

PUBLIC SERVICE COMMISSION: Cannot exact contract hauler license from trucker transporting livestock from farm to market and on return trip hauling his (the trucker's) own property.

August 15, 1939.

8-18



Hon. Jack H. Denny
Prosecuting Attorney
Howard County
Fayette, Missouri.

Dear Sir:

This will acknowledge receipt of your letter of August 9, 1939, as follows:

"Section 5265, Laws of 1931, page 304 provides that the provisions of that act shall not apply to motor vehicles used exclusively in hauling farm and dairy products from the farm to original market.

"The State Highway patrol has issued warnings to truck drivers in this county that if they haul livestock to St. Louis, Missouri, and while in St. Louis, buy other property, pay for it, and own it, they cannot haul it home without coming under the provisions of the act requiring them to have a certificate of necessity and convenience.

"Does the word 'exclusively' in the above law mean that a truck driver cannot haul his own property home after he has hauled livestock to market?"

The power and authority of the Public Service Commission on this subject is contained in Section 5270, Laws of Mo. 1937, page 436, which provides:

"The public service commission is hereby vested with power and authority and it shall be its duty to license, supervise and regulate every contract hauler in this state except as provided in section 5265 of this act * * * *"

The term contract hauler is defined in Section 5264 (c), Laws of Mo. 1931, p. 305, in this manner:

"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."

We assume the truckers involved are "contract haulers" as this term is defined. With this assumption it is clear that these truckers must be licensed by the Public Service Commission as contract haulers unless the exceptions made in Section 5265, Laws 1937, p. 439, operate to exempt them from the terms of Section 5270, supra.

Section 5265, Laws of Mo. 1937, p. 439, provides:

"The provisions of this act shall not apply * * * * 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 * * *"

These are the only exceptions made in the act with respect to farm products, and it is the meaning to be ascribed to this section which governs your question.

Section 5265 as it appeared in Laws 1931, p. 306, is identical with that appearing in Laws 1937, p. 439, with the exception that in the 1937 act there is added the exemption of a contract hauler when "transporting stocker and feeder livestock from market to farm or from farm to farm."

The case of Schwartzman Service Inc. v. Shahl, 60 Fed. (2d) 1, c. 1038 holds the 1931 version of Section 5265 did not authorize the hauling of farm products from market to farm without a contract hauler's permit. The court said, "The motor vehicle employed must return empty, as farm products could not be hauled both ways to market." That this is the meaning to be given Section 5265 as it appeared in 1931 cannot be disputed. The whole exemption is based upon the vehicle being used exclusively in transporting farm products from the farm to the market. There is no language employed which even implies said vehicle is exempt when the transportation is from market to farm.

However, in 1937 the Legislature added a clause to this section exempting contract haulers from need for license when "transporting stocker and feeder live-

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stock from market to farm or from farm to farm." Again this use of the vehicle must be exclusive. It is to be noticed contract haulers are only exempt under this clause when transporting stocker and feeder livestock. There is no broad reference to farm or dairy products.

From the foregoing we conclude the correct meaning to be given Section 5265, Laws 1937, p. 439, is this: Truckers are exempt from having to obtain a permit as a contract hauler from the Public Service Commission when the vehicle is used exclusively in transporting farm and dairy products from the farm to the original market, creamery, warehouse or storage place. Said haulers are also exempted when the vehicle is used exclusively in transporting stocker and feeder livestock from the market to the farm or from farm to farm.

At the outset of this opinion we assumed the truckers involved were contract haulers. Now, a contract hauler is one who as his principle business transports for compensation or hire persons or property for a particular person from or to a particular place under an individual agreement.

If the truckers involved are not contract haulers then they are not required to have a license as such issued by the Public Service Commission. A person may transport his own property from or to any place he desires and not be subject to the license provided for a contract hauler. The Public Service is not invested with any authority to control such transportation.

Applying the above to your particular example, it appears that the trucker when hauling livestock for hire to the market in St. Louis, is exempted from having to have a license as a contract hauler because he is transporting farm products from the farm to the original market. On his return trip he is hauling his own property for himself and the Public Service Commission has no control over this. He is not transporting property for hire for a particular person from or to a

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particular place under an individual agreement on this return trip.

That provision of Section 5265, supra, pertaining to "exclusive" use has reference to the property transported. It means that the trucker in order to come within the exemption must only transport farm products for hire for a particular person from the farm to the original market under an individual agreement, to the exclusion of other kinds of property transported for hire for a particular person from or to a particular place under an individual agreement.

CONCLUSION

Therefore, it is our opinion that a trucker transporting livestock for a person for hire from the farm to the original market and then purchasing property as his (the trucker's) own, and transporting it on his return trip, is not required to be licensed as a contract hauler. Neither is he required to be so licensed if on said return trip he is transporting stocker and feeder livestock from the market to the farm.

Respectfully submitted,

APPROVED:

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