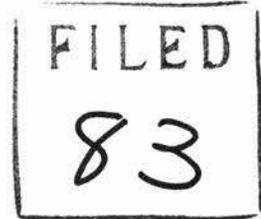


MOTOR VEHICLES:
PUBLIC SERVICE COMMISSION:

A lessee of a truck and driver for a period of less than ten days, for the purpose of transporting for hire property or persons, before operating said truck on the highways, must obtain a certificate of convenience and necessity from the Public Service Commission.

June 9, 1948



Honorable Wayne V. Slankard
Prosecuting Attorney
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Neosho, Missouri

Dear Sir:

This will acknowledge receipt of your recent request for an opinion, which reads:

"I would like your opinion on the following:

"The owner of a motor truck enters into a rental contract with another party, renting the truck to the other party for his use for less than a ten days period, the other party also paying the truck owner for the services of the truck owner's driver. Under such an arrangement would the owner of the truck or the other party be required to secure a Certificate of Convenience or other permit from the Public Service Commission."

We assume from your request, since the party is leasing the truck for less than ten days and also paying the owner of the truck for services of his driver, that the lessee of said truck during the period of said lease is contemplating using said truck for hire of persons or property of someone else, otherwise there would be no need of obtaining a certificate of convenience and necessity from the Public Service Commission.

This department has heretofore ruled that, under such a lease for more than ten days, the lessee becomes a limited owner under the statutes and must, therefore, before operating said

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truck on the highways of this state, procure a certificate of registration and proper license plates. We are enclosing a copy of said opinion. However, this department has never ruled on the particular question as to the necessity of such a lessee obtaining a certificate of convenience and necessity from the Public Service Commission before operation of said leased truck over the highways of this state.

Unless said lessee comes within some specific exemption under the Public Service Commission Act, if he is hauling for hire, he must secure a certificate of convenience and necessity or some other similar authority from the Public Service Commission before being permitted to operate said motor vehicle over the highways of this state. Section 8367, R.S.Mo. 1939, defines "owner" as follows:

"* * * The term owner shall include any person, firm, corporation or association, owning or renting a motor vehicle, or having the exclusive use thereof under lease, or otherwise, for a period greater than ten days successively.* * *"

Section 5720, page 523, Subsection (b), Laws of Missouri, 1941, defines "motor vehicle" and "motor carrier," as used in Article 8, Chapter 35, R.S.Mo. 1939, which is a part of the Public Service Commission Act. Said provision contains certain exceptions to said article, and reads in part:

"(a) The term 'motor vehicle,' when used in this article, means any automobile truck, motor bus, truck, bus, or any other self-propelled vehicle not operated or driven upon fixed rails or tracks.

"(b) The term 'motor carrier,' when used in this article, 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: Provided, however, this article shall not be so construed as to apply to motor vehicles used in the transportation of passengers or property for hire, operating over and along regular routes within

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any municipal corporation or a municipal corporation and the suburban territory adjacent thereto, forming a part of transportation system within such municipal corporation or such municipal corporation and adjacent suburban territory, where the major part of such system is within the limits of such municipal corporation. And provided further, this article shall not be so construed as to apply to motor vehicles operated between the State of Missouri and an adjoining state when the operations of such motor vehicles within the State of Missouri are limited exclusively to a municipality and its suburban territory as herein defined."

Sections 5723 and 5724, R.S.Mo. 1939, vest in the Public Service Commission authority to license, supervise and regulate every motor carrier in this state and fix and approve rates, fares, etc. Said sections further make it unlawful for any motor carrier to operate for hire without a certificate of convenience and necessity, and read in part:

"(a) The public service commission is hereby vested with power and authority, and it shall be its duty to license, supervise and regulate every motor carrier in this state to fix or approve the rates, fares, charges, classifications, and rules and regulations pertaining thereto; to regulate and supervise the accounts, schedules, service and method of operating of same; to prescribe a uniform system and classification of accounts to be used, which among other things shall set up adequate depreciation charges, and after such accounting system shall have been promulgated, motor carriers shall use no others; to require the filing of annual and other reports and any other data; and to supervise and regulate motor carriers in all matters affecting the relationship between such motor carriers and the public.

* * * *

"(c) All laws relating to the powers, duties, authority and jurisdiction of the public service commission over common carriers

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are hereby made applicable to all such motor carriers, except as herein otherwise specifically provided.

"(d) A motor carrier not operating over a regular route may, within the territory permitted to be served by him, 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 any motor carrier, except one having a certificate of convenience and necessity authorizing such service, 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 motor carrier so offending shall be guilty of a misdemeanor and punished as provided by section 5731."

"Sec. 5724. * * * (a). It is hereby declared unlawful for any motor carrier to operate or furnish service as a common carrier within this state without first having obtained from the commission a certificate declaring that public convenience and necessity will be promoted by such operation. The commission upon the filing of a petition for a certificate of convenience and necessity shall within a reasonable time fix a time and place for hearing thereon. * * *"

The Supreme Court of this state has held that jurisdiction to issue certificates of convenience and necessity lies with the Public Service Commission. In *State v. Dixon*, 73 S.W. (2d) 385, 1.c. 388, 335 Mo. 478, the court said:

"Our statute is similar in that the Public Service Commission was created as an administrative body with authority to regulate public utilities of this state as well as the transportation for hire of passengers and

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freight over the highways. It is an elaborate system covering the entire field of regulation.* * * *

Also, see State v. Public Service Commission, 179 S.W. (2d) 123, 1.c. 128, wherein the court said:

"With such purpose in mind, the legislature delegated to the commission the authority to issue certificates 'if in the opinion of the commission the public convenience and necessity will be promoted by so doing.' Sec. 5724. The Commission has a discretion in determining whether a certificate of convenience and necessity shall issue. Of course, it cannot act unlawfully or unreasonably; if so, the courts will correct such action. * * * *

* * * *

"By statute, the Commission's discretion in issuing a certificate is to be controlled by three principal considerations: (1) The transportation service being furnished by other carriers; (2) the permanency and continuity of the proposed service; and (3) the effect which the proposed service may have upon other existing forms of transportation service. State ex rel. Detroit-Chicago Motor Bus Co. v. Public Service Commission, 324 Mo. 270, 23 S.W. 2d 115. We find in the instant case the Commission gave consideration to all three propositions and its conclusions are amply supported by the evidence."

CONCLUSION

Therefore, it is the opinion of this department that a person leasing a truck from the owner of said truck even for a period of less than ten days, must before operating said truck over the highways of this state obtain a certificate of convenience and necessity from the Public Service Commission, if said lessee is going to operate said truck for hire of property or persons and he does not come within the exceptions contained in Sections 5720 and 5723, supra.

APPROVED:

Respectfully submitted,

J. E. TAYLOR
Attorney General

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Assistant Attorney General