

MOTOR VEHICLES: Exemption of taxicabs from control by
Public Service Commission.

February 14, 1938.

2-15

Honorable Claude T. Wood,
Prosecuting Attorney,
Waynesville, Missouri.



Dear Sir:

We are in receipt of your request under date of
January 31, 1938, relative to motor vehicles, which is as
follows:

"I should like to have your official
opinion upon the following proposition:

"A yellow taxicab operating in Spring-
field, Missouri, transports two passengers
for hire, to-wit: ten cents per mile, along
highway #66 from Springfield to Rolla,
Missouri, through Pulaski County, Missouri.
Present information and for the purpose
of the question in hand, only one such
trip was made. Subject had no certifi-
cate of convenience and necessity nor a
permit as a contract hauler.

"Does the subject come within the exemption
of section 5265 R. S. Missouri, 1929, as
amended by laws of 1937, page 439, or does
the subject under the above circumstances
come in conflict with the prohibitions of
Article 8, chapter 33, R. S. Mo. 1929,
as amended by Laws of Missouri, 1931, pages
304 to 316 inclusive."

I.

Section 5265, Laws of Missouri, 1937, page 439, is 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 to 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 a creamery, warehouse, or other original storage or market, and transporting stocker and feeder livestock from market to farm or from farm to farm 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 5264, subsection (d), Laws of Missouri, 1931, page 305, is as follows:

"The term 'taxicab,' when used in this act, shall mean every motor vehicle designated and/or constructed to accommodate and transport passengers, not more than five in number, exclusive of the driver, and fitted with taximeters and/or using or having some other device, method or system, to indicate and determine the passenger fare charged for distance traveled, and the

principal operations of which taxicabs are confined to the area within the corporate limits of cities of the state and suburban territory as herein defined."

Your letter does not state whether or not you know in fact that the taxicab mentioned is of the character and construction and has the equipment required by said subsection (d) of Section 5264, or whether or not the principal operations of the taxicab in question are confined to Springfield and adjacent suburban territory. However, for the purpose of this opinion, we will assume that the above facts exist.

Based upon the above assumption of facts, under the statute Section 5265, taxicabs which come under the definition as prescribed by subsection (d) of Section 5264 are exempt and do not come under or within the control of the Public Service Commission, so as to require a taxicab, under such circumstances, to procure a certificate of convenience and necessity.

II.

However, it is possible that a constitutional question could be raised, respecting the right of exemption allowed taxicabs by the above statute, as to whether or not such exemption is discriminatory and hence invalid.

We find no Missouri cases dealing with the exemption allowed taxicabs under the above statute. However, a case of interest to the case herein concerned is Bacon Service Corporation v. Huss, 248 Pac. 235, wherein the court said, l. c. 239:

"The respondent next contends that the exemption of 'taxicabs, drays, transfer vehicles, and other like city vehicles which do not run over regular routes' is such an exemption as disturbs the required uniformity of the act. It is apparent that this exemption and the further exemption of hotel busses meeting trains, cars, or boats were intended to apply to those who are engaged in the business of

operating such motor vehicles for hire within the limits of incorporated cities. As such, they may be properly so separately classified for the reason that highways within municipalities are usually not maintainable directly at the expense of the state but from municipal revenues derived from the exercise of municipal powers of license and taxation, and it must be assumed that the Legislature had this distinction in mind in limiting the license to the use of highways maintainable by the state and for whose maintenance municipalities are not responsible.

"In providing for the exemptions heretofore considered, we are of the opinion that the Legislature has not acted arbitrarily nor without reason in making such classifications. We do not intend to hold, however, that the exemptions provided for in section 9 of the act would apply to operators therein mentioned who are engaged also in the business of transporting passengers or property for hire outside of incorporated cities as the fact in each case may appear."

It is to be noted that where taxicabs operating in Missouri cities (and in adjacent suburban territory) confine such operation to such territorial limits, the above case would apparently sustain the validity of the exemption in question here. On the other hand, the concluding paragraph (although probably dictum) in the case, to-wit:

"In providing for the exemptions heretofore considered, we are of the opinion that the Legislature has not acted arbitrarily nor without reason in making such classifications. We do not intend to hold, however, that the exemptions provided for in section 9 of the act would apply to operators therein mentioned who are engaged also in the business of trans-

porting passengers or property for hire outside of incorporated cities as the fact in each case may appear."

might, or could be used in argument, at least, that the exemption as to taxicabs under the Missouri statute, (although the operations of a taxicab outside of the territorial limits defined in the statute constituted the minor part, or even were less than such minor part, of such operations,) was discriminatory in favor of taxicabs, and hence invalid as unconstitutional.

CONCLUSION.

Assuming that the taxicab in question is of the character and has the equipment as set forth and provided for in the aforesaid subsection (d) of Section 5264, and confines its principal operations to Springfield and adjacent suburban territory, then, unless or until the whole, or that part of said Section 5265 relating to the exemption allowed taxicabs should be held unconstitutional, it is our opinion that such taxicab is not required to procure a certificate of convenience and necessity from the Public Service Commission of Missouri, because its operations are not under the control of the Commission.

Respectfully submitted,

J. W. BUFFINGTON,
Assistant Attorney General.

APPROVED:

J. E. TAYLOR,
(Acting) Attorney General.

JWB:HR