

**OPINION NO. 83-046****Syllabus:**

A piece of machinery known as a "floater," "Big A," "customer application," "spray rig," "field gymmy," or "big wheels" is farm machinery for purposes of R.C. 4501.01 and R.C. 4513.11(B). (1975 Op. Att'y Gen. No. 75-043, overruled.)

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**To: Kenneth R. Cox, Director, Department of Highway Safety, Columbus, Ohio**  
**By: Anthony J. Celebrezze, Jr., Attorney General, September 6, 1983**

I have before me your request for my opinion concerning the classification of certain machinery for purposes of R.C. 4501.01(B) and R.C. 4513.11(B). The machines with which you are concerned are known as "floaters," "Big A's," "customer applications," "spray rigs," "field gymmys," and "big wheels." You state in your letter:

The distinguishing characteristics of these machines are:

- (1) They are not designed for or employed in general highway transportation;
- (2) They are equipped with very wide "flotation" tires designed for minimum soil compaction when travelling over tilled farmland, but essentially lacking in design characteristics suitable for high-speed highway travel;
- (3) They are employed primarily for the field application of dry or liquid agricultural crop pesticides and fertilizers with some transport over highways of such agricultural production materials from a local place of storage or supply to the farm where application is to be made;

- (4) Such machines are not designed for safe operation at speeds in excess of twenty-five miles per hour.

R.C. 4501.01(B), which provides the definition of "motor vehicle" for purposes of R.C. Chapters 4501, 4503, 4505, 4507, 4509, 4511, 4513, 4515, and 4517, and for the penal laws, except as otherwise provided, reads:

"Motor vehicle" means any vehicle, including house trailers and recreational vehicles, propelled or drawn by power other than muscular power or power collected from overhead electric trolley wires, except motorized bicycles, road rollers, traction engines, power shovels, power cranes, and other equipment used in construction work and not designed for or employed in general highway transportation, well drilling machinery, ditch digging machinery, farm machinery, trailers used to transport agricultural produce or agricultural production materials between a local place of storage or supply and the farm when drawn or towed on a public road or highway at a speed of twenty-five miles per hour, or less, threshing machinery, hay baling machinery, corn sheller, hammermill and agricultural tractors and machinery used in the production of horticultural, agricultural, and vegetable products. (Emphasis added.)

"Farm machinery," which is excepted from the definition of "motor vehicle," is defined in R.C. 4501.01(U) as:

all machines and tools used in the production, harvesting, and care of farm products, including trailers used to transport agricultural produce or agricultural production materials between a local place of storage or supply and the farm when drawn or towed on a public road or highway at a speed of twenty-five miles per hour, or less.

In 1975 Op. Att'y Gen. No. 75-043, my predecessor addressed the question whether the piece of machinery known as the "Big A" is a "motor vehicle" for purposes of R.C. 4501.01(B). In considering the possibility that the "Big A" was farm machinery rather than a motor vehicle, my predecessor stated:

It would, at first impression, appear that the vehicle under consideration clearly qualifies as farm machinery and is, accordingly, exempt from the license tax. It is, in theory, neither designed for nor employed in general highway transportation. It is a three-wheeled vehicle with over-sized tires. An advertised maximum field speed of only twenty miles per hour presumably renders it unsuitable for general highway travel. The intended use of the vehicle is to aid in the production of agricultural products.

Id. at 2-162 to 2-163. The opinion went on to find, however, that the machinery was a motor vehicle since the owner and operator of the machine was not a farmer, but a supplier who delivered and spread fertilizer with the machine at the request of farmers. My predecessor noted:

The owners and operators of the machines in question are not engaged in farming either primarily or incidentally. They are, rather, engaged in a business which consists of the sale and application of fertilizer. The mere fact that, in carrying on such a business, these operators offer a necessary service to farmers does not justify finding that the equipment used is farm machinery under R.C. 4501.01.

In conclusion. . . a vehicle, commercially known as the "Big A," when owned and operated by a supplier for the purpose of delivering and applying fertilizer to farms qualifies as a motor vehicle pursuant to R.C. 4501.01(B) and, as such, is subject to the license tax imposed by R.C. 4503.02.

Id. at 2-164.

In reaching this conclusion, Op. No. 75-043 relied on two earlier Attorney General opinions, 1932 Op. Att'y Gen. No. 3932, vol. I, p. 30 and 1940 Op. Att'y Gen. No. 3087, vol. II, p. 1032. I believe this reliance to be misplaced. When 1932 Op. No. 3932 was rendered, "motor vehicle" was defined more narrowly. In addition, there was no definition of farm machinery. The opinion was concerned with whether the machinery in question constituted an "agricultural tractor" or "traction engine," which were defined as "any self-propelling vehicle designed or used for drawing other vehicles or wheeled machinery but having no provision for carrying loads independently of such other vehicles, and used principally for agricultural purposes." (This definition may now be found in R.C. 4501.01(C).) 1940 Op. No. 3087 was also concerned with the interpretation of "agricultural tractor" or "traction engine." Neither opinion dealt with a piece of machinery described as a "Big A." Thus, I do not find either opinion to be persuasive with regard to the classification of a "Big A" as farm machinery.

I believe that my predecessor was erroneous in Op. No. 75-043 in placing emphasis on the ownership of the machinery. It appears that the only relevant inquiry in determining whether machinery is a motor vehicle or farm machinery is the use to which such machinery is put. See State v. Devilbliss, 16 Ohio Op. 2d 404, 177 N.E.2d 74 (C.P. Highland County 1961) (the test of farm machinery is the use made of the vehicle rather than the kind of vehicle). If a piece of machinery is "used in the production, harvesting, and care of farm products" or is "used to transport agricultural produce or agricultural production materials between a local place of storage or supply and the farm when drawn or towed on a public road or highway at a speed of twenty-five miles per hour, or less," then it constitutes farm machinery, regardless of whether it is owned by a farmer or by a businessman providing the machinery for the use of a farmer. (Of course, if a piece of machinery which could be used for agricultural purposes is used by a farmer or anyone else for other than agricultural purposes, then the machinery is not farm machinery for purposes of R.C. 4501.01(U).) In addition, "threshing machinery, hay baling machinery, corn sheller, hammermill and agricultural tractors and machinery used in the production of horticultural, agricultural, and vegetable products" have been excepted from the definition of "motor vehicle" for purposes of R.C. 4501.01(B). Again, there is no indication that the classification of such machinery depends on the occupation of its owner. It is a well-established principle of statutory construction that words not used in a statute may not be inserted. Dougherty v. Torrence, 2 Ohio St. 3d 69, 442 N.E.2d 1295 (1982); Columbus-Suburban Coach Lines, Inc. v. PUCO, 20 Ohio St. 2d 125, 254 N.E.2d 8 (1969). Thus, I do not believe that qualifying language as to a machine's owner may be implied in interpreting the definition of farm machinery found in R.C. 4501.01(U) or in construing the language of R.C. 4501.01(B) describing the type of machinery excluded from the definition of motor vehicle. Accordingly, I overrule Op. No. 75-043.

From the description provided of the machinery in question, it is clear that such machinery falls squarely within the definition of "farm machinery" found in R.C. 4501.01(U), and thus, is excepted from the definition of "motor vehicle" found in R.C. 4501.01(B). You state that the machines are "employed primarily for the field application of dry or liquid agricultural crop pesticides and fertilizers." Thus, such equipment is "used in the production, harvesting, and care of farm products," for purposes of R.C. 4501.01(U), and is "used in the production of horticultural, agricultural, and vegetable products" for purposes of R.C. 4501.01(B). You also state that the machines are involved in "some transport over highways of [the pesticides and fertilizers] from a local place of storage or supply to the farm where application is to be made," and that "[s]uch machines are not designed for safe operation at speeds in excess of twenty-five miles per hour." This description further qualifies such machinery as farm machinery and as machinery excepted from the definition of motor vehicle.

You have drawn my attention to the case of State v. Conner, No. 23638 (County Ct. Darke County Aug. 9, 1982), wherein the court held that a truck with fertilizer spreading equipment attached to its bed was not a piece of farm machinery since the truck's owner was engaged in the business of selling fertilizer rather than of farming. The fact that the seller offered the truck to farmers so

that they could spread the fertilizer on their fields did not, in the opinion of the court, qualify the truck as farm machinery.<sup>1</sup> As noted above, I am of the opinion that the test of whether a piece of machinery is farm machinery is the use to which the machinery is put, rather than the occupation of the equipment's owner. I am not persuaded by Conner to conclude otherwise. See R.C. 4501.01(U); State v. Devilbliss.

You have also asked about the classification of the machinery described in your letter for purposes of R.C. 4513.11(B). This statute reads:

(B) All farm machinery and other machinery, including all road construction machinery, upon a street or highway, except when being used in actual construction and maintenance work in an area guarded by a flagman, or where flares are used, or when operating or traveling within the limits of a construction area designated by the director of transportation, a city engineer, or the county engineer of the several counties, when such construction area is marked in accordance with requirements of the director and the manual of uniform traffic control devices, as set forth in section 4511.09 of the Revised Code, which is designed for operation at a speed of twenty-five miles an hour or less shall be operated at a speed not exceeding twenty-five miles per hour, and shall display a triangular slow-moving vehicle emblem (SMV). The emblem shall be mounted so as to be visible from a distance of not less than five hundred feet to the rear. The director of highway safety shall adopt standards and specifications for the design and position of mounting the SMV emblem. The standards and specifications for SMV emblems referred to in this section shall correlate with and, so far as possible, conform with those approved by the American society of agricultural engineers. (Emphasis added.)

Pursuant to R.C. 4513.11(C), the use of the SMV emblem is "restricted to animal-drawn vehicles, and to the slow-moving vehicles specified in division (B) [of R.C. 4513.11] operating or traveling within the limits of the highway." Division (C) further provides that, the emblem's "use on slow-moving vehicles being transported upon other types of vehicles or on any other type of vehicle or stationary object on the highway is prohibited."

By its own terms, R.C. 4501.01 is the definitional statute for R.C. Chapter 4513. Thus, if a piece of machinery meets the definition of "farm machinery" found in R.C. 4501.01(U), then the machinery is farm machinery for purposes of R.C. Chapter 4513. Because I have concluded that the machinery described in your letter is farm machinery for purposes of R.C. 4501.01(U), and because you have noted that such machinery is not designed for operation at speeds in excess of twenty-five miles per hour, I conclude that the machinery you have described, variously known as a "floater," "Big A," "customer application," "spray rig," "field gymmy," and "big wheels," falls within the provisions of R.C. 4513.11(B).

In conclusion, it is my opinion, and you are advised, that a piece of machinery known as a "floater," "Big A," "customer application," "spray rig," "field gymmy," or "big wheels" is farm machinery for purposes of R.C. 4501.01 and R.C. 4513.11(B). (1975 Op. Att'y Gen. No. 75-043, overruled.)

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<sup>1</sup> The Darke County Court's decision in State v. Conner has been appealed, although an opinion has not been rendered at this time.