

Taxicabs:

Certificate of Convenience and Necessity not required of persons operating "taxicabs" whose "principal" operations are within a city or suburban territory adjacent thereto.

February 19, 1948

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Mr. G. C. Beckham
Prosecuting Attorney
Steelville, Missouri

Dear Mr. Beckham:

This will acknowledge receipt of your opinion request of February 5, 1948, which request, omitting caption and signatures, inquires as follows:

"In Crawford County, Missouri we have a number of persons who are operating taxi cab businesses. Some operate out of the City of Steelville and some out of the City of Cuba. They offer a "call and demand service" and will take customers anyplace that the customer might want to go either in the City or outside the City.

I understand that the Public Service Commission has held that such operators are required to obtain a Certificate of Convenience and Necessity to operate as a passenger-carrying motor carrier over an irregular route.

The question is whether or not persons engaged in such a business are required to have a Certificate of Convenience and Necessity. I would like to have your construction of Section 5720 RS Mo 1939 on the above question.

I might further state that a certain person who does have a Certificate of Convenience and Necessity to operate as a passenger-carrying motor carrier over an irregular route has complained about the operations above mentioned.

I might further state in my opinion that there is no way to determine whether the principal operations of such unauthorized taxi cab operators are confined to the area within the corporate limits of the respective cities out of which they operate."

The primary question propounded by your request aforesaid which is to be answered is whether the owners or operators of "taxicabs" operating in the manner set out in your letter, are subject to control by the Public Service Commission of Missouri, as set out in Article 8, Chapter 35 Missouri Statutes Annotated. If the activity of these taxicabs is subject to such control, then it will be necessary, under such statutory provisions for the operators thereof to obtain a Certificate of Convenience and Necessity.

In 1941, Section 5720 of the aforesaid Article and Chapter of the statutes was repealed and a new section enacted in lieu thereof and designated as Section 5720. Said section defines the various terms used in the aforesaid article among said terms being that of a "taxi-cab". This provision is sub-section (d) and provides the following:

(d). "The term 'taxicab' when used in this article shall mean every motor vehicle designated and/or constructed to accommodate and transport passengers, not more than five in number, exclusive of the driver, and fitted with taximeters and/or using or having some other device, method or system to indicate and determine the passenger fare charged for distance traveled, and the principal operations of which taxicabs are confined to the area within the corporate limits of cities of the state and suburban territory as herein defined."

The definition of "suburban territory" as used in the aforesaid article is, contained in sub-section (f) and is as follows:

(f). "The term 'suburban territory' when used in this article, means that territory extending one mile beyond the corporate limits of any municipality in this state and one mile additional for each 50,000 population or portion thereof: PROVIDED, that when more than one municipality is contained with (within) the limits of any such territory so described, motor carriers operating in and out of any such municipalities within said territory shall be permitted to operate anywhere within the limits of the larger territory so described."

For the purposes of this opinion it might further be well to set out sub-section (i) which prescribes the following:

(i). "The term 'irregular route' when used in this article means that portion of the public highways over which a regular route has not been established."

To furnish an answer to your question, it is necessary that we consider the statutes along with the decisions of the Courts of this State to determine whether individuals operating a "call and

demand service", such as you mention in your letter are operating motor vehicles for hire as "taxicabs", and whether they are under the control of the Public Service Commission.

The last decision touching this question is State ex rel Crown Coach Company, vs Public Service Commission, 185 SW (2) 347, and was handed down by the Kansas City Court of Appeals. In this decision, the Court went into the question of the classifications of motor carriers under Section 5720, Supra, and their exemption from the control of the Public Service Commission. In speaking of this exemption the Court said at #357:

"The exemption of "taxicabs" from the regulation and jurisdiction of the Public Service Commission under Section 5721 has other purposes than those personal to the operators of that type of service. No doubt one main purpose was to allow for the local regulation of such carriers by the municipality involved. The exemption constitutes subject matter expressly withheld from the jurisdiction of the Commission which can not by the act of the operator, or in fact by the act of the commission, be brought within the jurisdiction of the Commission in contravention of the statute, *****"

The Court in continuing it's opinion further said:

"It is evident that under Section 5720 (d) R.S. Mo. 1939, motor vehicles of the type therein described are either 'Taxicabs' or they are not 'Taxicabs', depending on the location of their principal operations. Under the evidence in this case the motor vehicles in question were common carriers for hire. See State ex rel Anderson vs Witthaus, 340 Mo. 1004, 102 SW (2) 99. To determine the jurisdiction, if any, of the Public Service Commission over such vehicles of the type described, when used for hire as common carriers as in the instant case, the statutory test is whether the 'principal operations' of the same are confined to the area within the corporate limits of cities of the state and suburban territory as described. If the facts shall show all the elements of such exemption to exist, then no part of Article 8, Chapter 35, R.S. Mo. 1939, applies to such carrier and the Public Service Commission. If the facts show any element of exemption lacking, then such vehicles are within the purview of Section 5720 (h) and 5725, which statutes and all other applicable provisions of said Article affect such vehicles, and the jurisdiction of the Public Service Commission would obtain."

Mr. G. C. Beckham

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Taking the Court's decision in the above case as a yardstick, it would appear to this department that the answer to your inquiry will be based on the facts in each case. The mere fact, that persons operate motor vehicles for hire will not necessarily subject them to the control of the Public Service Commission. Whether they come under its supervision depends on whether the "principal operations" of the particular carriers are confined to the areas within the City of Steelville or the city of Cuba or their respective suburban territories as defined in Section 5720 (e) set out above. As stated above, this can only be determined by a study of the facts in each particular case.

CONCLUSION

It is therefore the opinion of this department that persons operating a "taxicab" or motor vehicles for hire whose "principal operations" are within a city or its "suburban territory" as defined in Section 5720 (e) are exempted from the control of the Public Service Commission under Article 8, Chapter 35 of the Revised Statutes of Missouri for 1939, but if their "principal operations" are otherwise, then they are required to obtain a Certificate of Convenience and Necessity.

Respectfully submitted,

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APPROVED:

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