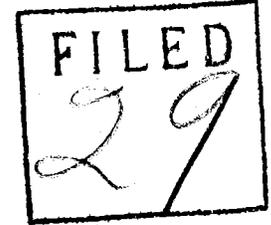


**INSURANCE:** Deductions for insurance premiums by Commission Merchants  
**TRUCKERS:** or truckers carrying livestock from farm to market are illegal where the carrier falls within the jurisdiction of the Public Service Commission, if the total charges exceed the rate allowed by the Commission; are illegal if the insurance is not carried whether the trucker is within jurisdiction of the Public Service Commission or not; and where insurance is carried may or may not be legal according to the contract entered into between shipper and trucker.

May 14, 1946



5/18

Honorable Andrew Field  
Prosecuting Attorney  
Caldwell County  
Hamilton, Missouri

Dear Mr. Field:

This will acknowledge receipt of your letter of recent date, requesting an opinion of this department regarding the legality of the practice of Live Stock Commission Merchants and Packers in deducting from the proceeds of shipments of livestock a premium on an insurance policy purported to have been carried by the driver of the truck who transports a farmer's livestock to the city markets.

Your letter states that the farmers object to such deductions for the following reasons:

First, because they have no information as to whether a particular truck driver carries a policy of insurance to cover losses sustained; second, because the farmer is not advised of the insurance company in which such policy is held; and third, because the farmer has no choice in selecting the insurance company in which such policy is held.

We think the following questions are presented by your letter:

- (1) Are the deductions above referred to legal when the trucker falls under the supervision of the Public Service Commission of Missouri?
- (2) Are said deductions legal when the trucker does not fall under the jurisdiction of the Public Service Commission of Missouri, and does not actually purchase the insurance?
- (3) Are the deductions legal when the trucker does not fall under the jurisdiction of the Public Service Commission of Missouri, and such insurance is carried by the trucker?

We will consider the above questions in the order named.

Section 5720, R. S. Mo., 1939, defines the term "motor vehicle" and "motor carrier". By the provisions of Section 5723, R. S. Mo., 1939, the Public Service Commission is vested with the power to supervise and regulate every motor carrier in the state and to fix or approve rates, fares and charges of such motor carriers. Section 5721, R. S. Mo., 1939, provides that the provisions of the Public Service law 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 nor to motor vehicles used exclusively in the distribution of newspapers from the publisher to subscribers or distributors."

Thus, the livestock truckers who are engaged only in transporting livestock from the farm to the market would not fall within the jurisdiction of the Public Service Commission.

Section 5723 (c), R. S. Mo., 1939, provides as follows:

"All laws relating to the powers, duties, authority and jurisdiction of the public service commission over common carriers are hereby made applicable to all such motor carriers, except as herein otherwise specifically provided."

Section 5611, R. S. Mo., 1939, found in the article dealing with common carriers, provides in part as follows:

"\* \* \* No common carrier shall charge, demand, collect or receive a greater or less or different compensation for transportation of passengers or property, or for any service in connection therewith, than the rates, fares and charges applicable to such transportation as specified in its schedules filed and in effect at the time; nor shall any such carrier refund or remit in any manner or by any device any portion of the rates, fares, or charges so specified, nor extend to any shipper or person any privileges or facilities in the transportation of passengers or property except such as are regularly and uniformly extended to all persons and corporations under like circumstances."

Rule No. 65 of General Order No. 33-B, promulgated by the Public Service Commission, provides in part as follows:

"(a) Tariffs Required. Every motor carrier, to the extent it is authorized by this Commission to engage in intrastate transportation between points in Missouri, shall publish, file and post tariff schedules containing the charges to be assessed for all common carrier services."

It will thus be seen that truckers who carry livestock from farm to market, but who also carry other goods, must file a tariff with the Public Service Commission, and the rates and charges allowed by the Public Service Commission cannot be exceeded by such carriers. Therefore, if a trucker falls within the jurisdiction of the Public Service Commission of Missouri, it would be illegal for him to deduct extra charges for insurance premiums, if these extra charges exceed the rate allowed by the Public Service Commission.

With regard to the second question raised by your letter, we refer you to Sections 4487 and 4694, R. S. Mo., 1939, which read as follows:

"Every person who, with intent to cheat or defraud another, shall designedly, by color of any false token or writing, or by any other false pretense, obtain the signature of any person to any written instrument, or obtain from any person any money, personal property, right in action or other valuable thing or effects whatsoever, and every person who shall, with the intent to cheat and defraud another, agree or contract with such other person, or his agent, clerk or servant, for the purchase of any goods, wares, merchandise or other property whatsoever, to be paid for upon delivery, and shall in pursuance of such intent to cheat and defraud, after obtaining possession of any such property, sell, transfer, secrete or dispose of the same before paying or satisfying the owner or his agent, clerk or servant therefor, shall upon conviction thereof be punished in the same manner and to the same extent as for feloniously stealing the money, property or thing so obtained."

"Every person who, with the intent to cheat and defraud, shall obtain or attempt to obtain, from any other person, or persons, any money, property or valuable thing whatever by means or by use of any trick or deception, or false and fraudulent representation, or statement or pretense, or by any other means or instrument or device, commonly called 'the confidence game,' or by means, or by use, of any false or bogus check, or by means of a check drawn, with intent to cheat and defraud, on a bank in which the drawer of the check knows he has no funds, or by means, or by use, of any corporation stock or bonds, or by any other written or printed or engraved instrument, or spurious coin or metal, shall be deemed guilty of a felony, and upon conviction thereof be punished by imprisonment in the state penitentiary for a term not exceeding seven years."

We are of the opinion that a deduction withheld on the premise that insurance has been purchased by trucker would be the taking of money under false pretenses as defined in the above sections. Such withholding would be, therefore, illegal and subject to penalties provided for in the above quoted sections.

Regarding the third question presented by your letter, we are of the opinion that the legality of deductions by non-Public Service operators who actually purchase liability insurance is to be determined on a contract basis. We see no reason why the trucker could not charge the amount he desires for hauling live-stock, including additional charges for insurance premiums, if the shipper is informed that such additional charges will be made. In such case, it would appear that a valid contract would exist between shipper and trucker. On the other hand, if the shipper was quoted a hauling charge by the trucker, and then the trucker attempted to charge an additional amount, the shipper would not legally be bound to pay such additional amount. In other words, the trucker would be obliged to fulfill his part of the contract entered into between the shipper and himself, and further, that the shipper would not be bound beyond the terms of said contract. This department would be unable to pass upon the legality of deductions in such cases without being advised of the specific terms of the contract entered into by the shipper and the trucker.

The first objection raised by the shipper to the practice of making these deductions for insurance premiums by livestock truckers that they do not know whether the trucker actually carries a policy of insurance is, we think, answered by the discussion above with relation to questions (1) and (2) presented by your letter. The second and third objections, we think, are matters of individual contract rights, which are dealt with by our discussion under question (3) above.

#### CONCLUSION

We are, therefore, of the opinion that: (1) It would be illegal for livestock truckers, who are under the jurisdiction of the Public Service Commission of Missouri, to charge more than the rate allowed under the rules and regulations of the Public Service Commission, and if the deductions for insurance premiums are inconsistent with the rules and regulations regarding this type of trucker laid down by the Public Service Commission, they could not legally be exacted from the shipper. (2) That the deductions for insurance premiums would be illegal, if any trucker failed to actually carry the insurance for which he has purported to make the deduction. (3) The legality of deductions made by truckers, who do not fall under the jurisdiction of the Public Service Commission, and who actually purchase the insurance, the premium for which is deducted, would depend upon whether the terms of the contract entered into between the shipper and the trucker included said deductions, and the deductions would be legal only to the extent that they were covered by the terms of such contract.

Respectfully submitted,

SMITH N. CROWE, JR.  
Assistant Attorney General

APPROVED:

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J. E. TAYLOR  
Attorney General

SNC:LR