

OFFICIAL OPINION NO. 30

July 30, 1957

Honorable John W. Van Ness  
Chairman,  
Public Service Commission  
401 State House  
Indianapolis, Indiana

Dear Mr. Van Ness:

In your letter of July 18, 1957, you have requested my Official Opinion as to whether or not The Public Service Commission of Indiana has jurisdiction, for any purpose whatsoever.

“\* \* \* of any person (whether as agent or under a contractual arrangement) engaged in the transportation of property, by motor vehicle, in the performance of transfer, collection, or delivery service for a freight forwarder.”

You have further stated that the “freight forwarder” holds itself out to the general public as a common carrier to transport or provide transportation of property, for compensation, in interstate commerce, and it is subject to the provisions of Part IV of the Interstate Commerce Act (56 Stat. 284; U. S. Code, Title 49, Sections 1001 to 1022, as amended).

In answering this question I am assuming some additional facts not stated in your letter:

1. The person in question, engaged in the transportation of property for the freight forwarder, is not a mere employee;
2. And the transportation performed by him is over the public highways in this State, not within any exemption as stated in the Acts of 1935, Ch. 287, Sec. 3, as amended, and as found in Burns' (1952 Repl.), Section 47-1213.

By the provisions of the Motor Vehicle Act, the terms “contract carrier,” “person,” and “motor vehicle” are defined as follows:

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“(h) The term ‘contract carrier’ shall mean any person which, under individual contracts or agreements, engages in the transportation (other than transportation referred to in paragraph (g) hereof) by motor vehicle of passengers or property for compensation.

\* \* \*

“(a) The term ‘person’ shall mean and include any individual or individuals, corporation, firm or copartnership, their lessees, trustees and receivers appointed by any court whatsoever.

\* \* \*

“(f) The term ‘motor vehicle’ shall mean any truck, tractor, trailer, semitrailer, motor bus or any self-propelled or motor-driven vehicle used upon any public highway of this state for the purpose of transporting persons or property.”

Acts of 1935, Ch. 287, Sec. 2, as amended, as found in Burns’ (1952 Repl.), Section 47-1212.

The transportation excepted from the definition of “contract carrier,” in paragraph (g) of the above section, is that of the “common carrier,” which is not involved in your question to me.

It is further provided in the same act, in part, as follows:

“No person shall hereafter operate motor vehicles as a contract carrier over the public highways of this state for the transportation of persons and property for compensation without first having obtained from the commission a contract carrier permit, and no permit shall be issued except as hereinafter provided \* \* \*.”

Acts of 1935, Ch. 287, Sec. 11, as found in Burns’ (1952 Repl.), Section 47-1221.

In my opinion the person in question who acts as an agent or under a contractual arrangement with a freight forwarder (or anyone else) by individual contracts or agreements, to transport property by motor vehicle, for compensation, upon the public highways of this State, is a contract carrier, and

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subject to the jurisdiction of The Public Service Commission of Indiana, pursuant to the provisions of The Motor Vehicle Act.

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OFFICIAL OPINION NO. 31

August 5, 1957

Mr. T. M. Hindman  
State Examiner  
State Board of Accounts  
304 State House  
Indianapolis, Indiana

Dear Mr. Hindman:

This is in reply to your request for an Official Opinion on the following questions:

“PART I

“As a result of the Supreme Court decision in the case of Caesar v. Devault, Township Trustee of Calumet Township, etc., *et al.*, number 24910, April 3, 1957, your official opinion is requested upon the questions:

“(1) Is the appellant Caesar entitled to her salary at the rate of \$4,200.00 annually as provided by Chapter 154, Acts 1953, being Burns’ Indiana Statutes, section 5-108m, 1955 Pocket Supplement, from the time her appointment was declared null and void by the Porter Circuit Court?

“(2) Does the decision prohibit the payment of constable’s salary and other office expense provided for in Chapter 223, Acts 1945, sections 2 and 4, being Burns’ Indiana Statutes, section 5-108c, 5-108e, 1955 Pocket Supplement:

“(a) on and after April 23, 1957, the date of finality of the decision?

“(b) If the answer to (a) is in the affirmative, are such payments made prior to the decision invalid from the effective date of Chapter 223, Acts 1945?