

BUS & TRUCK LAW: Constitutionality of paragraph (e) of
Sec. 5270, Laws of Mo. ^{3p.} 304.

September 11, 1933. ✓ 9/12



Hon. C. Arthur Anderson,
Prosecuting Attorney,
St. Louis County,
Clayton, Missouri.

Dear Sir:

This is to acknowledge receipt of your letter of August 16, 1933, which reads as follows:

' "This office has been requested to give an opinion by the Dyer O'Hare Hauling Company, of this vicinity, which company operates a number of trucks as a contract hauler in Missouri within a radius of 120 miles of this point.

The question arises from the construction to be placed on Section 5270 paragraph (e) of the Missouri Bus and Truck Law passed by the 56th General Assembly of 1931, and given as General Order No. 27.

The language of Sec. 5270, paragraph (e) reads as follows: '(e) It shall be unlawful for a contract hauler to accept persons or property for transportation from a point on a regular route destined to a point on a regular route, or where through or joint service is being operated between such points and any contract hauler so offending shall be guilty of a misdemeanor and punished as provided by section 5275 of this Act.'

The question is whether or not this is constitutional, and it seems that this section is somewhat unfair and discriminatory.

This question was previously submitted by A.J. Frank, Constable of Central Township, of this County, but owing to the prohibition against giving an opinion to anyone but the Prosecuting Attorney, the opinion was not given.

Because of the very high standing of this firm in this community, we are pleased to renew the request for the opinion and will thank you for an early reply."

You ask whether or not paragraph (e) of Sec. 5270, Laws of Mo. 1931, p. 310 is constitutional because it appears to be discriminatory. At first glance the same does appear discriminatory between contract haulers and motor carriers, as both use the highways for their place of business; however, a comparison of the statutes relating to both classes reveals that the Legislature in exercising its right to regulate and supervise trucks using the highways for private gain or business imposed restrictions on the classes thereof to the end that the Public Service Commission would have complete supervision and power of regulation over all classes of persons thus using the highways. The State has the right to regulate and use the highways in the manner it has provided.

In *Carson v. Woodram*, 120 S.E. 512, the Supreme Court of Virginia said:

"The right of a citizen to travel upon the highway and transport his property thereon in the ordinary course of life and business differs radically and obviously from that of one who makes the highway his place of business and uses it for private gain in the running of a stage coach or omnibus. The former is the usual and ordinary right of a citizen, a right common to all, while the latter is special, unusual and extraordinary. As to the former the extent of the legislative power is that of regulation; but as to the latter, its power is broader. The right may be wholly denied to others, because of this extraordinary nature. (Many cases cited)".

The United States District Court in *Schwartzman Service, Inc. v. Stahl, et al*, 60 Fed. Rep. (2d) 1034, l.c. 1037, recognizes this doctrine; we quote:

"At the outset it must be acknowledged that the State has the power to regulate and control the movement of motor vehicles over its highways. This it may do in the interest of public convenience and safety and for the protection of the highways. Provisions of this character have been uniformly sustained. (Many cases cited)"

Judge Reeves in redering the decision, quoted on the same page, said:

"The highways belong to the State. It may make provisions appropriate to securing the safety and convenience of the public in the use of them. **** Assuming therefore the power and right of the State to regulate and supervise its highways, such right cannot be hampered or restricted within narrow bounds. On the contrary, to the end that such right might be fully enjoyed and exercised, there is a constant recognition of the principle that the State has a broad discretion in classification in the exercise of its power of regulation. **** Upon such classification no person can interpose an objection save only in those cases where the classification or discretion is entirely arbitrary."

Having thus established the fact that the State may regulate the uses of its highways, we now proceed to determine in what manner and method the State has sought by statute to regulate trucks using the highways for private gain or business. The distinction and definition of a "contract hauler" and "motor carrier" can be discerned by reciting herein the definition of each. A "contract hauler", under Sec. 5264 Laws of Mo. 1931, p. 305, is defined as follows:

"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 such city or town and its suburban territory as herein defined."

In the same section, under paragraph (b), the term "motor carrier" is defined as follows:

"The term 'motor carrier' when used in this act, 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."

A distinction exists between contract hauler and motor carrier in this: A contract hauler is not required to pay an annual license fee, whereas, a motor carrier must.

Art. IV, Sec. 44a, p. 92 of the Constitution of the State of Missouri in part provides:

****For a period of ten years after the adoption hereof, the General Assembly shall have no power to levy and collect state registration fees, license taxes or other taxes on motor vehicles (except the property tax on motor vehicles and state license fees or taxes on motor vehicle common carriers) or state taxes on the sale or use of motor vehicle fuels ****"

Sec. 5272, Laws of Mo. 1931, p. 311, subdivision (c) provides the amount of the annual license fee on motor carriers. Thus, a distinction is made between contract haulers and motor carriers in that the former pays no annual license fee and the latter does.

A further distinction between the two classes exists in this: That a contract hauler receives a contract hauler's permit and is restricted by certain limitations of the statute in his activities, i.e., paragraphs (d) and (e) of Sec. 5270, Laws of Mo. 1931, p. 310, which provide:

"(d) A contract hauler may receive persons or property at a point located on a regular route and destined to a point not located on a regular route and receive persons or property at a point not located on a regular route and destined to points on a regular route."

"(e) It shall be unlawful for a contract hauler to accept persons or property for transportation from a point on a regular route destined to a point on a regular route, or where through or joint service is being operated between such points and any contract hauler so offending shall be guilty of a misdemeanor and punished as provided by Section 5275 of this act."

A motor carrier is restricted to travel on a regular route and may only do business on the route as shown in the original application for the Certificate of Necessity and Convenience, while the contract hauler, by his permit is entitled to contract and conduct his business under said contracts in any manner in so far as it does not conflict with a regular route allotted to the motor carrier.

The trucks of both contract haulers and motor carriers are regulated as to size, weight, speed, capacity of load, insurance and safety devices, and the only distinctions exercised between the two classes are:

- (1) The route over which they travel;
- (2) The payment of annual license fees;
- (3) The kind of permit each receives.

In order to hold paragraph (e), Sec. 5270, Laws of Mo. 1931 unconstitutional, it must be shown that the discrimination between contract haulers and motor carriers hereinbefore set out is unjust and arbitrary. We again quote from the Schwartzman Case, supra, l.c. 1038:

"It is the law that, even though an exemption is a clear discrimination, it is not invalid unless arbitrary. German Alliance Ins. Co. v. Kansas, 233 U.S. 389, etc. The fact the legislative classification may rest on narrow distinctions as decided in German Alliance Insurance Company v. Kansas, supra."

In State ex inf. Barker v. Kansas City Gas Company, 254 Mo. 515, l.c. 534, our Supreme Court said:

"That act is an elaborate law bottomed on the police power. It evidences a public policy hammered out on the anvil of public discussions. It apparently recognizes certain generally accepted economic principles and conditions, to-wit, that a public utility (like gas, water,

car service, et.) is in its nature a monopoly; that competition is inadequate to protect the public, and if it exists, is likely to become an economic waste; that state regulation takes the place of and stands for competition; that such regulation, to command respect from patron or utility owner, must be in the name of the overlord, the State, and to be effective must possess the power of intelligent visitation and the plenary supervision of every business feature to be finally (however invisibly) reflected in rates and quality of service."

In *Pugh v. Public Service Commission, et al*, 10 S.W. (2d) 946, 1.c. 951, the Supreme Court held:

"It is settled by the decisions of both state and federal courts that the mere fact a rate fixing is discriminatory is not conclusive that such discrimination is unjust and therefore unlawful and invalid. (many cases cited)"

And further, in *State v. M.K. & T. Railway Company*, 172 S.W. 40, the court said:

"Arbitrary discriminations alone are unjust if the difference in rates be based upon a reasonable and fair difference in conditions which equitably and logically justify a different rate, it is not an unjust discrimination."

Many cases could be cited to show the narrow bounds in which the Supreme Court has held discrimination in classifications was constitutional. The *Schwartzman Case*, supra, held that the provision relating to exemption of dairy and farm products was constitutional. In that case the Court distinguished between our statute and the Florida statute, which was the basis of the decision in *Smith v. Calhoun*, 283 U.S. 553. The constitutionality of the entire Bus and Truck Law was clearly upheld in the *Schwartzman Case*, supra, when the Court said:

"This case involves the constitutional validity of certain sections of the statute of Missouri. The particular act assailed relates to 'transportation of persons by motor vehicle over public highways of the State of Missouri.'"

And further:

"Every presumption must be indulged in favor of the constitutionality of the law. While validity of a statute cannot stand upon legislative declaration alone, yet the rule is that 'the legislative declaration of purpose and policy is entitled to gravest consideration, and unless clearly overthrown by the facts of record, must prevail.'"

And further:

"The whole enactment in view of the foregoing appears to be designed to accomplish the legislative purpose by it 'of promoting and conserving the interests and convenience of the public'.

It is obvious in view of the evidence before the court that it was needful legislation, not only to limit the number of motor vehicles in use on the highways, both as motor carriers and contract haulers, but in like manner to supervise and regulate them in the matter of the size of the trucks, the character of business done, and the responsibility of the operators."

From the foregoing, it is the opinion of this department that paragraph (e) of Sec. 5270, supra, is constitutional, and that the discrimination between motor carriers and contract haulers is not unfair or arbitrary.

Respectfully submitted,

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APPROVED:

Roy McKittrick,
Attorney General