the reason that their permit describes the point as from the town of Marshall to the town of Concordia.

CONCLUSION

In view of the above authorities, it is the opinion of this department that the defendant in your case has not violated paragraph (e) of Section 5267, Session Laws 1935, page 322, but has complied with paragraph (d) of the same section.

Respectfully submitted

W. J. BURKE
Assistant Attorney General

APPROVED:

J. E. TAYLOR
(Acting) Attorney General

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