

Opinion No. 31.

**Board of Railroad Commissioners—
Motor Carriers—Livestock and
Agricultural Products.**

Held: Board of Railroad Commissioners may not entertain an application for, nor grant a certificate of public convenience and necessity for the transportation of ordinary livestock or agricultural commodities exclusively.

April 21, 1945.

Mr. Horace F. Casey, Chairman
Board of Railroad Commissioners
State Capitol
Helena, Montana

Dear Mr. Casey:

You have requested my opinion on the following question:

May the board of railroad commissioners grant a certificate of public convenience and necessity to a motor carrier for hire hauling only livestock?

The Legislative Assembly of 1931, by Chapter 184, Laws of 1931, granted to your board authority to supervise and regulate motor carriers within the state. As a creature of the statute, your board has only such power and authority as granted by the legislature.

In exercising any power or authority you must find the right within some statute.

Chapter 184, *supra*, was carried into the Codes of 1935 and now appears as Chapter 310 of the Political Code. (Sections 3847.1 to 3847.25, Revised Codes of Montana, 1935.)

Section 3847.3, Revised Codes of Montana, 1935, provides in part:

"The board of railroad commissioners is hereby vested with power and authority, and it is hereby made its duty to supervise and regulate every motor carrier in this state . . . The board shall have power and authority by general order or otherwise to prescribe rules and regulations in conformity with this act applicable to any and all motor carriers . . ."

However, in granting authority to regulate and supervise motor carriers, the legislature specifically provided what motor carriers should come within this authority. It defined the term "motor carrier" as all persons or corporations "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." It then made certain exceptions, such as school buses, motor vehicles used for occasional hauling of persons or property, etc. (Section 3841.1, Revised Codes of Montana, 1935.) The board therefore has no jurisdiction over those motor vehicles specifically excepted from the act.

In 1943 the legislature amended Section 3841.1, *supra*, and among those motor vehicles excepted added the following: "motor vehicles used in carrying property, consisting of ordinary livestock or agricultural commodities (not including manufactured products thereof), if such motor vehicles are not used in carrying any other property, or passengers, for compensation." This amendment therefore removes from your jurisdiction motor vehicles used in carrying property consisting of ordinary livestock or agricultural commodities, if such motor vehicles are not used in carrying any other property or passengers for compensation.

Having expressly excluded from the operation of the law motor vehicles

used in hauling livestock and agricultural products exclusively, the legislature denied your board the right to regulate and/or supervise such motor carriers. It is evident the legislature, having in mind that a certificate of convenience and necessity is a franchise, determined that the business of hauling livestock is one in which there should be no regulation and hence excluded it from those over which the board has jurisdiction.

It is therefore my opinion—under the law as given us by the legislature—your board may not entertain an application for, nor grant a certificate of public convenience and necessity for the transportation of ordinary livestock or agricultural commodities exclusively.

Sincerely yours,
R. V. BOTTOMLY,
Attorney General