

**OPINION
70-244**

March 11, 1970 (OPINION)

Honorable Richard E. Forkner

Senator, Tenth District

RE: Motor Vehicles - Truck Fees - Farm Truck Exemption

This is in reply to your letter of March 8, 1970, relative to Section 39-04-19(5) of the North Dakota Century Code, as amended. You quote the section and state the following facts and questions:

Under this law can a farmer trade work providing he trades with his neighbor only in the hauling of grain, potatoes, sugar beets, implements from field to field, etc.

When a certain farmer has helped his neighbor harvest his crop and haul it to market for which he receives no pay, can the other farmer then reciprocate by hauling his neighbor's farm products to market without pay?

Also if one farmer helps another haul products to market under the reduced rates in this section does he have to secure a higher or commercial license?

All of the above questions refer to farm crops or farm implements hauled by farmers strictly as trading work without pay or hire."

This office previously refused to answer this question when submitted by the Office of a State's Attorney, since that question involved a specific factual situation which was pending before the Court and it has been a longstanding policy of this office to refrain from rendering opinions on matters which are currently in litigation or are otherwise subject to a Court determination. This practice is based upon the proposition that the issuance of an opinion concerning matters before the Court would, in effect, deprive the party or parties charged or in litigation of due process. We assume, therefore, that your question is not concerned with a specific factual situation presently being litigated in the Courts.

Section 39-04-19(5) of the North Dakota Century Code, as amended, provides:

MOTOR VEHICLE REGISTRATION FEES AND MILE TAX. Motor vehicles required to pay registration fees or a mile tax shall pay the following fees:

* * *

5. Trucks or combination of trucks and trailers, weighing from 24,001 to 73,280 pounds which are used as farm vehicles only, shall be entitled to registration pursuant to the following fee schedule and the provisions of this

subsection. Farm vehicles shall be considered, for the purpose of this subsection, as trucks or combinations of trucks and trailers weighing from 24,001 to 73,280 pounds owned and operated by a bona fide resident farmer who uses such vehicles exclusively for transporting his own property between farms and the usual local trading places and not for hire." (Underscoring ours.)

To our knowledge this language first appeared in the statute after a revision of the motor vehicle laws by the 1959 Legislative Assembly. See Chapter 289, 1959 Session Laws of North Dakota. The revision was a result of an interim study by the Legislative Research Committee authorized by the 1957 Legislative Assembly. See Senate Concurrent Resolution 0, 1957 Legislative Assembly, P. 854, 1957 Session Laws. However, the language referred to was not a part of the original recommended bill but was included therein through amendment in the House, (See P. 1066 of the House Journal, 1959 Session), and concurred therein by the Senate.

See pages 888, 929, Senate Journal, 1959 Session. Therefore, the report of the Legislative Research Committee is of no assistance in determining the intent of this provision. We have examined the contents of the minutes of the Committees on Transportation of the 1959 Session to which this bill was assigned and we find nothing therein which would be indicative of the intent of the Legislature in enacting this language.

It is, however, clear to us that the above quoted language would not apply to farmers hauling grain, potatoes, sugar beets, implements, etc., for another farmer even though he was not compensated therefor in money and he "traded" work with his farmer neighbor. In the first instance we would note the language very clearly specifies that farm vehicles are entitled to registration under the fees prescribed in subsection 5 of Section 39-04-19 only if the vehicles are owned and operated by a bona fide resident farmer who uses such vehicles exclusively for transporting his own property between farms and the usual local trading places and not for hire. If a farmer is transporting property of a neighbor he is obviously not transporting his own property. While the statute also uses the term, "and not for hire", it is apparent that all conditions must be met, i.e., the truck must be owned and operated by the farmer, he must be transporting his own goods and it cannot be for hire. Under the situations described in your letter, these conditions would not be met.

Secondly, we would also note that a "trading" of work between neighbors may well be considered "for hire." There may be no money passing between the two neighbor farmers but there is certainly a legal consideration in the fact that the one farmer hauls his neighbor's produce in exchange for the neighbor hauling his produce. We do not believe the words "for hire" necessarily carry a connotation of money payment. Any consideration, including an exchange or trading of work, would constitute consideration and could well be construed to be "for hire." This point may not be of great importance since the fact the farmer is hauling products other than his own would appear to be sufficient to make the provision inoperative to him.

Had the Legislature intended a farmer to be able to transport property of another farmer without requiring a higher registration fee, we assume they would have enacted legislation somewhat similar to subsection 3 of Section 49-18-02 of the North Dakota Century Code, as amended, which exempts from the motor carrier licensing provisions the transportation of property, except that compensated for in money, between the farms and the usual local trading places of the farmer for whom the transportation is performed, or between farms locally.

In direct reply to your questions, it is our opinion that under the provisions of Section 39-04-19(5) of the North Dakota Century Code, as amended, a farmer who transports property for another farmer is not entitled to have his truck registered under the schedule of fees specified in said subsection but would be required to be registered under the provisions of Section 39-04-12(2)(b) of the North Dakota Century Code, as amended, governing the registration fees for "school buses and trucks or combination trucks and trailers, including commercial and non-commercial trucks, except those trucks or combinations of trucks and trailers which qualify for registration under subsection 5 of Section 39-04-19."

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