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SILOS, FARM—COMPONENT PARTS—USED TO CONSTRUCT COMPLETE SILO — NOT “FARM SUPPLIES” — “MOTOR TRANSPORTATION COMPANY”—“PRIVATE MOTOR CARRIER”—DESIGNATION OF THOSE NOT “ENGAGED IN THE TRANSPORTATION OF FARM SUPPLIES TO THE FARM”—SUCH MOTOR CARRIERS REQUIRED TO SECURE FROM PUBLIC UTILITIES COMMISSION OF OHIO, CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY OR CONTRACT CARRIER PERMIT—PRECEDENT TO FURNISHING TRANSPORTATION SERVICE OVER ANY PUBLIC HIGHWAY IN STATE—SECTIONS 4921.02, 4923.02 RC.

SYLLABUS:

Farm silos, including all the component parts thereof used in the construction of a complete silo on a farm, are not “farm supplies” as that term is employed in enumerated exception (5) to Section 4921.02, Revised Code, and in enumerated exception (6) to Section 4923.02, Revised Code, which statutes define respectively a “motor transportation company” and a “private motor carrier.” Persons, firms, partnerships, associations, and companies engaged in the intrastate transportation, for hire, by motor vehicle of such silos to farms in Ohio are not “engaged in the transportation of farm supplies to the farm” as provided by said exceptions, and such motor carriers are required to secure from The Public Utilities Commission of Ohio either a certificate of public convenience and necessity or a contract carrier permit precedent to furnishing such transportation service over any public highway in this state.

Columbus, Ohio, June 30, 1954

Hon. Robert L. Moulton, Chairman, Public Utilities Commission of  
Ohio,  
Columbus, Ohio

Dear Sir:

You have requested my opinion upon the following question:

“ \* \* \* whether the transportation of concrete silos, wooden silos, metal silos, or silos constructed of any other materials, including all component parts used in the construction of a complete silo on a farm, may be transported over the highways of Ohio from a point of origin in Ohio, to a destination in Ohio, which destination is the farm where such silo is to be erected, without the motor carrier furnishing the transportation service first obtaining from the Public Utilities Commission of Ohio, a certificate of public convenience and necessity or a contract carrier permit, when the transportation service is not to be performed by the owner of the silos and component parts used in the construction of a complete silo, in the owner's motor vehicle?”

A review of Chapters 4921. and 4923. in Title 49 of the Revised Code of Ohio, relating respectively to Motor Transportation Companies and Private Motor Carriers, indicates that The Public Utilities Commission of Ohio is vested with power by legislative enactment to supervise and regulate *only* those types of carriers by motor vehicle therein defined by Section 4921.02, Revised Code, as “motor transportation company(ies)” or “common carrier(s) by motor vehicle” and by Section 4923.02, Revised Code, as “private motor carrier(s)” or “contract carrier(s) by motor vehicle.”

Thus, unless the character of the transportation operation described in your letter of inquiry—the transportation by motor vehicles of silos to farms—is encompassed within one of the aforesaid statutory definitions, the motor carriers engaged in the transportation of silos to the farm are not subject to regulation by The Public Utilities Commission, Sections 4921.03, 4921.04 and 4923.03, Revised Code, and, they need not secure certificates of public convenience and necessity or contract carrier permits from the Commission. Sections 4921.07 and 4923.04, Revised Code.

The determination of your question, perforce, may well be resolved by reference to aforesaid Sections 4921.02 and 4923.02. The former definitional statute, delineating a "motor transportation company," reads in part pertinent hereto as follows:

"As used in sections 4921.01 to 4921.32, inclusive, of the Revised Code:

"(A) 'Motor transportation company,' or 'common carrier by motor vehicle,' includes every corporation, company, association, joint-stock association, person, firm, or co-partnership \* \* \* when engaged or proposing to engage in the business of transporting persons or property, or the business of providing or furnishing such transportation service, for hire, whether directly or by lease or other arrangement, for the public in general, in or by motor-propelled vehicles of any kind, including trailers, over any public highway in this state. \* \* \* 'Motor transportation company' as so used, does not include any person, firm, co-partnership, voluntary association, joint-stock association, company, or corporation, wherever organized or incorporated:

"(1) Engaged or proposing to engage as a private motor carrier as defined by section 4923.02 of the Revised Code;

" \* \* \* (5) *Engaged in the transportation of farm supplies to the farm* or farm products from farm to markets or to food fabricating plants;" (Emphasis added.)

Section 4923.02, defining a "private motor carrier," sets forth substantially the same exceptions to the definition thereof as are enumerated in Section 4921.02 as to the definition of a "motor transportation company," the provisions thereof applicable to the question here in issue reading:

"(A) 'Private motor carrier' or 'contract carrier by motor vehicle' includes every corporation, company, association, joint-stock association, person, firm, or copartnership, \* \* \* not included in the definition under section 4921.02 of the Revised Code, when engaged in the business of private carriage of persons or property, or both, or of providing or furnishing such transportation service, for hire, in or by motor-propelled vehicles of any kind, including trailers, over any public highway in this state, but does not include any corporation, company, association, joint-stock association, person, firm or copartnership, \* \* \* :

"(1) Engaged or proposing to engage, directly or indirectly, as a private owner or operator of motor vehicles employed or used by a private motor carrier, or by a motor transportation company as defined in section 4921.02 of the Revised Code;

“ \* \* \* (6) *Engaged in the transportation of farm supplies to the farm or farm products from farm to market; \* \* \** ”  
 (Emphasis added.)

Inasmuch as your letter specifies that the transportation of the silos to the farm is not performed “by the owner of the silos and component parts used in the construction of a complete silo, in the owner’s motor vehicle,” it must be assumed at the outset that the carriers transporting these silos to the farm are engaged in either *public* transportation or *private* carriage of property, *for hire*, over public highways in this state, thereby subjecting them to the regulatory jurisdiction of the Commission as either a “motor transportation company” or a “private motor carrier,” *unless such operations are expressly encompassed within one or more of the enumerated exceptions to the above-quoted definitional sections.*

A review of said enumerated exceptions plainly shows that *only* exception (5) in Section 4921.02 and exception (6) in Section 4923.02, may be construed as possibly applicable to the transportation of silos to farms. Both of these exceptions, it is noted, employ the identical language insofar as pertinent to the nature of transportation service here in question, to-wit:

“Engaged in the transportation of farm supplies to the farm \* \* \*.”

This gives rise necessarily to the construction to be accorded the meaning and scope of the term “farm supplies” as therein employed by the Legislature. If the term “farm supplies” was intended by the Legislature to encompass silos used on the farm, the transportation of silos to farm is excepted from both of the above-quoted statutory definitions of a “motor transportation company” and a “private motor carrier,” and the motor carriers engaged in that transportation are not amenable to the Commission’s jurisdiction and therefore, need not secure certificates or permits from the Commission authorizing them to transport that type and character of property.

In ascertaining the meanings of words, terms, or phrases contained in statutes, the primary end to be sought is the connotation which the Legislature intended to attach thereto in the particular statutes in issue. *Warren v. Davis*, 43 Ohio St., 447. As a general rule, words of a statute, in common use or other than terms of art or science, will be construed in their ordinary acceptance and significance and with the meaning commonly

attributed to them. Indeed, the intention of the Legislature to use statutory phraseology in such manner has been presumed. *Mutual Building & Investment Co. v. Elfros*, 152 Ohio St., 369; *Kiefer v. State*, 106 Ohio St., 285.

In the absence of an express definition by the Legislature, and here we have no legislative definition of the term "farm supplies," it is incumbent in the construction of such words, phrase, or term to look to the judicial interpretation applied thereto, if any.

The only Ohio case found which interprets the word "supply" is *Millersburg v. Wurdack*, 30 Ohio Dec., 218 (C. P.—1919), wherein it is stated, in part, at page 222: "A supply means any substance consumed \* \* \*."

This interpretation that the words "supply" or "supplies" connote an article or substance which is consumed by or subject to consumption in the work or operations in which it is utilized, meets with general acceptance by courts of other states and jurisdictions:

*U. S. Rubber Co. of California v. Washington Engineering Co.*, 86 Wash., 180, 149 P. 706, 707—"A 'supply' would be any article furnished for carrying on the work which from its nature is necessarily consumed by use in the work."

*National Surety Co. v. Bratnoler Lumber Co.*, 67 Wash., 601, 122 P. 337, 343—"It seems to us that the words 'provisions' and 'supplies' include anything that is furnished for, and used directly in the carrying on of, the work, and is entirely consumed thereby. Such things do not enter into and become a physical part of the finished structure like 'materials' do, as that word is generally construed; but they do become as much a part of the structure as the labor which is performed upon it."

Some courts, it is to be noted, distinguish "supplies" from "materials," ruling that the former are consumed or used in operations while the latter are furnished for and become a physical part of the finished structure. *Building Supplies Corp. et al. v. Willcox*, 284 F., 113, 115 (C of A, 4thC). Other courts point out, in following this same rationale, that the term "supplies," in the plural, has the meaning of something, such as stores, which "are kept on hand for daily use." *Connor v. Littlefield*, 79 Tex., 76, 77, 15 S. W., 217, 218.

Particularly pertinent to the question involved herein is a recent Federal District Court decision sustaining a ruling by the Interstate Com-

merce Commission that a prefabricated building, either complete or knocked down in sections, does *not* constitute "construction supplies." In this decision, relative to a determination of the commodities authorized to be transported under a motor carrier's interstate certificate, reported in *Converse v. United States*, 109 F. 2d, 807 (D. C., Calif. 1953), the court states as follows at pages 809-810 thereof:

"Lumber may very well be prima facie a 'construction material', but if a complete house were to be moved from one place to another, it could not be maintained that construction materials were being transported. Half of a house would still remain identifiable as a building. At some point, it can be said that the commodity involved loses its individual identity and becomes a component element of a building, i.e., a construction material. The decision of the Commission that a prefabricated building, either complete or knocked down in sections, does not constitute 'construction materials, equipment or supplies', is not clearly erroneous or arbitrary."

In pursuance of this reasoning, it would seem to follow that a silo, either complete or knocked down in sections, does not constitute "farm supplies."

The lexicographical definitions of the word "supplies," substantiate the foregoing judicial interpretations given that word:

Webster's New International Dictionary, 2d Ed.—"Supply \* \* \* The quantity or amount (esp. of a commodity) at hand or needed; as, to send for a fresh supply of provisions, money, or strength. e. *Chiefly pl.* Provisions, clothing, arms, raw materials, etc., set aside to be dispensed at need; stores: as, to lay in *supplies* for the winter; in charge of *supplies* in a factory."

The Century Dictionary, Vol. II, 1st Ed.—"Supply \* \* \* that which is supplied; means of provisions or relief; sufficiency for use or need; a quantity of something supplied or on hand; a stock; a store \* \* \* 4. *pl.* Necessaries collected and held for distribution and use; stores: as, the army was cut off from its *supplies* \* \* \*."

In light of the judicial interpretations generally accorded the word "supplies" and the general and common acceptance of the meaning of that word, I am compelled to conclude that complete farm silos or the component parts thereof do not constitute "supplies" within the connotation thereof as used by the Legislature in said Sections 4921.02 and 4923.02, Revised Code.

By virtue of the foregoing, it is my opinion that farm silos, including all the component parts thereof used in the construction of a complete silo on a farm, are not "farm supplies" as that term is employed in enumerated exception (5) to Section 4921.02, Revised Code, and in enumerated exception (6) to Section 4923.02, Revised Code, which statutes define respectively a "motor transportation company" and a "private motor carrier." Persons, firms, partnerships, associations, and companies engaged in the intrastate transportation, for hire, by motor vehicle of such silos to farms in Ohio are not "engaged in the transportation of farm supplies to the farm" as provided by said exceptions, and such motor carriers are required to secure from The Public Utilities Commission of Ohio either a certificate of public convenience and necessity or a contract carrier permit precedent to furnishing such transportation service over any public highway in this state.

Respectfully,

C. WILLIAM O'NEILL

Attorney General