

Opinion No. 54-6022

October 4, 1954

BY: RICHARD H. ROBINSON, Attorney General

TO: State Corporation Commission State Capitol Building Santa Fe, New Mexico

{*485} Sometime ago you submitted to us with a request for an opinion, a letter addressed to you from Lynell G. Skarda, attorney at Clovis, New Mexico, seeking the answers to nineteen questions which have been condensed into five questions, relative to the requirement of certificates of convenience and necessity and the exemption allowed for transporting livestock, farm and dairy products. Your questions involve the exemption provided in Section 68-1325 of the 1941 Compilation, pocket supplement, subsection (c), which reads as follows:

"Neither this act nor any provisions hereof shall apply or be construed to apply to any of the following:

"(c) To motor vehicles being used in the transportation of or carrying a cargo consisting exclusively of live stock and/or any farm or dairy products from the place of production to market, and nothing in this act shall be construed to prevent a return load to be hauled provided no charge for transportation is made therefor."

Your last question also involves the exemption from mileage taxes contained in Section 68-1532 of the 1941 Compilation, pocket supplement, which is as follows:

"Motor vehicles, properly licensed in the state of New Mexico or in any other state, having a reciprocal agreement with New Mexico, shall not be required to pay a mileage tax when being used in the transportation of a cargo, consisting exclusively of live stock on the hoof, live poultry, eggs, shelled or threshed grain, cleaned or recleaned, bulk or sacked, cotton, either ginned or unginned, peanuts, either roasted or unroasted, hay either loose or baled, nonprocessed agricultural products, nonprocessed fruits, nonprocessed vegetables, nonprocessed milk or cream, either sweet or sour, sweet potatoes, either cured or uncured, from the original place of growing or raising to market. "Any motor vehicle, as hereinabove described, shall not be required to pay a mileage tax on a return trip when empty or when transporting a cargo consisting of farm products and live stock as described hereinabove or farm and/or ranch supplies to be used exclusively for home consumption and not being transported for resale or hire."

In order that a complete picture of the problems involved may be presented at one time, the first four or your condensed questions which represent the first eighteen questions in Mr. Skarda's letter are set forth together. It should be understood that these questions are general and the answers likewise must be general, and that numerous situations may arise involving a construction of the situations involved with reference to specific facts, and in such cases if these fact situations are presented to us, we shall be happy

to give you our opinion relative thereto, regarding the specific fact situation. The four questions are as follows:

"Is one who holds no permit of any kind from the New Mexico State Corporation Commission within the exemption of § 68-1325 (c), N.M.S.A., 1941, as amended, Laws 1951, Ch. 207, § 1, under the following fact situations when that person or trucker is (1) a resident of New Mexico, or (2) a resident of Texas?

"1. One who (1) buys, or (2) hauls and then remits proceeds of sale less consideration for the hauling to the Texas farmer, bundle feed or hay or grain at or from the Texas farm where it is produced to the Clovis market where it is sold to cattle feeders or livestock yard operators for use?

"2. One who hauls bundle feed or hay or grain from the (1) Texas, or (2) New Mexico, farm where it was produced to a (1) Clovis, or (2) Texas, feeder, livestock yard operator, dairyman, rancher, or dealer who purchased said products at the Texas or New Mexico farm, as the case may be, and who pays the person for the hauling?

"3. One who (1) buys, or (2) for hire paid for by the farmer or purchaser, hauls, bundle feed or hay or grain from a farm in New Mexico where it was produced, and trucks it to (1) Clovis, New Mexico, where it is sold to cattle feeders or livestock yard operators for use, or (3) delivered to the purchaser in New Mexico who bought it at the New Mexico farm?

"4. One who (1) buys, or (2) for hire, paid for by the farmer or purchaser, and trucks threshed wheat or sorghum grains from a farm in New Mexico where it is produced to grain elevators in (1) New Mexico, or (2) Texas?"

Before attempting to answer the questions specifically, it should be borne in mind that taxation is the rule, and exemption the exception. Statutes granting exemptions from taxation are to be reasonable and liberally construed but strictly applied insofar as the person seeking to come under the exemption is concerned.

Section 68-1325 (c) uses two terms which require discussion and definition before it is possible to give an opinion concerning the same. The first of these is the phrase "the place of production." In its broad sense production may occur on the farm or ranch and in subsequent places, for instance as in a feeding pen or pasture for fattening cattle, and may consist of several steps. However, it is our feeling that this phrase was intended by the Legislature to be the original place of production such as the farm or ranch where the products are originally grown, in view of the fact that these exemption statutes apparently were passed for the benefit of the farmers and ranchers.

The second term that needs discussion and clarification is the word "market". In Restatement of Law, under Torts, Section 717, in connection with infringement of trade marks, market is defined in three ways:

1. Market may mean the territorial area where goods are bought and sold, or the gathering of persons in such area for the purpose of buying or selling goods.
2. It is also used in a different sense to include prospective purchasers of goods wherever they are.
3. Persons who purchase goods a market for those goods distinct for resale to retailers may constitute from that constituted by persons who purchase the goods for resale to consumers or those who purchase for consumption.

{*487} The more common use of the term is to signify a place and in this sense it means a public place or market place. See 55 C.J.S., "Market" page 785, and 35 Am. Jur., "markets" Section 2, page 135.

We believe that in using the words "from the place of production to market" the Legislature did not intend the original place of production to constitute a market, but intended to mean the place of sale or storage of the product after leaving the place of production. If the product is stored or in the case of animals, is placed in a feeding pen, transportation thereafter, although the product is still unsold, would not be from the original place of production and would not be exempt.

Since the primary purpose of the exemption seems to be to benefit the farmer, rancher or grower of these products, it would seem to be immaterial whether the grower or producer sold the product on the farm, in isolated instances, in which case the sale price would be reduced in proportion to the cost of transportation to market, or whether he sold at the market and paid the cost of transportation from the sale price. Apparently the Legislature intended to give farm and ranch products one "free ride" regardless of ownership of the motor vehicle transporting the same to market, or regardless of whether the sale or contract of sale is made on the farm or in the market.

Under this theory it is possible for a rancher to buy hay on the farm for use on the ranch, and no tax would ever be imposed on the transportation. Any interpretation given in general terms cannot cover all conceivable situations and any result reached will undoubtedly result in inequities in some instances which cannot be avoided.

With these definitions and principles in mind, it is apparent that in all four of your questions the persons transporting the livestock, farm or dairy products, from the original place of production in New Mexico to the place of sale, storage or detention in New Mexico are exempt under Section 68-1325 (c) from obtaining a permit and from the tax. Since Section 68-1532, supra, was part of an Act passed later than Section 68-1325 (c) as originally enacted, it is assumed the later Act would govern in its field. Therefore vehicles transporting products from the place of production in New Mexico to a market outside the State or from the place of production outside the State to a market in New Mexico, would be exempt from mileage tax only if they are transporting products exempt pursuant to Section 68-1532, in the same manner as hereinafter discussed relative to question No. 5.

Your last question is whether or not the mileage tax due under § 68-1346 of the 1941 Compilation, is payable by either New Mexico or Texas truckers holding New Mexico certificates of convenience and necessity for hauling livestock or unprocessed farm products from the place of production in New Mexico or Texas to markets in either New Mexico or other States, for hire.

Section 68-1346 of the 1941 Compilation, was originally passed as a part of Chapter 154 of the Laws of 1933, as was Section 68-1325, subsection (c). The latter section specifically exempts from the provisions of the Act "motor vehicles being used in the transportation of or carrying a cargo consisting exclusively of livestock and/or any farm or dairy products from the place of production to market . . ." Therefore this exemption would apply, whether or not the trucker holds {*488} a certificate of convenience and necessity, in the transportation of products from the original place of production in New Mexico to markets in New Mexico.

As to vehicles transporting products from the place of production in New Mexico to markets in other States, or transporting products from the place of production in other States to this State, the tax exemption in § 68-1532 of the 1941 Compilation, pocket supplement, would apply, which is in different language than that appearing in Section 68-1325 (c). The language in these two sections is set out above and will not be repeated here.

It is noted that Section 68-1532 exempts among other things, non-processed agricultural products, non-processed milk or cream, non-processed vegetables and non-processed fruits. In this respect the exemption is narrower than that contained in Section 68-1325 (c).

As to such products contained in these two sections under the situations mentioned, the transportation thereof would be exempt.

By: C. C. McCulloh

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