

Common Carriers, Who Are. Automobiles, as Common Carriers. Stage Lines, as Common Carriers.

Persons operating automobiles or stage lines who hold themselves out to the public as ready to engage in the transportation of passengers or goods for hire as a public employment and not as an occasional occupation are common carriers and should be licensed as such.

October 3, 1911.

Hon. C. L. Crum,
County Attorney,
Forsyth, Montana.

Dear Sir:

I am in receipt of your letter of Sept. 26th, wherein you state that there are two stage lines engaged in the business of common carriers in your county, and that there are also a number of parties who own automobiles and who transport passengers and freight from the southern end of your county to Forsyth whenever they can get anything to do. In one or two instances the automobiles are competing with the stage lines very strongly, and the parties who are running the stage lines object to paying a license as common carriers unless the owners of the automobiles do likewise. The parties operating the automobiles have no definite schedule and only go when they desire to do so and only carry those whom they wish to convey, according to their statement. The question you wish my opinion upon is whether or not the parties who have been and are carrying passengers and freight in this manner, by automobile, should be required to obtain a common carriers license.

In reply I will say that there appears to be no question but what the stage lines are operated as common carriers and should be required to pay the license prescribed by Sec. 2774 of the Revised Codes. Their liability to pay the license prescribed by law is not dependent upon whether or not the operators of automobiles are common carriers.

Sec. 5332 of the Revised Codes defines a common carrier to be "every one who offers to the public to carry persons, property, or messages, except only telegraph or telephonic messages, is a common carrier of whatever he thus offers to carry," and Sec. 5332 provides that a common carrier must, if able to do so, accept and carry whatever is offered to him, at a reasonable time and place, of the kind he undertakes or is accustomed to carry.

If the persons operating the automobiles hold themselves out to the public as ready to engage in the transportation of passengers or

goods for hire as a public employment, and not as an occasional occupation, they are common carriers.

Vol. 6, Cyc., p. 366.

An occasional undertaking to carry goods or passengers will not make a person a common carrier * * * * the undertaking must be general and for all people indifferently * * * * if the carrier refuses to carry any person or his goods offering to pay his hire, he is liable to be sued and to respond in damages to the person aggrieved, and this is, perhaps, the safest test of his character.

Fish v. Chapman, 46 Am. Dec. 393.

As to whether or not the persons operating the automobiles mentioned by you are common carriers is a question of fact under the definition of a common carrier as defined by the sections of our code above referred to. If they only occasionally carry such persons or property as they wish to carry, they would not be common carriers, but if they hold themselves out to the general public to carry freight or passengers for hire, even though they have no regular schedule, they would, in my opinion, be common carriers and liable to pay the license provided for by Sec. 2774, Revised Codes, based upon the amount of business they may do.

In the event you believe the parties operating the automobiles are common carriers they should be required to take out the license prescribed by law, and if they fail to do so they may be prosecuted as provided by Sec. 2750 of the Revised Codes.

Yours very truly,

ALBERT J. GALEN,

Attorney General.