

MOTOR VEHICLES: Association of farmers organized for the sole purpose of transporting milk from their farms to market in St. Louis required to take out a local commercial motor vehicle license.

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June 30, 1948

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Honorable Onie D. Newlon  
Prosecuting Attorney  
Ralls County  
New London, Missouri

Dear Sir:

Restating your request for sake of brevity, you inquire if an organization such as the Transport Service Sanitary Milk Producers, organized under the laws of Illinois for the sole purpose of transporting milk from farms belonging to members of said organization and located between the Iowa line and St. Louis, Missouri, to companies located in St. Louis offering the best available price for such milk products, is required under the laws of this state to pay the full amount of license fee charged commercial motor vehicles to operate their motor vehicles in this state, or merely pay one-third of that amount required of commercial motor vehicles. The individual farmers belonging to the foregoing association deliver the milk to the highway from their farms, where it is picked up for delivery to St. Louis. Said company is a nonprofit corporation, or more in the nature of a cooperative organization. After all expenses are paid, any profit remaining is distributed between the members of said organization.

This department, under date of January 14, 1948, rendered an opinion to Colonel Hugh H. Waggoner, Superintendent of the Missouri State Highway Patrol, on this identical question, wherein it was held that such motor vehicles do not come within the classification of a "local commercial motor vehicle," but are operating as a "commercial motor vehicle," and must pay the license fee required for commercial motor vehicles. However, the facts submitted in the request for that opinion are not the same as those submitted in your present request, and this accounts for the conclusion in this opinion being contrary to the one reached in the previous opinion rendered by this department.

Assuming that the foregoing facts related represent a true picture of the organization in question, then we are inclined

to believe that such organization is only required to pay one-third of the amount required of a commercial motor vehicle.

Section 5721, Laws of Missouri 1947, exempts motor vehicles used exclusively in transporting farm and dairy products from the farm or dairy to the creamery, warehouse or other original storage or market, from the provisions of Article 8, Chapter 35, R.S. Mo. 1939, which deals with regulation of motor vehicles and carriers by the Public Service Commission of the State of Missouri. However, such article has nothing whatsoever to do with the requirement of license fee for operating any motor vehicle over the highways of this state as provided in Article 1, Chapter 45, R.S. Mo. 1939.

The specific provision which requires construction in the instant case is Section 8369, page 1197, Laws of Missouri 1945, which reads in part:

"For commercial motor vehicles having a gross weight of:

(Here will be found the various charges in accordance with various gross weights)

\* \* \* \* \*

"For each local commercial motor vehicle there shall be paid a fee equal to one-third of the fee specified above for other commercial motor vehicles, provided, however, no commercial motor vehicle fee shall be less than \$10.00.

"The term 'local commercial motor vehicle' includes every 'commercial motor vehicle' as defined in Section 8367, of this act, while operating within this state and used for the transportation of persons or property:

"1. Wholly within any municipality or urban community, or

"2. Wholly within any municipality or urban community and a zone extending 25 air miles from the boundaries of any municipality or urban community, or contiguous municipality or urban community, or

"3. In making hauls not exceeding 25 miles in length, or

"4. When controlled or operated by any person or persons principally engaged in farming when used exclusively in the transportation of agricultural products or livestock to or from a farm or farms, or in the transportation of supplies to or from a farm or farms."

Section 8367 of the same act, page 1195, Laws of Missouri 1945, defines "commercial motor vehicle" as follows:

"\* \* \* 'Commercial motor vehicle.' A motor vehicle designed or regularly used for carrying (a) freight and merchandise, or (b) more than eight passengers.\* \* \*"

There can be no question but that the motor vehicle in question is considered a "commercial motor vehicle" under the foregoing definition. The only remaining matter for determination is whether such motor vehicle should be classified as a "local commercial motor vehicle." If so, then only one-third of the amount of license fee charged for a commercial motor vehicle may be charged in this instance. It is our understanding, under the facts stated in your request, that all such motor vehicles are operated strictly intrastate. In such case, if said motor vehicles are used in the transportation of property, as provided under any one of the four conditions hereinabove enumerated under Section 8369, supra, then said motor vehicle should be classified as a "local commercial motor vehicle." Under the foregoing facts, we think said motor vehicle should be classified as a "local commercial motor vehicle." Under subsection 4 of Section 8369, supra, there can be no question about the persons comprising said organization being principally engaged in farming. While "agricultural products" have not been defined under this act, we do find many appellate court decisions in many states which hold that "agricultural products" include dairy products. In the case of *In re Rodgers*, 279 N.W. 800, 1.c. 802-803, the court, in holding that dairy products come within the term "agricultural products," said:

"The first question for our consideration is: What is meant by agricultural commodities?"

"In the case of District of Columbia v. Oyster, 4 Mackey 285, 15 D.C. 285, 54 Am. Rep. 275, in the body of the opinion the court said (page 286):

"'But the common parlance of the country, and the common practice of the country, have been to consider all those things as farming products or agricultural products which had the situs of their production upon the farm, and which were brought into condition for the uses of society by the labor of those engaged in agricultural pursuits, as contradistinguished from manufacturing or other industrial pursuits.

"'The product of the dairy or the product of the poultry yard, while it does not come directly out of the soil, is necessarily connected with the soil and with those who are engaged in the culture of the soil. It is, in every sense of the word, a part of the farm product. It is depended upon and looked upon as one of the results and one of the means of income of the farm, and in a just sense, therefore, it may be considered produce.'

"In 2 Am. Jur. 395, Sec. 2, speaking of agriculture, it is said: 'The term is broader in meaning than "farming;" and while it includes the preparation of soil, the planting of seeds, the raising and harvesting of crops, and all their incidents, it also includes \* \* \* dairying.' To like effect are Gregg v. Mitchell, 6 Cir., 166 F. 725, 20 L.R.A., N.S., 148, 16 Ann. Cas. 510; Dillard v. Webb, 55 Ala. 468.

"In the Non-Stock Cooperative Marketing Act (Comp. St. 1929, sec. 24-1401), the Nebraska legislature of 1925 defined the term 'agricultural products' as 'field crops, horticultural, viticultural, forestry, nut, dairy,

livestock, poultry, bee and farm products.' Decisions of the courts have adopted the foregoing definition of agricultural commodities or products. We believe that the applicant in this case was engaged in hauling agricultural commodities. This brings us to the question of whether or not the applicant is a common carrier or a contract carrier."

In *Kimball v. Blanchard*, 7 Atl. (2d) 349, l.c. 396, the court said:

"The noun 'produce' has 'no definite, exact and technical meaning. It may be used in a larger or more restricted sense.' *District of Columbia v. Oyster*, 4 Mackey 285, 15 D.C., 285, 286, 54 Am. Rep. 275. 'Agricultural product or products' is one of its definitions, and 'agriculture' in its broad use includes dairying. Webster's New International Dictionary, 2d Ed. In construing the phrase 'sale of farm produce on the premises' attention should be paid to the comprehensiveness of its terms and to the extent of its application."

See also *District of Columbia v. Oyster*, 15 D.C. 285, l.c. 286:

"But the common parlance of the country, and the common practice of the country, have been to consider all those things as farming products or agricultural products which had the situs of their production upon the farm, and which were brought into condition for the uses of society by the labor of those engaged in agricultural pursuits, as contradistinguished from manufacturing or other industrial pursuits.

"The product of the dairy or the product of the poultry yard, while it does not come directly out of the soil, is necessarily connected with the soil and with

those who are engaged in the culture of the soil. It is, in every sense of the word, a part of the farm product. It is depended upon and looked upon as one of the results and one of the means of income of the farm, and in a just sense, therefore, it may be considered produce."

Furthermore, the laws of this state define "agricultural products" so as to include dairy products. However, such definitions are for the purpose of other specified articles and not the article dealing specifically with the licensing of motor vehicles. However, such definitions do support the foregoing decisions in defining agricultural products. Under Section 14290, R.S. Mo. 1939, which deals with the article on standardization and inspection of agricultural products, "agricultural products" is defined: "'Agricultural products' shall include horticultural, viticultural, dairy, bee, and any farm product." Also, under the article on nonprofit cooperative associations, Section 14334, R.S. Mo. 1939, provides in part, under subsection (a), that whenever the term "agricultural products" occurs in said article it shall include horticultural, viticultural, forestry, dairy, livestock, poultry, bee or any farm products.

#### CONCLUSION

Therefore, it is the opinion of this department that the Transport Service Sanitary Milk Producers, organized under the laws of Illinois and authorized to do business in this state, under the foregoing facts submitted in your request, in transporting dairy products of its members from their farms to the market, all within this state, is required to obtain a "local commercial motor vehicle" license for their motor vehicles used in transporting said products. This amounts to only one-third of the cost of a "commercial motor vehicle" license.

Respectfully submitted,

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Assistant Attorney General

APPROVED:

J. E. TAYLOR  
Attorney General

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