

"It is the request of the Public Service Commission that you give an opinion on the second proviso, stating whether or not the Commission should collect from motor carriers operating upon the public highways of Missouri in interstate commerce, who use a route in excess of ten miles but which is not greater than twenty miles, only one-half of the annual license fee mentioned in the table of fees in Section 5272.

"The first proviso clearly manifests a legislative intent to extend to interstate motor carriers the privilege of using a route in Missouri, which is ten miles or less in length, for one-third of the annual license fee mentioned in the table of fees in Section 5272. It has been so construed.

"It is not clear, however, whether or not it was the legislative intent to give a route of ten to twenty miles in length within this State to interstate motor carriers for one-half of the annual license fee mentioned in the table in Section 5272. Recently, interstate motor carriers have requested that the one-half fee provision for a 20-mile route be extended to them. They contend that, if the 20-mile proviso be construed to apply to intrastate motor carriers only, an unlawful discrimination would exist against such interstate operators.

"It would also be appreciated if you would give an opinion stating whether or not the term 'route,' used in each of the foregoing provisos, applies to a definite, measurable 'regular route,' as defined in Section 5264-(g).

It is the opinion of the Commission that it would render the two provisos unworkable if the term 'route' should be construed to mean an 'irregular route' as well as a 'regular route.'

"Inasmuch as the questions submitted pertain to the collection of license fees by the Commission, although in moderate amounts only, the Commission deems it advisable that the Attorney General should pass upon the questions herewith submitted."

Your request is divided into two questions, your first question being whether or not the Public Service Commission should collect from motor carriers operating on the public highways of Missouri in interstate commerce, who use a route in excess of ten miles but which is not greater than twenty miles, one-half of the annual license fees as provided in the table in Section 5272, R. S. Mo. 1922, as amended by Laws of Missouri, 1931, page 311, or should they be charged a full annual license fee?

Your question calls for a construction of proviso number 1 and proviso number 2 as set forth in Section 5272, Laws of Missouri, pp. 311-312. It will be noted that the first proviso definitely and clearly states "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 hereinafter set out." However, the second proviso, as set forth above, Laws of Missouri, 1931, page 312, is not so clear and positive in its meaning and for that reason we have to look further to determine the legislative intent and what was intended by the language used in the second proviso:

"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 hereinafter set out."

We have come to the conclusion that it was the intention of the Legislature to charge both intrastate and interstate motor carriers a license fee of one-half the annual license fee mentioned in Section 5272, supra, on each motor vehicle which is to be operated over a route in this state, the total mileage of which is not greater than twenty miles. It seems both consistent and reasonable that the Legislature was attempting to graduate the license fees on both intrastate and interstate carriers in proportion to the privilege of using the highways; one-third of the license fees for operators of less than ten miles, and one-half the license fees for operators of not greater than twenty miles. If this section was construed to mean that an interstate carrier should be charged the full license fee where the total mileage is not greater than twenty miles and the intrastate operator was to be charged a one-half fee, there might be some question as to the constitutionality of the act.

In the case of *Prouty v. Coyne*, 55 Fed. (2d) 289, l. c. 292, it is said:

"The state may constitutionally impose a tax burden on interstate commerce as compensation for the use of the public highways, providing the charge is only a reasonable and fair contribution to the expense of construction and maintenance of such highways and of regulating the traffic thereon. (Cases cited)."

A cardinal rule of interpretation of statutes is that a construction should always be given a statute which would render it constitutional rather than unconstitutional.

In the case of *Brashear Freight Lines v. Public Service Corporation*, 23 Fed. Sup. 865, l. c. 869, the court in commenting on the second proviso, as aforesaid, said the following:

"The contention that the assessment of a fee of one-third the usual amount for operations less than ten miles in length within the State

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and one-half the usual amount where the operation is twenty miles or less, is unreasonable, is without merit."

The court therein indicated the same construction that we have given these two provisos. The plaintiffs in the Brashear Case, supra, were all interstate motor carriers, who were challenging the validity of the fees in Section 5272, supra.

It is, therefore, our opinion that interstate carriers should be charged one-third the fee for operations of less than ten miles, and for operations less than twenty miles one-half the regular fee.

II

As to your second question, whether or not the term 'route' used in each of the foregoing provisions, applies to a definite, measurable 'regular route,' as defined in Section 5264-(g), we are of the opinion that the term 'route' as used in the two provisos in your letter of request, refers to 'regular routes' as defined in Section 5264-(g), Laws of Missouri, 1931, page 305, wherein "the term 'regular route,' when used in this act, means that portion of the public highway over which a motor carrier usually or ordinarily operates or provides motor transportation service."

Very truly yours,

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APPROVED:

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