

PUBLIC SERVICE COMMISSION: Motor vehicles transporting cotton and cotton seed from gin to original market or warehouse which is still the property of the producer are exempt from registering with the P. S. C. as contract haulers under Section 5265.

MOTOR VEHICLES:

September 9, 1938 9/10



Honorable Elbert L. Ford
Prosecuting Attorney
Dunklin County
Kennett, Missouri

Dear Sir:

This will acknowledge receipt of your letter of September 3, 1938, which is as follows:

"Some of the highway patrolman have been stopping trucks who were hauling cotton seed to the oil mill and cotton to the ware houses and advising the truck owners they must secure a truck hauling permit in order to haul such products.

"It has been the opinion of this office that this being agricultural products and truckers hauling to the oil mills and compresses, this would come under the exemptions set out in Section 5265 Laws of Missouri, 1937, page 439.

"Please give me an opinion at once as to whether or not such truck drivers would be compelled to secure contract hauler's permit."

The power and authority of the Public Service Commission on this subject are contained in Section 5270, Laws of 1937, page 436. This section reads as follows:

"The public service commission is hereby vested with power and authority and it shall be its duty to license, supervise and regulate every contract hauler

in this state except as provided in section 5265 of this act and to approve schedules containing the minimum charges of such contract haulers and to prescribe reasonable rules and regulations governing the filing and keeping open for public inspection of such schedules: To prescribe after hearing and upon complaint or its own initiative such minimum charge, or such rule, regulation or practice as in its judgment may be necessary and consistent with the public interest after giving due consideration to the cost of the service and providing that such minimum charges shall give no advantage or preference to any such contract hauler in competition with any common carrier subject to this act."

For the purpose of this opinion we are assuming that under the above statute the motor vehicles in question are subject to control by the Public Service Commission and are engaged in the transportation of cotton and cotton seed as contract haulers as this term is defined in Section 5264, Laws of 1931, page 304, and should be licensed as contract haulers unless they fall within the exemption contained in Section 5265, Laws of 1937, page 439, relative to the transportation of farm products.

This section provides that: "The provisions of this act shall not apply to any motor vehicle * * * * used exclusively in transporting farm * * * products from the farm * * to a * * * warehouse, or other original storage or market * * *."

Under the terms of this statute if the exemption is to apply, the vehicle must be used exclusively for transporting farm products from the farm to the original storage or market place. Does the manner in which cotton and cotton seed is handled between the farm and original storage or market cause it to come within this exemption?

Cotton is a farm product which, before it is ready

to be stored, must be put through a ginning process to separate the fiber or lint from the seed. This is also true with respect to what must be done before it can be sold because in most parts of the state cotton is now purchased on a grade basis and the quality and texture of the fiber is not ascertainable until said cotton has been ginned.

The motor vehicles in question, as we understand it, are transporting the lint cotton and seed from the gin to the compress warehouse or oil mill. The statute says "from the farm * * to a * * * warehouse, or other original storage or market." If we take this to mean that the cotton must be being transported direct from the land which produced it to the warehouse or market, then, of course, these motor vehicles must obtain permits.

But we do not think this to be the meaning of said statute. The purpose of the Legislature in enacting this exemption statute is plain in that said body desired the farmer to be able to get a cheaper transportation rate and they realized the impracticability of prescribing a definite rate or schedule for a vehicle engaged in moving farm products due to the seasonal activity and the irregular route and territory over which said products must be transported.

The principal crops of Missouri are corn, wheat, hay and cotton. All of these are capable of being transported direct from the land which produced them to the original market or storage place, except cotton, because it is not necessary that they be put through a preliminary processing before they can be sold or stored as is cotton. The Legislature has not named a specific crop in said statute and the presumption is that they intended this exemption to apply uniformly to all farm products. This being so we cannot conclude that the exemption statute in question means that the farm product must be being transported direct from the land which produced it to the original market or storage place because such a conclusion would exclude those vehicles transporting cotton and cotton seed.

However, the manner in which cotton and cotton seed are marketed bears on this question. Some cotton is

sold after it is ginned to the ginner or a buyer there for that purpose, and sometimes the producer transports said cotton to a warehouse to hold for a better market. Though this latter is not the usual procedure with cotton seed, it could be if the producer so desired.

Thus, where the producer does not sell his cotton at the gin it is apparent that the transportation of said cotton from the gin to the warehouse is in fact merely a continuation of the transportation which began at the farm (perhaps in another vehicle) and which was interrupted for the ginning process which is necessary to put the cotton in a condition to be sold or stored. This, in our opinion, is transportation from the farm to the original market or storage, even though it may be carried to the gin by one vehicle and away from there in another. The important thing is that the cotton still remains the property of the producer. The above is also true with reference to cotton seed if it remains the property of the producer enroute from the farm to the gin and thence to the market or storage place.

However, where the producer sells both seed and cotton or either at the gin or to a buyer there for that purpose, the gin is the original market and the motor vehicle transporting the same from the gin to another market is not exempted from obtaining a contract hauler's permit. Neither would said vehicle be exempt where the product is sold by the producer at the gin when the vehicle is transporting the same for that buyer to a warehouse or place of storage because the application of the exemption ceases once the product reaches either the original market or storage place. The statute does not require both to have been reached.

CONCLUSION

Therefore, it is our opinion that the exemption contained in Section 5265, supra, relative to the transportation of farm products is applicable to those motor vehicles which transport cotton or cotton seed from the gin to the original market or place of storage if said cotton and seed are still the property of the producer and remain so until said original market or place of

Hon. Elbert L. Ford

-5-

September 9, 1938

storage is reached with the product.

Of course, the meaning of the statute is clear that the motor vehicle must be exclusively devoted to the transportation of those products which make the exemption apply.

Respectfully submitted,

TYRE W. BURTON
Assistant Attorney General

APPROVED:

J. E. TAYLOR
(Acting) Attorney General

LLB:DA