

September 28, 1967

OPINION NO. 315
Answer by Letter-Denman

Honorable Thomas R. Gilmore
Assistant Prosecuting Attorney
Scott County
Sikeston, Missouri 63801



Dear Mr. Gilmore:

This is in answer to your question as to the advisability of proceeding with a prosecution against a person charged with operating a motor vehicle licensed as a "local commercial motor vehicle" out of the geographical limits authorized by Section 301.010(10), RSMo.

This subsection defines a local commercial vehicle as follows:

"a commercial motor vehicle whose operations are confined solely to a municipality and that area extending not more than twenty-five miles therefrom; or a commercial motor vehicle whose property carrying operations are confined solely to the transportation of property owned by any person who is the owner or operator of such vehicle, to or from a farm owned by such person or under his control by virtue of a landlord and tenant lease; provided that any such property transported to any such farm is for use in the operation of such farm;"

The facts giving rise to the charge, you state to be as follows:

"The defendant owns several trucks and was charged for operating one of his trucks outside the geographical limits for which it was licensed. The truck had a 'local' Missouri truck license. The defendant had an arrangement with a farmer near Perryville, Missouri by which the defendant would provide all of the labor and operating

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expenses necessary to cut and bale hay on this man's farm. The defendant was also to truck the hay wherever necessary in order to market it. The defendant and the farmer were to split all the proceeds on a 50-50 basis. The defendant was under the impression that since he was involved in a joint farming operation with this farmer, he was entitled to transport this hay under his local license by virtue of the definition in Sec. 301.010(10). Reading this part of the Statute literally, it would appear the defendant is not covered by the strict language which reads 'to or from a farm owned by such person or under his control by virtue of a landlord and tenant lease'."

We have no previous rulings on your question and find no cases directly in point. Since this question is one which is now pending before the court, it is the policy of this office in such circumstances not to issue an official opinion on the subject. However, it is our position, based upon the facts you have given, that you should proceed with prosecution on the charge now pending.

Under these facts it does not appear that the vehicle in question was being operated in accordance with the definition of a local commercial vehicle. The farm is not owned by the owner of the truck, and an arrangement whereby the truck owner agreed to cut and bale the farmer's hay and transport it to wherever necessary in order to market it in payment for 50% of the proceeds does not constitute a landlord and tenant relationship. There is also some doubt as to whether the arrangement would vest ownership of the hay in the truck owner sufficient to convert the hay into "property owned" by the owner of the vehicle as required by Section 301.010(10).

The registration fee for "local" commercial vehicles is substantially less than that for regular commercial vehicles. Section 301.060, RSMo Supp. 1965. This partial exemption from payment of registration fees may be compared to exemptions from taxes given religious, charitable and educational institutions under certain specified conditions. It is well settled in such cases, that the provisions of the exempting statutes must be strictly yet reasonably construed, and the burden is on the taxpayer to show that he is entitled to the exemption claimed. In re First National Safe Deposit Co., Mo.Banc 173 S.W.2d 403; Bethesda Naval Hospital v. State Tax Commission, Mo.Sup., 381 S.W.2d 772; State ex rel St. Louis Y.M.C.A. v. Gehner, Mo.Sup., 11 S.W.2d 304.

The statutory definition of a "local commercial vehicle" is "confined solely" to vehicles operated in conformance with the provisions therein, and construing these provisions strictly as we believe

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they should be, in our opinion the state should take the position that the truck in question was not being operated within its authority as a "local commercial vehicle", and you should proceed with the prosecution on this charge.

Very truly yours,

NORMAN H. ANDERSON
Attorney General

JHD:maw