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DELIVERY VIS-A-VIS TRANSPORTATION

1. WEIGHT CERTIFICATE FOR HAULING COAL AND COKE —§1327.21 RC—OWNER OF COAL OR COKE TRANSPORTING HIS OWN COAL OR COKE; NO SALE OR DELIVERY WITH TERMS OF STATUTE — NO CERTIFICATE REQUIRED.
2. WEIGHT CERTIFICATE REQUIRED BY §1327.23 AND .24, RC IS CERTIFICATE PRESCRIBED BY §1327.21 RC—OPERATOR TRANSPORTING COAL OR COKE WHERE NO CERTIFICATE REQUIRED, NO VIOLATION OF §§1327.23 OR .24 RC.

SYLLABUS:

1. The weighing and weight certificate prescribed by Section 1327.21, Revised Code, are required only when coal or coke is sold or delivered, and when the owner of coal or coke transports it from one place to another without transferring possession of it, there is no sale or delivery within the meaning of this section, and no weighing or weight certificate is required.

2. The weight certificate required by Sections 1327.23 and 1327.24, Revised Code, to be in the possession of the operator of a vehicle hauling coal or coke is the certificate prescribed by Section 1327.21, Revised Code, and when the operator is transporting coal or coke in circumstances in which the latter section requires no certificate, failure to possess such a certificate is not a violation of Section 1327.23 or 1327.24, Revised Code.

Columbus, Ohio, August 22, 1957

Hon. Ray W. Davis, Prosecuting Attorney
Pickaway County, Circleville, Ohio

Dear Sir:

Your predecessor's request for my opinion reads as follows:

"One W. H. operates a retail coal business in Deshler, Ohio, and obtains his coal by sending one of his trucks with a driver to Logan, West Virginia, in that area to pick up the coal and return it to Deshler where it is weighed at his place of business and later sold at retail.

“Recently one of the drivers of such truck returning to Deshler, Ohio, with a load of coal was stopped here in Pickaway County by a Highway Patrolman thinking that the truck was overloaded. The Highway Patrolman requested the driver to furnish him with a weight certificate required by Section 1327.21 of the Revised Code of Ohio, and the driver advised him that he had no weight certificate and that for years had been operating without obtaining a weight certificate at the place where the coal was bought in West Virginia. The driver stated that their custom has been that the coal is loaded onto the truck at West Virginia and they advise him as to the number of tons on the truck. It is not officially weighed there and he does not have a weight certificate until he gets to Deshler, Ohio, where he weighs the coal and later sells the same at retail. The driver did have in his possession an invoice as to this load of coal, a copy of which I am herewith attaching.

“It does seem that Section 1327.24 of the Revised Code covers the situation mentioned herein but there is no penalty provided as to that section.

“The question thus arises as to whether or not Section 1327.21, 1327.22 and 1227.23 of the Revised Code would apply to the fact situation presented herein where the truck was stopped by the Highway Patrolman was enroute to a city within this State where the coal was to be weighed there prior to being sold at retail.”

Title 13 of the Revised Code is concerned with commercial transactions, Chapter 1327. with weights and measures, and Sections 1327.21 through 1327.28 with coal and coke.

Section 1327.23, Revised Code, reads:

“No person, firm, or corporation shall sell or attempt to sell or deliver coal or coke of short weight, or issue a short weight certificate under section 1327.21 of the Revised Code, or sell or attempt to alter a weight certificate after the same has been issued, or *operate a truck*, wagon, or other vehicle *upon any of the public streets, roads, or highways of this state, without the certificate*, and invoice or bill of sale required by any order issued by the United States department of the interior, bituminous coal division, Washington, D. C., in his possession. If said truck, wagon, or other vehicle is being operated by the owner, or the agent of the owner, thereof, at the time of said violation, the court may declare the use of said truck, wagon, or other vehicle to be unlawful in the transportation of coal or coke upon the public streets, roads, or highways of this state, for one year from the date of the conviction for such offense.”
(Emphasis added.)

Section 1327.24, Revised Code, reads:

“Any person driving or operating a truck, wagon, or other vehicle in which coal or coke is being transported upon the streets, roads, or highways of this state, whether inside or outside the limits of a municipal corporation, *shall have in his possession the weight certificate required by section 1327.21 of the Revised Code* and in addition thereto, shall have in his possession a bill of sale or invoice as required by any order issued by the bituminous coal division of the United States department of the interior, and such bill of sale or invoice shall contain and state the things required in any such order.

“This section does not apply to the transportation of coal or coke from a mine or other place of loading to a scale for the purpose of securing a weight certificate, unless the person transporting such coal or coke has had access to a scale at or near the site of loading.” (Emphasis added.)

The weight certificate mentioned in these sections and in the other sections of Chapter 1327., dealing with coal and coke is the certificate required by Section 1327.21, Revised Code, which reads as follows:

“Sales of coal or coke shall be by weight and two thousand pounds avoirdupois shall constitute a ton thereof. All coal or coke *sold or delivered* within this state shall be weighed on a scale inspected and sealed by a sealer of weights and measures. At the time of the weighing of such coal or coke, duplicate weight certificates, written in ink or indelible pencil, or partly printed and partly written with ink or indelible pencil, shall be delivered by the weigher to the person in charge of the truck, wagon, or other vehicle delivering the same, which certificates shall show the name and address of the seller, the name and address of the consignee, the name and address of the person in charge of the truck, wagon, or other vehicle, the gross weight of the load, the weight of the truck, wagon, or other vehicle used in such delivery, the date of the weighing, and the weight of the coal or coke purported to be delivered. The weigher shall imprint on said duplicate certificates, across the figures showing the weights, a seal showing the name and place of the scale where weighed, and the words “Inspected and sealed scale.” One certificate shall be delivered by the person in charge of said truck, wagon, or other vehicle to the purchaser of said coal or coke, or other person in charge of the premises where said coal or coke is to be delivered, prior to the unloading of the same, and the other certificate shall be carried by the person in charge of said truck, wagon, or other vehicle to and from the place of delivery.” (Emphasis added.)

It is the purpose of these sections to regulate commercial transactions in coal and coke, to prevent short-weight selling, and to that purpose Section 1327.21, *supra*, requires the weighing at an inspected scale only of coal or coke *sold or delivered*.

As I understand the facts, the sale to W. H. of the coal with which we are here concerned took place in West Virginia and so was not subject to the regulation imposed by Ohio law. When the driver was stopped in Pickaway County, he was transporting the coal after its sale. Was he, then, *delivering* it? Delivery is defined as follows: "The transfer from one person to another of the res or a right or interest therein * * *" *Murphy v. Smith*, 291 Mass. 93. "The tradition or transfer of the possession of personal property from one person to another." *Bowles v. Beucher*, 53 Fed. Supp. 984. See *Black's Law Dictionary*. Thus, when one is merely transporting a chattel from one place to another he is not delivering it. There is no delivery without transfer of possession.

As I understand the facts of this case, and the conclusions herein are based on such understanding, W. H. purchases coal from a dealer in West Virginia. The coal is delivered to W. H. when it is placed on his trucks in West Virginia. Thereafter it is his property, and when he hauls it to his coal yard in Ohio he is not delivering it because he is not transferring possession. He is not required, therefore, to have the coal he is hauling weighed or to secure the certificate required by Section 1327.21, Revised Code.

It is not the purpose of Sections 1327.21 through 1327.28, Revised Code, to regulate the hauling or transporting of coal or coke but to regulate its sale and delivery. The purpose is to prevent short-weight sales and deliveries. These sections, thus, do not apply when one moves his own coal or coke from one place to another.

In specific response to your question, it is my opinion that W. H. is not, upon the facts presented in your letter as I understand them, guilty of a violation of any provision of Sections 1327.21 through 1327.28, Revised Code.

Of course, W. H. and others in his position remain subject to the provisions of law regulating the weight of trucks on the highways.

It is my opinion, and you are advised, that:

1. The weighing and weight certificate prescribed by Section 1327.21, Revised Code, are required only when coal or coke is sold or delivered, and when the owner of coal or coke transports it from one place to another without transferring possession of it, there is no sale or delivery within the meaning of this section, and no weighing or weight certificate is required.

2. The weight certificate required by Sections 1327.23 and 1327.24, Revised Code, to be in the possession of the operator of a vehicle hauling coal or coke is the certificate prescribed by Section 1327.21, Revised Code, and when the operator is transporting coal or coke in circumstances in which the latter section requires no certificate, failure to possess such a certificate is not a violation of Sections 1327.23 or 1327.24, Revised Code.

Respectfully,

WILLIAM SAXBE

Attorney General