

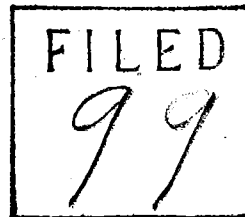
PUBLIC SERVICE COMMISSION:

Motor Vehicles

Public Service Commission does not have power to license and regulate a nonresident who owns and operates a store in neighboring state and regularly operates his own truck within the State of Missouri for the purpose of obtaining goods and supplies to be sold in his place of business in another state.

March 15, 1945

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Honorable A. L. Wright
Prosecuting Attorney, Stone County
Crane, Missouri

Dear Mr. Wright:

This will acknowledge receipt of your request for an opinion, which reads as follows:

"A resident of the State of Arkansas, who owns and operates a store in that state rather regularly, operates his own truck to Springfield, Missouri, for the purpose of obtaining goods and supplies to be sold in his store in Arkansas without any kind of a Missouri truck license and without any writ of convenience and necessity. Is such use of our highways, under the above circumstance, lawful?"

State ex rel. Anderson v. Witthaus, 103 S. W. (2d) 99, 340 Mo. 1004, "to render one a 'common carrier', use of his facilities must be so extensive as to imply offer to serve entire public, or there must be other circumstances reasonably warranting inference that he was undertaking to serve all to the limit of his capacity, but one does not become a 'public carrier' because engaged exclusively in transporting persons or property, or because persons whom he serves take all of his facilities; test being whether he invited trade of public."

Sub-Section A, Section 5723, R. S. Mo. 1939, provides:

"The Public Service Commission is hereby vested with power and authority, and it shall be its duty to license,

supervise and regulate every motor carrier in this state to fix or approve the rates, fares, charges, classifications, and rules and regulations pertaining thereto; * * * * *

Sub-Section B of Section 5720, R. S. Mo. 1939, defines:

"The term 'motor carrier,' when used in this article, 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 or furnishing such transportation service, for hire as a common carrier; * * * * *

The registration of nonresidents and establishing a system of reciprocity, Section 8375, R. S. Mo. 1939, provides:

"A nonresident owner, except as otherwise herein provided, owning any motor vehicle which has been duly registered for the current year in the state, country or other place of which the owner is a resident and which at all times when operated in the state has displayed upon it the number plate or plates issued for such vehicle in the place of residence of such owner may operate or permit the operation of such vehicle within this state without registering such vehicle or paying any fee to this state, provided that the provisions of this section shall be operative as to a vehicle owned by a nonresident of this state only to the extent that under the laws of the state, country or other place of residence of such nonresident owner like exemptions are granted to vehicles registered under the laws of and owned by residents of this state."

March 15, 1945

An Arkansas merchant who operates his own truck into the State of Missouri for the purpose of obtaining goods and supplies to be sold in his store in Arkansas, would not be required to obtain a writ of convenience and necessity or any other Missouri vehicle license as long as he hauls his own goods in interstate traffic and does not hold himself out as transporting persons or property for hire. To be regulated by the Public Service Commission, a motor vehicle must also be a motor carrier under the provisions of the Public Service Act.

A nonresident owner of a vehicle is exempted from the provisions of our Motor Vehicle Act, requiring licensing, as long as the state, country or other residence of such nonresident owner grants exemptions in the same manner to vehicles registered under the laws of and owned by residents of this state.

CONCLUSION

A nonresident of the State of Missouri, who owns and operates a store in another state, regularly operating his own truck at points within the State of Missouri for the purpose of obtaining goods and supplies to be sold in his store in another state, is not regarded as a motor carrier and subject to the rules and regulations of the Public Service Commission.

Respectfully submitted,

A. V. OWSLEY
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

AVO:kb