

OPINION
65-231

April 27, 1965 (OPINION)

Mr. A.S. Benson

State's Attorney

Bottineau County

RE: Public Service Commission - Agricultural Carrier - Permit
and Insurance

This is in reply to your letter relative to section 49-18-01 of the North Dakota Century Code. You call our attention particularly to subsection 4 thereof, which provides:

"DEFINITIONS. In this chapter, unless the context or subject matter otherwise requires:

* * *

4. 'Agricultural carrier' shall mean any person, firm, association, or corporation, hauling or transporting for compensation, grain, seed, feed, poultry, livestock, dairy products, and other agricultural products, or farm supplies from the farm where such products are produced, grown, or further processed, to the market, village, or place where such products or supplies are sold, stored, disposed of, purchased or acquired, and the hauling or transporting of such agricultural products or farm supplies from the market, village, or place where the same are purchased or acquired to the farm where the same are to be used, consumed, or further processed; * * *."

You discuss the historical background of the legislation there involved and point out that cattle truckers who truck for hire and deliver agricultural products for their neighbors now may deliver a distance of two hundred to three hundred miles from their home base with these cattle although these cattle may have been picked up within a fifteen mile radius of the trucker's home base.

You ask whether under these modern conditions it is our opinion that an agricultural carrier must have a (C) plate and cargo insurance and, further, whether the expanding market place would still qualify an agricultural carrier under subsection 4 quoted above.

We are enclosing herewith Thermofax copies of other correspondence of this office in regard to similar matters in this field.

Under current conditions it is our understanding that persons meeting the requirements of subsection 3 of section 49-18-02 of the North Dakota Century Code are entirely exempted from the provisions of such chapter. Thus section 49-18-02, subsection 3, provides:

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

3. 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."

Perhaps because of the close similarity between this type of activity and that of the agricultural carrier defined in subsection 4 of section 49-18-01, we believe that on occasion it may have been suggested that the person defined as exempted under subsection 3 of section 49-18-01 might well obtain an agricultural carrier's permit in order to avoid difficulty in showing the exemption.

The "agricultural carrier" unlike the person exempted under subsection 3 of section 49-18-02 is required to obtain a permit. Section 49-18-35 provides:

"AGRICULTURAL CARRIER - MUST HAVE PERMIT. No agricultural carrier shall operate any motor vehicle for hire on any public highway in this state without a permit from the commission."

See section 49-18-41 of the North Dakota Century Code as to identification tags.

Prior to 1963 the agricultural carrier was exempted from the insurance and rate schedule requirements of the chapter. Section 49-18-39 then provided:

"AGRICULTURAL CARRIERS - EXEMPT FROM INSURANCE AND RATE SCHEDULE REQUIREMENTS. An agricultural carrier shall be exempt specifically from making any showing of public convenience and necessity and from any requirements as to insurance and from any schedule as to rates." (Underscoring ours.)

However, said section 49-18-39 was amended in the 1963 Legislative Session to provide:

"AGRICULTURAL CARRIERS - EXEMPT FROM RATE SCHEDULE REQUIREMENTS. - An agricultural carrier shall be exempt specifically from making any showing of public convenience and necessity and from any requirements as to any schedule of rates." (Underlining ours.)

Thus it would appear that the usual exemption from insurance requirements has been deleted.

Also, the 1963 Legislature provided by section 49-18-33 of the 1963 Supplement to the North Dakota Century Code:

"INSURANCE OR BOND REQUIRED OF COMMON, AGRICULTURAL OR CONTRACT CARRIER - LIABILITY OF INSURER AND SURETY - TRIAL. The commission in granting a certificate to any common motor carrier and in granting a permit to any agricultural or

contract carrier shall require the owner or operator first to procure either liability and property damage insurance or a surety bond to be approved by the commission as to the form, sufficiency, and surety thereof and written by a company authorized to write such insurance in this state in an amount to be designated by the commission. The conditions of such liability insurance or surety bond shall be such as to guarantee the payment of any loss or damage to property, or on account of the death of or injury to persons, resulting from the negligence of such carrier. In any action for damages resulting from the negligence of such carrier, the insurer or surety shall not be joined as a party defendant nor shall the fact of the ultimate liability of such insurer or surety be disclosed or commented on to the jury. Upon final judgment the insurer or surety shall become liable directly to the owner of such judgment for the full amount thereof but not exceeding the amount of the policy of insurance or surety bond applicable to such loss. Each insurance policy or bond so required shall be filed with the commission and shall be kept in full force and effect, and upon the failure to do so the certificate or permit shall be revoked and canceled; provided that, a certificate of any company authorized to write liability or property damage insurance in the state, in a form approved by the commission and certifying that there is in effect a liability insurance policy required by this section, may be filed in lieu of the policy itself. The commission also shall require the owner or operator first to procure a surety bond, written by a company authorized to write such bond in this state, in an amount to be designated by the commission, to guarantee the payment by the carrier to the shipper or its agent, of all cash or collect on delivery charges collected by said carrier in connection with the operation or conduct of his business as such common motor carrier or contract carrier."

To conclude, it is our opinion that an "agricultural carrier" as defined in subsection 4 of section 49-18-01 must obtain a permit as specified in section 49-18-35; identification tags as specified in section 49-18-41; and insurance as specified in section 49-18-33, etc. It is further our opinion that subsection 3 of section 49-18-02 has not been repealed by implication or otherwise and that persons falling within such definition are not required to obtain a permit, identification tags or insurance as set out above, although under the express terms of that statute the transportation must be between farms, "local" trading places, etc. We do not believe that a trading place two to three hundred miles from home base is a "local" trading place.

HELGI JOHANNESON

Attorney General