cure an exemption under the Illinois law for the benefit of an Ohio resident interstate carrier. Especially where the vehicles in service were not registered or licensed in Indiana or Ohio. I do not believe that the State of Illinois contemplated that Indiana would exempt an interstate common carrier who was an Ohio resident because he employed vehicles that carried an Illinois license plate and were driven by an Illinois resident who held the legal title to the vehicle.

My opinion is that the language in the agreement that Indiana commission and the governor "Do hereby agree to waive all provisions of the Indiana law relative to the movement, registration and regulation of motor vehicles owned and licensed in the State of Illinois" when read in the light of the Illinois statute refers to a vehicle employed in carrier service by an Illinois resident and not to a vehicle operated by an Ohio resident. The situation which you describe in your statement of facts does not bring the case of an Ohio operator within the Indiana-Illinois agreement as I construe it, and, in my opinion, the Illinois vehicles used by him are not entitled to be exempt by the Public Service Commission of this State from the payment of its registration fees.

I understand that the payment of weight tax or license plate fees is not involved in your inquiry.

As to the Indiana-Ohio reciprocity agreement I am unable to see that it has any bearing on the question which you submit.

PUBLIC SERVICE COMMISSION: Motor vehicles—trucks used to carry livestock and agricultural commodities.

July 29, 1937.

Hon. Perry McCart, Chairman,
Public Service Commission,
State House,
Indianapolis, Indiana.

Dear Mr. McCart:

This is in answer to your inquiry of July 24, 1937, asking an opinion and calling attention to a letter from the assistant general manager of the Indiana Farm Bureau Co-operative Association. The problem about which he writes arises out of an interpretation of the 1937 amendment to the Indiana

Motor Carrier Law. The question is, whether or not the words 'agricultural commodities,' as used in the statute, includes everything that might be used on a farm.

Prior to the 1937 amendment, the statute exempted certain motor vehicles from the requirements of the motor carrier statute; among the exemptions was the following:

> "To motor vehicles while being used exclusively in transporting livestock, farm or dairy products or supplies from farm to market, dairy, creamery, warehouse, or other original place of processing and/or storage, or to any distribution depot owned, operated or controlled by any non-profit co-operative association, or from market, dairy, creamery, or from any distribution depot owned, operated or controlled by any non-profit co-operative association to farm, nor to any motor vehicle owned, leased or operated by a non-profit co-operative association when transporting property of the association."
>
> Acts of 1933, Ch. 237, Sec. 2 (f).

Inasmuch as the Federal Motor Carrier Act had become a law after the 1935 statute above referred to was passed, the Indiana legislature in 1937 changed the 1935 statute by an amendment to make the Indiana law conform to the wording of the Federal Act.

The Federal Act as to such exemption reads as follows:

> "* * * or (4a) motor vehicles controlled and operated by any farmer, and used in the transportation of his agricultural commodities and products thereof, or in the transportation of supplies to his farm; or (4b) motor vehicles controlled and operated by a co-operative association as defined in the Agricultural Marketing Act, approved June 15, 1929, as amended; or (5) trolley busses operated by electric power derived from a fixed overhead wire, furnishing local passenger transportation similar to street-railway service; or (6) motor vehicles used exclusively in carrying livestock, fish (including shell fish), or agricultural commodities (not including manufactured products thereof); * * *"
>
> U.S.C.A. Tit. 49 Sec. 303 (b).

The Indiana law on exempted vehicles as amended by the 1937 legislature is as follows:

> "* * * (f) To motor vehicles controlled and operated by any farmer, and used in the transportation of his agricultural commodities and products thereof, or in the transportation of supplies to his farm, or to motor vehicles controlled and operated by any non-profit co-operative association, *or to motor vehicles used exclusively in carrying livestock or agricultural commodities, not including the manufactured products thereof.* * * *"
>
> Acts 1937, Ch. 300 Sec. 2 (p. 1359).

The sentence interlined is the particular provision that is the subject of your inquiry.

The amendment to agree with the Federal law was a wise provision of the Indiana legislature as it removed any question of conflicting jurisdiction that might arise because of the different language of the two Acts with respect to carriers of farm commodities whether interstate or intrastate, operating in Indiana.

An action was recently brought in Newton County, Indiana, to determine whether truck owners who had no license or permit from the Public Service Commission could legally carry for hire the following articles: Horses, cattle, hogs, poultry, sheep, corn, oats, wheat, all kinds of grain and seeds grown on farms, ground feeds, mixed feeds, hay, straw, lumber, fertilizer, limestone, crushed limestone and powdered limestone, milk, butter and eggs, provided the hauling of the articles was from market to farm or from farm to market. On June 24, 1937, the Newton Circuit Court decided that it was permissible for the truck operators to carry all such articles for hire and rendered judgment accordingly.

The Newton Circuit Court evidently considered that the 1937 statute should be given the same meaning as the prior Act, and that the words "agricultural commodities" included any article bought or sold, for or on account of any farm or farmer. We are appealing from that decision, and, pending an authoritative ruling from the higher courts, the question is, how far the State law enforcement officers are bound by the decision of the Newton Circuit Court.

It must be kept in mind, of course, that the particular

provision under discussion has nothing to do with motor vehicles of a farmer that he uses for his own purposes, or to the trucks of a farm bureau. Those vehicles are exempted and the exemption rests on a sound basis.

In my opinion, the enforcement officers of the State should accept and conform to the decision of the Newton Circuit Court so far as Newton County violations are involved.

The word "commodities," used in the Act, is limited by the word "agricultural," and by the phrase "not including the manufactured products thereof." The Interstate Commerce Commission in interpreting the language of the Federal Act has construed those words to mean simply the products of the farm, such as grain, poultry, fruit, cotton, etc. On the other hand it has ruled that logs, canned fruit or vegetables, cotton seed meal, buttermilk and pasteurized milk, were manufactured products, or, were not agricultural commodities within the meaning of the Act and trucks used to carry such articles was not entitled to be exempted from registering and complying with the terms of the Federal Motor Carrier Act.

If a truck is exempted because it is engaged in carrying lumber or limestone or commercial fertilizer, or mixed feed for hire from mill or quarry or factory, or warehouse, to farm, it follows that brick or other building material, or flour or farm machinery may also be carried under like conditions. That is, as so construed anything designed for use or required on a farm, may be carried to farm, or from farm to market, by a motor carrier who has no certificate or permit, and whose routes of travel, or charges are not subject to regulation and who is not required to provide insurance against loss or damage. The effect must necessarily be to increase the traffic of unregulated carriers for hire on the highways and to withdraw from regulated carriers a part of their freight tonnage. I believe the legislature intended to restrict traffic carried for hire, so far as practical, to the regulated common and contract carriers and their registered vehicles.

Any construction of a portion of a statute ought to be in keeping with the general purpose of the entire statute. Section 4 of the Indiana Motor Carrier Act declares that the business of operating a motor carrier of property for hire upon the highways of the state is a business affected with a public interest, and to the end that highways may be made more safe for the general public, and that the service of transportation

agencies may be improved, more stringent regulations were necessary.

The Public Service Commission is charged with the general duty of seeing that the state has adequate transportation facilities. Common carriers and contract carriers for hire by motor vehicles are required to secure authority to operate and to carry insurance for the protection of shippers. Their charges for service are required to be reasonable and without discrimination and their operation is otherwise regulated in the interest of the public. It is not in keeping with this policy of the state which encourages carriers to afford better freight service, that the list of unregulated carriers for hire be extended beyond the clear intent of the law.

The Act in question is a regulatory one and while there is a range of legislative descretion in the classification of persons subject to a law, a construction of a statute which would permit a carrier for hire to carry any freight to a farmer but would not permit him to carry the same article to a mechanic or a merchant, seems to be a somewhat arbitrary distinction as applied to regulatory measures that could hardly be upheld against an attack upon its validity under the constitution.

Smith v. Cahoon, 283 U. S. 553,566.
Fountain Park Co. v. Hensler, 199 Ind. 95.
Bedford Quarries Co. v. Bough, 168 Ind. 671.

One of the recognized rules of construction is that a statute ought to be interpreted so as not to conflict with the constitution.

Spohn v. Stark 197 Ind. 299.

It is my opinion that a proper construction of the 1937 Act does not exempt a motor vehicle used to carry freight for hire from the requirements of the statute as to registration and regulation under the Public Service Commission, unless the vehicle is used exclusively in carrying live stock or agricultural commodities, and that the word "commodity" means only the actual products of a farm, and that except as indicated above with respect to Newton County, the law ought to be enforced in accordance with the views expressed in this opinion.