

Opinion No. 313.**Motor Vehicles—Licenses—Occasional
Transportation, MRC Not
Necessary.**

HELD: 1. One using his truck in assisting neighbor harvest his crop need not procure MRC license, this being "an occasional transportation," as defined by statute.

2. There is no statutory limit on number of MRC licenses that may be issued.

August 2, 1938.

Mr. Fred C. Gabriel
County Attorney
Malta, Montana

Dear Mr. Gabriel;

Your letters submit, in short, the following questions:

1. Is it necessary that neighboring farmers, assisting their neighbors by the use of their trucks in harvesting their grain, purchase MRC licenses?
2. Is there a limitation on the number of MRC licenses to be issued to cities or communities dependent upon population?

Answering the first question, we quote the following from Chapter 184, Laws of 1931:

"The Act as disclosed by its title affects only motor carriers engaged in the transportation of persons and property for hire. It defines a 'motor carrier' as a 'person or corporation, their lessees, trustees, or receivers appointed by any court whatsoever, operating motor vehicles upon any public highway in the State of Montana for the transportation of persons and/or property for hire, on a commercial basis either as a common carrier or under private contract, agreement, charter, or undertaking.'" (Sec. 1(h).)

Then follow exceptions not important in the consideration of this case.

"The words 'for hire' are defined in the Act as follows: 'The words 'for hire' mean for remuneration of any kind, paid or promised, either directly or indirectly. An occasional accommodative transportation service by a person not in the transportation business shall not be construed as a service for hire, even though the persons transported shares in the cost or pays for the service'."

It seems that the primary purpose of the law is not regulation with a view of safety or to the conservation of the highways, but the prohibition of competition. It determines, not the manner of use, but the persons by whom the highways may be used.

Buck v. Kuykendall, 267 U. S. 307, 45 S. Ct. 324, 69 L. Ed. 623, 38 A. L. R. 286.

Sometimes mistakes are made in the construction of the act and people take advantage of the act by subterfuge and are really common carriers but endeavor to evade the purchase of MRC licenses, in respect to which we might say that no form of subterfuge or evasion will prevent the courts from going behind the form to the substance.

Terminal Taxicab Co. v. Kutz, 241 U. S. 252, 36 Sup. Ct. 583, Ann. Cas. 1916D, 765, 60 L. Ed. 984;

Claypool v. Lightning Delivery Co., 38 Ariz. 262, 299 Pac. 126, 128.

This is the rule in this state (*Scott v. Prescott*, 69 Mont. 540, 223 Pac. 49).

It is my opinion, assuming that the neighboring farmers are acting in good

faith, that they come within subsection (i) of Section 3847.1, R. C. M. 1935, and are giving occasion accommodation, and therefore are not compelled to procure MRC licenses.

Answering your second question, Chapter 184 of the Laws of 1931 makes provision under Section 10, subsection (b), for the application of certificates of public convenience and necessity. Having filed the certificate, regardless of the number of licenses issued in any particular city or community, a hearing is had and if upon such hearing it is shown that it is necessary that a license be granted, the board will grant the same regardless of the population of a city or the number of licenses already granted.