

4176.

APPROVAL, BONDS OF NEW LEXINGTON EXEMPTED VILLAGE SCHOOL
DISTRICT, PERRY COUNTY, OHIO, \$16,000.00.

COLUMBUS, OHIO, April 20, 1935.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

4177.

TRANSPORTATION—MOTOR TRANSPORTATION COMPANY DEFINED—
PRIVATE MOTOR CARRIERS DEFINED—JURISDICTION OF PUBLIC
UTILITIES COMMISSION.

SYLLABUS:

1. *Individuals who own motor trucks and who are engaged in hauling gravel, cement and dirt for private contractors, employed in constructing dam sites in the State of Ohio, and who do not hold themselves out for the transportation "for hire" for the public in general, do not come within the definition of a "motor transportation company" as defined in Section 614-84 of the General Code, and are not required to secure a certificate of public convenience and necessity from the Public Utilities Commission of Ohio in accordance with the provisions of Section 614-84, General Code.*

2. *Such individuals, however, do come within the provisions of Section 614-103, et seq., of the General Code, defining "private motor carriers", and are subject to the jurisdiction of the Public Utilities Commission of Ohio, by virtue of Section 614-105 of the General Code, and consequently must secure a private carrier permit authorizing them to engage in the business in which they are employed.*

COLUMBUS, OHIO, April 22, 1935.

HON. J. S. HARE, *Prosecuting Attorney, New Philadelphia, Ohio.*

DEAR SIR:—Your letter of recent date is as follows:

"The Muskingum Conservancy District operating under the authority of 6828-1, et seq., of the General Code of Ohio, is constructing a number of dams in this county for flood control and water conservation. The contracts for building these dams have been let to private corporations, who in turn employ individuals, who own motor trucks to haul earth at the dam sites, sometimes using the public highways and sometimes not, at other times these individuals will haul gravel and cement over the highways from various places in building these dams for the contractor.

I am writing to inquire whether it is necessary for such individuals to secure a certificate of public convenience and necessity from the Public Utilities Commission as provided for in section 614-84, et seq., of the General Code of Ohio. Do such individuals, who do not furnish transportation for hire 'for the public in general' come under the definition of 'transportation companies' as provided for in section 614-84 of the General Code? Previous to working

for the contractors on dams in the conservancy, they operated in hauling their own merchandise.”

In this communication you inquire as to whether the individuals described therein, who do not furnish transportation “for hire” for the public in general, come within the definition of “motor transportation companies”, as defined in Section 614-84 of the Ohio General Code.

Section 614-84 of the General Code provides in part as follows:

“(a) The term ‘motor transportation company’ when used in this chapter, shall include, and all provisions of law regulating the business of motor transportation, the context thereof notwithstanding, shall apply to, every corporation, company, association, joint stock association, person, firm or co-partnership, their lessees, trustees, receivers or trustees appointed by any court whatsoever, when engaged in the business of transporting persons or property or both, or of providing or furnishing such transportation service, for hire, for the public in general, in or by motor propelled vehicles of any kind whatsoever, including trailers, over any public highway in this state; provided, however, that the term ‘motor transportation company’ as used in this chapter shall not include any person or persons, firm or firms, co-partnership or voluntary association, joint stock association, company or corporation, wherever organized or incorporated, in so far as they own, control, operate or manage a motor vehicle or motor vehicles used for the transportation of persons or property, or both, and which are operated exclusively within the territorial limits of a municipal corporation, or within such limits and the territorial limits of municipal corporations immediately contiguous thereto, or in so far as they own, control, operate or manage taxicabs, hotel busses, school busses, or sightseeing busses, or in so far as they own, control, operate or manage motor propelled vehicles, the use of which for hire is casual and disassociated from such private business.

(b) The term ‘public highway’, when used in this chapter, means any public street, road or highway in this state, whether within or without the corporate limits of a municipality.”

The language of this portion of the statute provides that a “motor transportation company”, to come within the definition as set forth therein, must be engaged in the furnishing of transportation service “for hire” for the public in general.

In your communication you state that the individuals about whom you inquire are not engaged in the transportation “for hire” for the public in general. This statement is supported by your description of the nature of the acts performed by the individuals involved.

The language of the statute in such a case is clear and explicit, and, by virtue of that language, it is apparent that the operation which you describe is not a common carrier operation within the meaning of the provisions of Section 614-84, *supra*.

This conclusion has an abundance of support in judicial authority. In the case of *Hissem vs. Guran*, 112 O. S. 59, at page 63, 64, the Supreme Court defined a common carrier in the following manner:

“To constitute a common carrier there must be a dedication of property to public use of such character that the product and service are available to the public generally and indiscriminately, and that the carrier must hold himself ready to serve the public indifferently to the limit of his capacity. The au-

thorities are equally uniform in holding that if a carrier is employed by one or a definite number of persons by a special contract, or for a special undertaking, he is only a private carrier."

(See also *Craig vs. Public Utilities Commission*, 115 O. S. 512; *Jonas vs. Sweetland*, 119 O. S. 12, 16; *Motor Freight vs. Public Utilities Commission*, 120 O. S. 1; *Motor Freight, Inc. vs. Public Utilities Commission*, 125 O. S. 349, 350.)

It is my conclusion that the individuals described in your letter who own motor trucks and who are engaged in hauling gravel, cement and dirt for private contractors employed in constructing dam sites in the State of Ohio and who do not hold themselves out for the transportation "for hire" for the public in general, do not come within the definition of a "motor transportation company", as defined in Section 614-84 of the General Code.

While it is my opinion that the persons described in your communication are not engaged in a common carrier service so as to bring them within the definition of a motor transportation company pursuant to the provisions of Section 614-84 of the General Code, it is apparent that the persons so described do come within the provisions of the recent amendment to the Motor Transportation Statutes providing for the regulation of "Private Motor Carriers." This amendment to the Motor Transportation Act, which became effective in September, 1933, consists of Sections 614-103 to 614-120, inclusive, of the Ohio General Code.

Section 614-103 provides in part as follows:

"The following words and terms when used in this chapter, unless the same are inconsistent with the text, shall be construed as follows:

(a) The term 'private motor carrier' shall include every corporation, company, association, joint stock association, person, firm or co-partnership, their lessees, legal representatives, trustees, receivers or trustees appointed by any court whatsoever, 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 whatsoever, including trailers, over any public highway in this state, but shall not include any corporation, company, association, joint stock association, person, firm or co-partnership, their lessees, legal representatives, trustees, receivers or trustees appointed by any court whatsoever, in so far as they may be engaged:
* * *

(7) In the operation of motor vehicles for contractors on public road work; or * * * ."

Section 614-105 provides as follows:

"The public utilities commission of Ohio is hereby vested with power and authority to supervise and regulate each such private motor carrier in this state; to prescribe reasonable safety rules; to prescribe reasonable rules and regulations for the administration and enforcement of the provisions of this act; to require the filing of such annual and other reports as the commission may prescribe; and to supervise and regulate the operation of such private motor carriers to the exclusion of all local authorities in this state except as hereinafter otherwise provided.

In the exercise of the jurisdiction conferred upon it by this chapter, the commission shall have power and authority to prescribe rules and regulations affecting such private motor carriers, notwithstanding the provisions of any ordinance resolution, license or permit enacted, adopted or granted by any incorporated city or village, city and county, or county, and in case of conflict between any such ordinance, resolution, license or permit, the order, rule or regulation of the public utilities commission shall in each instance prevail; provided that such local subdivisions may make reasonable local police regulations within their respective boundaries not inconsistent with the provisions of this act.

And the commission is given jurisdiction to receive, hear and determine as a question of fact, upon complaint of any party or upon its own motion, and upon not less than fifteen days' notice of the time and place of such hearing and the matter to be heard, whether or not any corporation, company, association, joint stock association, person, firm or co-partnership, their lessees, legal representatives, trustees, receivers or trustees appointed by any court whatsoever, is engaged as a private motor carrier and the finding of the commission thereon shall be a final order which may be reviewed as provided in section 614-106 of the General Code."

It will be observed that the individuals whom you describe in your communication come squarely within the definition of the term "private motor carrier" as defined in Section 614-103, supra, and are subject to the jurisdiction of the Public Utilities Commission of Ohio by virtue of the provisions of Section 614-105, supra.

The only possible exemption under which the operation which you describe might be excluded would be by virtue of subsection 7, Section 614-103. This section, you will note, excludes the application of the act where the work involved is the operation of motor vehicles for contractors on public road work. The work which you describe is quasi-public in its nature, but it is not public road work within the meaning of the statute, and does not come within the exception mentioned.

Since the persons described in your communication in my opinion come within the definition of a private motor carrier, as defined in Section 614-103 of the General Code, and since the regulation of private motor carriers has been vested in the Public Utilities Commission of Ohio by virtue of Section 614-105 of the General Code, it is my opinion that the individuals whom you describe are subject to the jurisdiction of the Public Utilities Commission of Ohio as "private motor carriers", and must apply to that Commission for a permit to authorize them to engage in the business in which they are now employed.

In conclusion, therefore, and specifically answering your inquiry, it is my opinion that individuals operating motor trucks for the purpose of hauling earth, gravel and cement, over the highways of the State of Ohio under private contract for the purpose of erecting dams, are not "motor transportation companies" as defined in Section 614-84 of the General Code, for the reason that such individuals do not furnish transportation service "for hire" to the public in general.

It is my further opinion, however, that such individuals do come within the provisions of Section 614-103, et seq., of the General Code, defining "private motor carriers", and are subject to the jurisdiction of the Public Utilities Commission of Ohio.

Respectfully,

JOHN W. BRICKER,

Attorney General.

4178.

APPROVAL, BOND FOR THE FAITHFUL PERFORMANCE OF HIS DUTIES AS
RESIDENT DISTRICT DEPUTY DIRECTOR—EDWARD STINGEL.

COLUMBUS, OHIO, April 24, 1935.

HON. JOHN JASTER, JR., *Director of Highways, Columbus, Ohio.*

DEAR SIR:—You have submitted for my consideration a bond, in the penal sum of five thousand dollars, and conditioned for the faithful performance of the duties of the principal as Resident District Deputy Director in Tuscarawas County, as follows:

<i>Name</i>	<i>District</i>	<i>Surety</i>
Edward Stingel	Tuscarawas	The Fidelity and Deposit Company of Maryland

This bond is evidently executed pursuant to the provisions of sections 1183 and 1182-3, General Code, which provides, so far as pertinent, as follows:

“Sec. 1183. * * *

Such resident district deputy directors shall * * * give bond in the sum of five thousand dollars.”

“Sec. 1182-3. * * * All bonds hereinbefore provided for shall be conditioned upon the faithful discharge of the duties of their respective positions and such bonds * * * shall be approved as to the sufficiency of the sureties by the director, and as to legality and form by the attorney general, and be deposited with the secretary of state.”

Finding said bond to have been properly executed in accordance with the foregoing statutory provisions, same is hereby approved and returned herewith.

Respectfully,

JOHN W. BRICKER,
Attorney General.

4179.

BOARD OF EDUCATION—MEMBER THEREOF UPON RESIGNATION MAY
BE EMPLOYED TO TEACH IN PUBLIC SCHOOLS UNDER JURISDICTION
OF BOARD OF EDUCATION OF WHICH HE WAS A MEMBER.

SYLLABUS:

A member of a board of education who resigns from such body may immediately be lawfully employed to teach in the public schools of the district under the jurisdiction of the board of education of which he had formerly been a member and may lawfully be designated as principal of schools providing he is properly certificated to teach the grades for which he is employed to teach and he is employed in the manner provided by law.