

PUBLIC SERVICE COMMISSION:  
CERTIFICATE OF CONVENIENCE  
AND NECESSITY:

A certificate of convenience and necessity is prerequisite for one to operate as a motor carrier of passengers for hire; "taxicabs" operating within "suburban territory" exempt.

March 19, 1951.

Hon. J. R. Gideon,  
Prosecuting Attorney,  
Forsyth, Missouri.

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Dear Sir:

This will acknowledge receipt of your request for an opinion from this office on a question which you present as follows:

"For the past several years in Taney County, we have had a number of persons (especially during tourist seasons), that use their private automobiles to transport persons for hire. These private operators use the public highways, some of which routes, have licensed buses operating over them. These private operators have no city, state or government licenses authorizing them to so operate their said automobiles for hire. These offenders make trips, when a load can be produced, and travel to points 25 or more miles from starting point, and traverse state highways covered by licensed operators for transporting persons for hire.

"These private operators also advertise their services.

"In your opinion, are persons operating their private automobiles for the transportation of persons for hire, as above described, required to procure a license to so operate? If a license is required what kind of license should be procured?"

At our request you furnished us a more detailed account of the manner of operation of these motor vehicles as follows:

"Your letter under date of Dec. 5th, 1950, relative persons operating automobiles for hire without obtaining a license authorizing such operation, has just reached my desk.

"For the past several years a number of persons have been operating out of Rockaway Beach, Branson and Hollister using their private automobiles. These

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persons advertise trips to points of interest in this immediate section. These operators do not advertise any regular schedule. When a load is made up operator takes off. They usually go via Reeds Springs and on to Fairy Cave, Marble Cave and then back thru Shepherd of the Hills Country, then on thru Branson to starting point. Other times the above route is traveled in reverse order.

"These trips are not confined to the points above mentioned, but include other points to the east and south. I have heard of one operator of making trips to Eureka Springs, Ark.

"I understand one operator located a Rockaway Beach, has a license to operate on a irregular route covering the caves and section above mentioned. I have not verified that a license has been issued for such irregular route, but I was informed that one A. U. Blansit has such a License.

"All the others mentioned above operate for about three months each year during tourist season, and call at hotels and tourist camps soliciting business.

"The above covers about all the information available except the fact that most or all of these operators do not have a license of any kind, not even a taxi license."

Section 390.020, RSMo. 1949, defines the terms used in the regulation of motor carriers as follows:

"1. The term 'motor vehicle,' when used in sections 390.010 to 390.170, means any automobile, automobile truck, motor bus, truck, bus, or any other self-propelled vehicle not operated or driven upon fixed rails or tracks.

"2. The term 'motor carrier,' when used in said sections, means any person, firm, partnership, association, joint stock company, corporation, lessee, trustee, or receiver appointed by any court whatsoever, operating any motor vehicle with or without trailer or trailers attached, upon any public highway for the transportation of persons or property or both or of providing

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or furnishing such transportation service, for hire as a common carrier; provided, however, said sections shall not be so construed as to apply to motor vehicles used in the transportation of passengers or property for hire, operating over and along regular routes within any municipal corporation or a municipal corporation and the suburban territory adjacent thereto, forming a part of transportation system within such municipal corporation or such municipal corporation and adjacent suburban territory, where the major part of such system is within the limits of such municipal corporation; and provided further, said sections shall not be so construed as to apply to motor vehicles operated between the State of Missouri and an adjoining state when the operations of such motor vehicles within the state of Missouri are limited exclusively to a municipality and its suburban territory as herein defined.

"4. The term 'taxicab,' when used in said sections, 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.

"6. The term 'suburban territory,' when used in said sections, means that territory extending one mile beyond the corporate limits of any municipality in this state and one mile additional for each fifty thousand population or portion thereof; provided, that when more than one municipality is contained within the limits of any such territory so described, motor carriers operating in and out of any such municipalities within said territory shall be permitted to operate anywhere within the limits of the larger territory so described.

"7. The term 'public highway,' when used in said sections, means every public street, alley, road, highway, or thoroughfare of every kind in this state used by the public, whether actually dedicated to the public and accepted by the proper authorities or otherwise.

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

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

Clearly the definition of "motor carrier" quoted as paragraph 2 above encompasses the motor vehicles described in your letter and their operation for hire on "call and demand" service over irregular routes.

The vehicles are just as clearly not "taxicabs" as defined above since they operate outside a "suburban territory" and are not entitled to exemption provided for taxicabs from the provisions of Chapter 390, RSMo. 1949. Since these persons are operating motor vehicles for hire and are clearly "motor carriers" and are not exempt as "taxicabs" they are subject to the regulation and license fees imposed by Chapter 390, RSMo. 1949.

In the case of State ex rel. Crown Coach Co. v. Public Service Commission, 185 S.W. 2d. 347, the court had to determine whether certain passenger cars being operated as carriers for hire were taxicabs. The court at l.c. 357 said:

"It is evident that under Section 5720(d), R. S. Mo. 1939, motor vehicles of the type therein described and used for hire as common carriers are either 'taxicabs' or they are not 'taxicabs', depending on the location of their principal operations. Under the evidence in this case the motor vehicles in question were common carriers for hire. See State ex rel. Anderson v. Witthaus, 340 Mo. 1004, 102 S.W. 2d 99. To determine the jurisdiction, if any, of the Public Service Commission over such vehicles of the type described, when used for hire as common carriers, as in the instant case, the statutory test is whether the 'principal operations' of the same are 'confined to the area within the corporate limits of cities of the state and suburban territory as herein defined.' If the facts show all the elements of such exemption to exist, then no part of Article 8, Chapter 35, R.S. Mo. 1939, applies to such carriers and the Public Service Commission has no power of jurisdiction over them. If the facts show any element of exemption lacking, then such vehicles are within the

purview of Section 5720(b) and 5725, which statutes and all other applicable provisions of said article affect such vehicles, and the jurisdiction of the Public Service Commission would obtain."

Section 390.060 requires any motor carrier operating as a common carrier to obtain from the Public Service Commission a certificate declaring that public convenience and necessity will be promoted by such operation. Said section reads in part as follows:

"I. It is hereby declared unlawful for any motor carrier to operate or furnish service as a common carrier within this state without first having obtained from the commission a certificate declaring that public convenience and necessity will be promoted by such operation. The commission upon the filing of a petition for a certificate of convenience and necessity shall within a reasonable time fix a time and place for hearing thereon. The commission shall cause a copy of such petition and notice of hearing thereon to be served at least ten days before the hearing upon the officers or owners of every common carrier that is operating or has applied for a certificate of convenience and necessity to operate in the territory proposed to be served by the applicant, and on the city clerk of any city into or through which said motor carrier may desire to operate, and any such common carrier or city is hereby declared to be an interested party to said proceeding and may offer testimony for or against the granting of such certificate, and any other person or persons who might in the opinion of the commission, be properly interested in or affected by the issuance of said certificate, be by the commissioner made a party, and may offer testimony for or against the granting of such certificate. If the commission shall find from the evidence that public convenience and necessity will be promoted by the creation of the service proposed, or any part thereof, as the commission shall determine, a certificate therefor shall be issued. In determining whether or not a certificate of convenience and necessity should be issued, the commission shall give reasonable consideration to the transportation service being furnished by any railroad, street railroad or motor carrier, and shall give due consideration to the likelihood of the proposed service being permanent and continuous

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throughout twelve months of the year, and the effect which such proposed transportation service may have upon other transportation service being rendered; provided, however, no vested right shall accrue to any certificate of convenience and necessity; and provided further, that the issuance of a certificate of convenience and necessity to one carrier shall not prohibit the granting of such certificate to another carrier over the same route if in the opinion of the commission the public convenience and necessity will be promoted by so doing.

"4. The commission shall adopt rules prescribing the manner and form in which motor carriers shall apply for certificates and permits required by sections 390.010 to 390.170. Among other rules adopted, there shall be rules as follows:

"(1) Application shall be in writing;

"(2) Shall contain full information concerning the ownership, financial condition, equipment to be used, and the physical property of the applicant;

"(3) The complete route over which the applicant desires to operate or the territory which applicant desires to serve;

"(4) The proposed rates, schedule, or schedules, or time cards of the applicant."

The rates for such license are provided by section 390.110 as follows:

"1. In addition to the regular registration license fee imposed on all motor vehicles in this state, and its personal property tax, every motor carrier, except as provided in section 390.030 shall, at the time of the issuance of a certificate of convenience and necessity and/or an interstate permit, and annually thereafter, on or between January first and January fifteenth of each calendar year, pay to the state of Missouri the annual license fee, as set out in sections 390.010 to 390.170. All such fees levied upon the issuance of a license to any motor carrier for any

motor vehicle hereunder shall be reckoned from the beginning of the quarter in which such license was issued; provided, however, that no motor vehicle coming within the provisions of said section shall be used or licensed which has a greater dimension or weight than is now or may hereafter be provided by law.

"2. In all cases where the mileage of any route covered by any certificate of convenience and necessity and/or an interstate permit issued under the provisions of sections 390.010 to 390.170 shall be in question, the public service commission shall by order determine such question and the order of the public service commission in such cases shall be final. For the purpose of determining the mileage of any such route, the certificate of the state highway commission, with respect to state highways, the county engineer, with respect to county or other highways not constituting a part of the state highway system, or of the streets of any municipal corporation, and in the case of streets in any municipal corporation, the certificate of any city engineer or mayor shall be accepted by the public service commission as conclusive evidence; provided, that where a motor carrier is operating within this and an adjoining state and the total mileage of said route in Missouri is ten miles or less, the license fee shall be one-third of the license fee set out in this chapter; provided further, that where a motor carrier is operating a route in this state, the total mileage of which is not greater than twenty miles, the license fee shall be one-half of the license fee herein set out.

"3. In the case of emergency or usual temporary demand for transportation, the license fee or additional motor vehicle for limited periods shall be fixed by the commission in such reasonable amount as may be prescribed by general or temporary order.

"4. The commission, upon the issuance of a license for any vehicle, as defined in sections 390.010 to 390.170, shall notify the director of revenue who shall receive the license fee for such vehicle; and immediately deposit the same with the state treasurer

in the state highway department fund.

"5. For each motor vehicle operating under a certificate of convenience and necessity or interstate permit as a passenger carrying vehicle, the sum of ten dollars per passenger seat.

"6. In computing the annual license fee on each motor vehicle, trailer or semi-trailer, operating under a certificate of convenience and necessity or interstate permit as a freight carrying vehicle, the vehicle shall be rated on the manufacturer's rated load capacity or the actual weight carrying capacity of the vehicle, which capacity shall be determined by the public service commission at the time a certificate of convenience and necessity or interstate permit is issued.

"8. Any motor carrier who shall use said highways in the transportation of persons or property or both as a common carrier without securing and having such interstate permit or certificate of convenience and necessity, and without paying the fees and filing the bond or insurance policy as provided in sections 390.010 to 390.170 shall forfeit and pay to the state of Missouri for deposit in the state highway department fund, the sum of five hundred dollars for each day such business is so conducted, to be recovered by civil action in the name of the director of revenue of the state of Missouri, instituted by summons or by attachment against their property in any county in this state wherein such property may be found.

"9. A motor carrier may elect to have described on his or its annual license card of any regularly licensed motor vehicle, trailer or semitrailer, not more than two emergency vehicles of weight carrying capacity not greater than that of the regularly licensed vehicle upon the payment by such motor carrier of an annual fee of five dollars for each alternate emergency vehicle described on said annual license card. Only one of such three vehicles as shown on the annual license card may be operated in the state at any one time; provided, however, the commission may on application, when a licensed motor vehicle has been destroyed or permanently replaced by another motor vehicle of the same seating capacity or less, or same tonnage capacity or less, transfer said annual license; in cases where the substituted

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vehicle is of larger seating or tonnage capacity, the applicant must pay an additional sum equivalent to the difference between the annual license fee for the original motor vehicle and the annual license fee for the substituted motor vehicle; provided, however, where a motor carrier uses a tractor for pulling trailers or semitrailers said motor carrier may elect to have described on his or its annual license card either the tractor, trailer, or semitrailer. In the event the motor carrier elects to license the tractor the annual license fee shall be computed upon the greatest weight carrying capacity of any trailer or semitrailer proposed to be operated in connection with said tractor.

"10. Eighty-five per cent of the registration fees paid by a motor carrier under section 301.060, RSMo 1949, on a commercial motor vehicle, shall be credited against the fees for the corresponding period required on any one vehicle of such motor carrier as provided in section 390.010 to 390.170; provided, however, such credit shall not apply on alternate or emergency vehicles."

Application for a certificate of public convenience and necessity for the operation of motor carriers for hire for carrying passengers on call and demand service over irregular routes should be made to the Public Service Commission.

For violation of or failure to comply with the provisions of sections 390.010 to 390.170 a penalty is fixed by section 390.170 in the following language:

"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 sections 390.010 to 390.170, 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."

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CONCLUSION.

Persons operating motor vehicles to transport persons for hire over irregular routes, rendering call and demand service outside suburban territory, are required to apply to the Public Service Commission for a certificate of convenience and necessity as a motor carrier and if such certificate is granted pay the license fee required for the type of operation in which such carriers engage.

Respectfully submitted,

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APPROVED:



J. E. TAYLOR  
Attorney-General

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