

"One of the most potent reasons for the conclusions we have reached in this case is found in the fact that Motor Freight, Inc., does not own any of the motor vehicles employed in the transportation."

And on page 10, as follows :

"Our interpretation of the testimony taken before the commission is that the respondent did not own the equipment and did not operate the same; that it did not control or manage the equipment; that the owners of the motor vehicles were independent contractors; that respondent exercised no supervision or control over the vehicles or the persons who drove them; and that therefore this evidence does not bring the respondent within the meaning of the definition of a motor transportation company, as defined in Section 614-84, General Code."

This case having been decided on February 13, 1929, it is probable that the amendment to include operators who provide or furnish such transportation service was passed with the legislative intent of requiring regulation over such operations.

Other than the changes mentioned above, there is no substantial difference between the old Section 614-84 (a) and as now amended. Applying the tests laid down in the cases cited, and in the light of these changes, it should be possible from the facts in each case, to determine whether or not the operator is a motor transportation company, as defined by law.

I realize the difficulties encountered in attempting to determine whether farmers, who haul for their neighbors, are within the exceptions set forth in Section 614-84, supra. To determine this question, the particular business must be scrutinized in order to determine whether the use of the motor vehicles "for hire is casual." Synonyms for the word "casual", as found in Webster's International Dictionary, are: "fortuitous," "incidental," "occasional," "unforeseen," "unpremeditated," "contingent." Manifestly, the antitheses of these words would be "habitual," "continual," "regular," "to make a business of" and "according to design or plan." Accordingly, if a farmer is so engaged in hauling for hire, even though for his neighbors, with such regularity as to make such employment cease to be casual, he becomes a motor transportation company, and subject to the act. In my opinion, this does not necessarily mean that he must haul every day, but the regular recurrent use of his facilities, as his neighbors' demands require, might be sufficient to make the employment other than casual.

As I have heretofore stated, each case must be controlled by its specific facts, and no specific rule may be set forth which will govern in all cases.

Respectfully,

GILBERT BETTMAN,  
*Attorney General.*

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APPROVAL, FINAL RESOLUTIONS ON ROAD IMPROVEMENTS IN  
HOLMES COUNTY.

COLUMBUS, OHIO, July 30, 1929.

HON. ROBERT N. WAID, *Director of Highways, Columbus, Ohio.*