

OPINION
64-234

December 29, 1964 (OPINION)

Mr. Norton M. Hatlie

Legal Counsel

Public Service Commission

RE: Public Service Commission - Certificates - Exemption

This is in reply to your letter of December 8, 1964, relative to a request from Mr. Harold T. Upgren, Motor Carrier Division, Public Service Commission, requesting an opinion in regard to the above cited statute.

The question presented is whether the exemption contained in said section applies only to the occasional transportation service of one farmer helping out another farmer in their local trading areas or whether it applies to a trucker making a business out of providing transportation services. The exemption is to the provisions of Chapter 49 18 requiring various motor carriers certificates to haul property.

Section 40-18-02 of the North Dakota Century Code provides:

"INAPPLICABILITY OF PROVISIONS OF CHAPTER. - The provisions of this chapter shall not apply:

1. To any person transporting his own property with his own vehicle when such person is the bona fide owner of the property so transported;
2. To an association of farmers owning or controlling a motor vehicle transporting for its farmer members agricultural commodities of all kinds, livestock and farm supplies from the farms where such commodities are produced, grown, or processed to the market, village or place where such commodities are sold, stored, or otherwise disposed of, and the transportation of such commodities from the market, village, or place where the same are purchased or acquired to the farms where the same are to be used, consumed, or processed; and
3. To the transportation of property for hire or otherwise between the farms and the usual local trading place of the farmer for whom the transportation is performed, or between farms locally."

Prior to 1947, subsection 3 of the above section provided that the provisions of Chapter 49-18 should not apply to:

3. The transportation of property between the farms and the

usual local trading places of the person for whom such transportation is performed, or between farms locally."

See Chapter 273 of the 1945 Session Laws. It should also be noted that the title of the section was, at that time, "Chapter Not Applicable to Farmers Hauling Own Goods."

Chapter 311 of the 1947 Session Laws amended this section to provide that the provisions of Chapter 49-18 did not apply:

- . To the transportation of property for hire or otherwise between the farms and the usual local trading places of the farmer for whom the transportation is performed, or between farms locally." (Emphasis supplied.)

It is to be noted that this act changed the title of this section to: "Inapplicability of Provisions of Chapter." It is obvious from a reading of this provision that it does not limit the exemption to those farmers hauling goods, etc., for other farmers although this may have been the intent of the sponsors of legislation. As a matter of fact it appears the legislature intended otherwise since the legislative history of the act indicates that initially the exemption applied only to the farmer owning the produce, etc, or to an association of farmers. See Chapter 164 of the 1933 Session Laws and Chapter 166 of the 1939 Session Laws.

Thus, since the original acts exempted only the farmer owner or an association of farmers from the provisions of the chapter and since the 1947 Legislature specifically included the words "for hire or otherwise" in the statute it would appear they intended the exemption provision to be broadened to include other persons hauling produce of a farmer. It needs no legal citation to support the statement so often made by the Supreme Court of this State that in construing legislation it is to be presumed that the legislature did not intend an idle act in amending a statutory provision. The farmer owner or associations who transport such property were already exempt under the existing provisions. Therefore the amendment extending the exemption must be construed to apply to other persons. It might be argued that such exemption was only intended to apply to farmers who hauled property, for hire or otherwise, for other farmers and who did not ordinarily engage in such occupation. However such limitation is contained in the present statute although such a provision might be plausible. To read such a construction into the statute would, we believe, constitute legislating rather than interpreting a statute on the part of our office.

It is further to be noted that section 49-18-44 of the North Dakota Century Code provides a penalty for any person who violates any provision of Chapter 49-18. The failure to secure the agricultural carrier permit by a person who hauls such produce would therefore constitute a crime if such permit was required. It is another accepted rule of statutory construction that statutes, penal in nature, are to be strictly construed in favor of the person charged with having violated the statute.

It is probably that the intent of the sponsors of the 1947 amendment to section 49-18-02(3) was to limit the exemption to the occasional

transportation service of one farmer helping out another farmer in their local trading areas. However the statute does not limit the exemption to such a situation.

If such a statute is desired it would appear subsection 3 of section 49-18-02 of the North Dakota Century Code should be amended to limit the exemption to the transportation of property for hire or otherwise by a farmer or some person not ordinarily engaged in the transportation of property for hire between the farms and the usual local trading places of the farmer for whom the transportation is performed or between farms locally.

We should also note that despite the construction of the exemption provision it applies only to the transportation to the usual local trading places of the farmer for whom the transportation is performed or between farms locally. If the transportation is to a trading place not the usual local trading place of the farmer for whom the transportation is performed or between farms locally, the exemption does not apply. This is essentially a question of fact. We trust this will satisfactorily set fourth our opinion on this matter.

HELGI JOHANNESON

Attorney General