

2426.

FARM TRUCK—UNDER SECTION 6292 G. C.—CLASSIFICATION—MUST BE EXCLUSIVELY USED TO TRANSPORT FARM PRODUCTS AND SUPPLIES IN USE AND OPERATION OF FARM—COMMERCIAL PURPOSES—COMMERCIAL FERTILIZER—TRANSPORTATION—FARM USE—75 PER CENT OF FARM USE OF TRUCK MUST BE FOR FARM OR FARMS OWNED, CONTROLLED OR OPERATED BY LICENSEE.

*SYLLABUS:*

1. *By virtue of the provisions of Section 6292 of the General Code, a farm truck in order to be classified as such must be used exclusively in transporting from the farm of products of the farm and to the farm of supplies necessary in the use and operation of the farm.*

2. *The transportation of commercial fertilizer to a farm is a "farm use" within the meaning of the term as used in such Section 6292, General Code.*

3. *A farm truck may be licensed under the schedule provided by Section 6292, General Code, when such truck is used for transporting such fertilizer to the farm or farms owned, controlled or operated by the licensee, as well as to other farms, providing 75 per cent of the farm use of such truck is for the farm or farms owned, controlled or operated by the licensee.*

COLUMBUS, OHIO, May 10, 1938.

HON. WILLIAM J. PORTER, *Prosecuting Attorney, Marysville, Ohio.*

DEAR SIR: This will acknowledge receipt of your recent communication, which reads as follows:

"This office desires an opinion with respect to the interpretation and construction of General Code, Section 6292 as it relates to the license pertaining to farm trucks.

We have the question before us with respect to one who operates a farm and in such connection is an agent for a fertilizer company at seasonable times and operates on the plan of selling the fertilizer and delivering it to various farmers in his community for which no compensation is paid by the buyer of the merchandise, but such compensation is paid by the fertilizer company which he represents, and the part we are particularly interested in is to whether or not the license for the truck as

provided for in Section 6292 is sufficient to cover the purpose which we have herein described.”

Section 6292 of the General Code, in so far as material to the question here considered, provides as follows:

“\* \* \*

For each farm truck which is owned, controlled or operated by one or more farmers *exclusively in farm use* as hereinafter defined, *and not for commercial purposes*, and provided that at least seventy-five per cent (75%) of such farm use shall be by or for the one or more owners, controllers or operators of the farm or farms, in the operation of which a farm truck is used, the license tax shall be as follows:

(a) Fifty cents per one hundred pounds or part thereof for the first three thousand pounds.

(b) Seventy cents per one hundred pounds or part thereof in excess of three thousand pounds up to and including four thousand pounds.

(c) Ninety cents per one hundred pounds or part thereof in excess of four thousand pounds up to and including six thousand pounds.

(d) Two dollars for each one hundred pounds or part thereof in excess of six thousand pounds up to and including ten thousand pounds.

(e) Two dollars and twenty-five cents for each one hundred pounds or part thereof in excess of ten thousand pounds.

Provided that the minimum license tax for any farm truck shall be ten dollars (\$10).

For the purposes of this act, *use of a farm truck is defined as one used in the transportation from the farm of products of the farm*, including livestock and its products, poultry and its products, floricultural and horticultural products, *and in the transportation to the farm of supplies for the farm* including tile, fence and every other thing or commodity used in agricultural, floricultural, horticultural, livestock and poultry production, and livestock, poultry and other animals and/or things used for breeding, feeding or other purposes connected with the operation of the farm or farms.

The term farm supplies shall include fuel used exclusively in the operation of a farm, including one or more homes located on and used in the operation of one or more farms and/or furniture and other things used in and around such homes.

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Every such licensee shall furnish an affidavit certifying that the truck or trucks licensed to him are to be used as to meet the requirements necessary for the farm truck classification.”  
(Italics the writer’s.)

It will readily be noted that the provisions of Section 6292, quoted supra, in clear and unambiguous language provide that a farm truck, in order to be classified as such, must be used exclusively for farm use and not for commercial purposes. It accordingly becomes necessary to determine the meaning of the phrase “commercial purposes” as used in the foregoing section. It is, of course, well established that commonly used terms are to be given their ordinary and commonly accepted meaning unless the context of a statute requires a departure from such rule.

There is no question but that in the ordinary meaning of the phrase the transportation of farm products or supplies to or from any farm is a “commercial purpose” just as is the transportation of any merchandise or supplies to or from any place of business other than a farm. In the instant case, however, the General Assembly has expressly provided that the transportation from the farm of products of the farm, as well as the transportation to the farm of supplies for the farm, shall be held to be included within the meaning of the phrase “farm use” and not within the meaning of the phrase “commercial purposes.” Section 6292, supra, defining “farm use” or “use of a farm truck,” provides that such phrase shall be defined for the purpose of the act as one used “in the transportation to the farm of supplies for the farm.” Fertilizer is such a supply as is included within this provision.

This brings me to a consideration of the use of the word “the” in the last quoted phrase where the legislature placed “transportation to the farm of supplies for the farm” in the category of farm use instead of in the category of commercial purpose. Standing alone, the inference would be that by the use of the word “the” instead of the word “a” the legislature intended to limit the hauling of supplies to the farm owned, operated or controlled by the licensee, and to exclude from the definition of “farm use” the hauling of supplies to farms not owned, controlled or operated by the licensee. Such a construction of the word “the” is, however, negated by the earlier provision in the section where clear permission is given for employing a truck in farm use for farms other than those owned, controlled or operated by the licensee. The latitude for such farm use operation is, however, curtailed by the provision “that at least 75% of such farm use shall be by or for the one or more owners, controllers or operators of the farm or farms, in the operation of which a farm truck is used.”

In view of the foregoing, the conclusion is in my judgment inescapable that so long as the hauling of supplies or products to or from farms other than those owned, controlled or operated by the licensee does not comprise more than 25 % of the farm use to which the truck is exclusively devoted, the license tax provided by Section 6292, supra, is applicable.

It should be observed in conclusion that the statute makes no mention of whether there is or is not any compensation paid for such farm use as is devoted to hauling for farms other than the farm or farms owned, controlled or operated by the licensee, and therefore the matter of whether such farm use is or is not done for compensation, or who pays the compensation, if any, has no bearing on the question.

Specifically answering your question, it is my opinion that :

1. By virtue of the provisions of Section 6292 of the General Code, a farm truck in order to be classified as such must be used exclusively in transporting from the farm of products of the farm and to the farm of supplies necessary in the use and operation of the farm.

2. The transportation of commercial fertilizer to a farm is a "farm use" within the meaning of the term as used in such Section 6292, General Code.

3. A farm truck may be licensed under the schedule provided by Section 6292, General Code, when such truck is used for transporting such fertilizer to the farm or farms owned, controlled or operated by the licensee, as well as to other farms, providing 75 % of the farm use of such truck is for the farm or farms owned, controlled or operated by the licensee.

Respectfully,

HERBERT S. DUFFY,

*Attorney General.*

2427.

PUBLIC EMPLOYEES RETIREMENT SYSTEM—CONSERVANCY EMPLOYEE, HEALTH EMPLOYEE, OR PUBLIC LIBRARY EMPLOYEE MEMBER CANNOT BECOME CANDIDATE FOR COUNTY OR MUNICIPAL EMPLOYEE MEMBER OF SAID SYSTEM—NEITHER MAY SAID EMPLOYEES VOTE FOR COUNTY EMPLOYEE MEMBER OR MUNICIPAL EMPLOYEE MEMBER OF PUBLIC EMPLOYEES RETIREMENT BOARD.

*SYLLABUS:*

1. *A conservancy employe, or, a health employe, or a public library employe, who is a member of the Public Employes Retirement System*