

Motor Vehicles—Private Carriers—Licensee.

Chapter 184, laws of 1931, includes within its regulatory provisions private carriers with certain exceptions. The law is presumed to be constitutional. Under the facts stated in the opinion it is held that the party is exempted from the operations of the act because the hauling is an occasional one and not as a part of his regular business.

Board of Railroad Commissioners,
Helena, Montana.

June 26, 1931.

Gentlemen:

You enclose a copy of a letter from county attorney Dean King, of Kalispell, relative to chapter 184, laws of 1931, which becomes effective July 1 of this year.

Mr. King states that there is a man in his county who is living on a stump ranch and selling wood; that he has an opportunity to contract to haul brick for about three weeks, the hauling to start after the act takes effect. He has not been hauling for anyone else and does not intend to haul for anyone else. So far as his present intention is concerned he does not intend to engage in the business of transporting persons or property by motor vehicles over the highways of the state as a regular business, his only intention being to haul the brick mentioned, which will require about three weeks.

Mr. King expresses some doubt as to the right of the legislature to regulate private carriers operating over the highways by legislation purporting to be a regulation of the highways within the state and also as to whether the particular transaction would require the party to secure

a certificate or permit from the board of railroad commissioners before hauling the brick.

There can be no doubt that the legislature, by the enactment of chapter 184, laws of 1931, has undertaken to supervise, regulate and control the use of the public highways of the state by motor carriers engaged in the transportation by motor vehicles of persons and property for hire upon the said highways and that private carriers, with certain exceptions, are required to comply with the terms of the act the same as a common carrier is required to do. As to whether it was within the power of the legislature to so enact is a constitutional question which has not been passed upon by the courts of this state. A law is presumed to be constitutional until its unconstitutionality is made to appear beyond a reasonable doubt and this office cannot say that there is anything in the act which renders it unconstitutional beyond a reasonable doubt and therefore so far as this office is concerned it will be treated as constitutional according to the presumption unless and until the courts declare it otherwise.

Paragraph (h) of section 1 of the act specifically provides that the term "motor carrier" does not include a person operating vehicles upon the highways, transporting freight or passengers when done occasionally and not as a regular business. As only persons who come within the definition of a motor carrier are required to comply with the terms of the act it is apparent that any person who transports freight or passengers by motor vehicles occasionally and not as a regular business does not have to comply with the act.

In my opinion, the hauling of the brick in question would not constitute the party a motor carrier within the meaning of the act. It is apparent that if he hauls the brick he will not do so as a part of his regular business as that seems to be selling wood. It appears that this would be but an occasional transportation within the meaning of the act. The word "occasionally" is defined by the dictionary as meaning "more or less frequently or not at fixed or regular times; happening at intervals as opportunity serves or occasion requires." This transaction seems to fit this definition in that the hauling of the brick is merely an opportunity which has presented itself not in the course of a regular business. To be exempt from the act the hauling must be done both occasionally and not as a regular business. A person engaged in the business of hauling freight or property for hire over the highways is required to comply with the terms of the act even though the pursuit of his business does not require frequent or regular transportation over the highways.

In the case above mentioned the hauling of these brick is both occasional and not as a regular business, and for this reason I am of the opinion that the party is not required to comply with the terms of the act in order to haul the brick in question.

Very truly yours,

L. A. FOOT,

Attorney General.