

PUBLIC SERVICE COMMISSION: A bus which is used to carry a school band from one town in Missouri to another town is within the exemption provisions of Section 5721 of the Public Service Act of Missouri.

SCHOOLS:

COMMON CARRIER:

June 15, 1946



Honorable Hugh H. Waggoner,
Superintendent
Missouri State Highway Patrol
Jefferson City, Missouri

Dear Colonel Waggoner:

We acknowledge receipt of your letter of recent date in which you request an opinion of this department as follows:

"We respectfully request that you give us an opinion upon the legality of the operation of a motor vehicle under the circumstances as set out below.

- a. The Schulte Transit Company of Crystal City, Missouri, is licensed by the Public Service Commission to operate as a common carrier. Their permit does not authorize service to Columbia, Missouri. On May 4, 1946, this company transported for hire a school band from Festus to Columbia, Missouri, for educational purposes.

We would like to know if the operation of this vehicle under these circumstances exceeded the authority granted to the company by the Public Service Commission or could the operation be defined as a "school bus" as set out in Section 5720 Revised Statutes of Missouri, 1939, which would exempt them from police control as set out in Section 5721."

A consideration of the facts set out in your letter indicate that the sole question involved here is whether the Missouri State Highway Patrol would be in the exercise of its lawful powers in arresting the Schulte Transit Company for making the trip which your letter outlines. The determination of this question turns upon whether or not the particular trip made by the Schulte Transit Company on May 4, 1946, was

the type of operation which is exempt under the Public Service Act. If it was not an exempted operation the Missouri State Highway Patrol would have full authority to make an arrest of the Transit Company for violation of its Public Service certificate. On the other hand, if it was an exempted operation, then the Missouri Highway Patrol has no authority to take any action against the Company. We think there are two legal issues raised by this question.

(1) Can a motor carrier which holds a certificate under the terms of the Public Service Commission Act engage in an operation other than that for which they are authorized in their certificate?

(2) Is the transporting of a school band from Festus, Missouri, to Columbia, Missouri, for educational purposes, an operation which is exempt from the regulation of the Public Service Commission?

We think the case of Public Utilities Commission v. Congdon (1941 Maine) 18 Atl. (2d) 312, is decisive as to the first legal issue. In that case a carrier operated a truck under a Public Utilities Certificate on a certain route. He was operating local pick-up and delivery trucks in the City of Portland, and within fifteen (15) miles thereof, for which he held no certificate. The latter operation was an exempt operation under the statutes. The carrier handled certain shipments to Portland, over the routes for which he had a certificate, then transferred them to the local pick-up and delivery trucks and completed the transportation to a point outside the scope of his permit. The court stated that the carrier could not claim the pick-up and delivery trucks exemption within the City of Portland when he used the trucks merely to extend his carriage of freight beyond the specified termini which he was authorized to serve in his Public Service Certificate. The contention was also raised in the case that since the carrier was a long-haul carrier operating under a certificate, that it could not operate the local pick-up and delivery trucks in the manner in which it did. This, of course, raised the exact question which is necessary to determine here, namely, can a carrier operating under a certificate also carry on an exempted operation. In that regard the court said: (l.c. 316)

"We do not think that Section 10 (A) of the Motor Carrier Act exempts only 'the operation of the motor vehicles of the purely

local carrier' and not those 'of the long haul carrier operating under a certificate'. While, as already pointed out earlier in this opinion, the statutory exemption does not apply to the operation of the vehicles of a carrier for which he has no certificate or permit when they are being used to extend his own long-haul business, we are not of opinion that other motor vehicles which he owns and operates in purely local transportation for hire as defined in Section 10 (A) are thereby excluded from the exemption provision, or by the fact that the local carrier is also a common carrier operating under a certificate or permit issued by the Commission. We find no such express or implied exclusion in the Motor Carrier Act. The fact that the respondent operated local pick-up and delivery trucks owned by him in transporting the shipments of merchandise in controversy from Portland to Westbrook when and while he was also a common carrier operating under a certificate issued by the Public Utilities Commission was not a valid reason for suspending his certificate. * * *

Further authority in line with this case is found in *Re Greeley Transportation Co.*, Public Utilities Report Ann. 1932A, p. 55, in which the Colorado Public Utilities Commission said: (l.c. 57)

"The next question raised is whether or not one engaged as a common carrier may operate as a private carrier on routes or in territory over or in which a certificate does not authorize operation.

"While the conduct of such a private carrier operation by common carriers may demoralize or break down the whole system of regulation, the law seems rather clearly to permit such operations. Some of the cases so holding are *Chenery v. Employers' Liability Assurance Corp.* (1925) 4 F. (2d) 826, 827; *Claypool v. Lightning Delivery Co.*--Ariz--, P.U.R. 1931D, 396, 299 Pac. 126; *Houle v. Lewonis* (1923) 245 Mass. 254, 140 N. E. 427; *Ney v. Haun* (1921) 131 Va. 557, 109 S. E.

438, 18 A.L.R. 1310; Terminal Taxicab Co. v. Kutz, 241 U. S. 252, 60 L. Ed. 984, P.U.R. 1916D, 972, 30 Sup. Ct. Rep. 583."

We think, therefore, that the first legal issue must be answered in the affirmative.

Having established the right of the carrier to carry on an exempt operation it remains to be determined whether he was carrying on this type of operation. The second legal issue must be determined by an interpretation of the statutes creating the exemption to the provisions of the Public Service Act, and, therefore, from the regulation of the Public Service Commission. The statute in which the exemption is found is Section 5721, Revised Statutes of Missouri, 1939. This section has been amended by House Bill 137, passed by the 63rd General Assembly, and approved by the Governor, which will become effective July 1, 1946. House Bill 137 carries the same school bus exemption as Section 5721, Revised Statutes of Missouri, 1939, so that there will be no change in this respect in so far as House Bill 137 is concerned. Section 5721, Revised Statutes of Missouri, 1939, reads, in part, as follows:

"The provisions of this article shall not apply to any motor vehicle of a carrying capacity of not to exceed five persons, or one ton of freight, when operated under contract with the federal government for carrying the United States mail and when on the trip provided in said contract; nor to any motor vehicle owned, controlled or operated as a school bus; * * *"

A school bus is defined in Section 5720e, Laws of Missouri, 1941, page 524, which reads as follows:

"The term 'School bus,' when used in this article, means any motor vehicle used to transport students to and from school (either public or private) or to transport pupils properly chaperoned, to and from any place within the state for educational purposes."

We find no cases in Missouri which have construed these sections with regard to the exemption of school bus operations. However, in Re Greeley Transportation Company, Public Utilities Report, page 55, supra, the Colorado Public Utilities Commission ruled on a similar point. There a carrier, licensed under the

Colorado Commission, transported students of the Colorado State Teachers College, Greeley, Colorado, to and from public schools in Gilcrest and Big Bend, Colorado, and high school students between La Salle and Greeley, Colorado. At the time this case was decided the Colorado Public Service Law contained an exemption of "the transportation of children to and from school". While the wording of this statute is not the same as that found in the Missouri law, it is, we think, of the same effect. If anything, the terms of the Missouri exemption statute are broader than that found in the Colorado act, because the Colorado act restricts the transportation exemption to the carrying of children "to and from school", which the Missouri act does not do. We think the main purpose, however, in both exemptions was to remove from regulation those buses used in connection with the education of children. The Colorado Commission dismissed the complaint against the carrier therein involved. Regarding the transportation of the school children the court said: (l.c. 56)

"The transaction with the State Teachers College is one entered into by the college in order to afford a limited number of its students training in the art of teaching.

"We are of the opinion, that the transportation of these students does not make the respondent a common carrier.

"The act relating to motor vehicles carriers, Chap. 134, Session Laws of Colorado, 1927, Sec. 23 thereof, purports to exempt from the act those persons engaged in 'the transportation of children to and from school' We are of the opinion that this language should not be strictly construed, and that transportation of six school students from La Salle to Greeley falls within the exception. * * *"

The Colorado Commission indicated that the transportation of high school students was for the purpose of taking them to school, and the students of the State Teachers College were transported to give them teaching training. We think the case is authority for an interpretation of the Missouri Statute because (1) the transporting of a school band for educational purposes is as much within the Missouri statute, which used the words "for educational purposes", as the transportation of high school students to school was within the terms of the Colorado statute which exempted the "transportation of children to and from school"; (2) the transportation of the Teachers College students appeared to be farther outside the scope of the Colorado act than the transportation of the school band was from the scope of the broad wording Missouri statute. The latter statement is made for the reason that the Teachers College students were not being transported to and from school

in the sense that they were attending regular college classes since the commission stated that they were being transported for teacher's training purposes. In other words, the students were not being transported from their home to their college classes, but from the State Teachers College to other public schools. The interpretation of the Colorado statute to exempt the transportation for teacher's training is, therefore, a broad interpretation since the statute could be construed as referring only to the ordinary transportation of school children from their homes to school. This case, we think, is determinative of the second legal issue involved, and necessitates an affirmative answer to the same.

CONCLUSION

It is, therefore, the opinion of this department that the operation of the Schulte Transit Company of Crystal City, Missouri, on May 4, 1946, in transporting for hire a school band from Festus, Missouri to Columbia, Missouri, was an exempt operation under Section 5720, Laws of Missouri, 1941, page 524, and Section 5721, Revised Statutes of Missouri, 1939, and that the Schulte Transit Company did not exceed the authority granted to it by the Public Service Commission of Missouri in undertaking said operation.

Respectfully submitted,

SMITH N. CROWE, JR.
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

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