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April 27, 1962

Mr. Clyde Killingsworth,
Superintendent
Motor Vehicle Division
Arizona Highway Department
206 South 17th Avenue
Phoenix 7, Arizona

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ARIZONA ATTORNEY GENERAL

Re: Letter Opinion No. 62-47-L
R-265

Dear Sir:

Following is the opinion you requested:

REQUESTED BY: CLYDE KILLINGSWORTH, Superintendent
Motor Vehicle Division

QUESTION: What do the words "commercial enterprise" mean or include when used in that part of §28-206.01 A.R.S. reading "or for the transportation of property in the furtherance of a commercial enterprise"?

CONCLUSION: "Commercial enterprise" means a business which is carried on for a profit.

REASONING:

§28-206.01 is an amendment to §28-206 to which it specifically refers. Consequently, the two sections should be read together.

"Sec. 28-206. Unladen Weight fees on commercial vehicles

"A. In addition to the registration fee required, there shall be paid to the vehicle division at the time of application for registration an unladen weight fee on each motor vehicle, trailer or semi-trailer designed, used or maintained primarily for transportation of passengers for compensation, or for transportation of property, including hearses, ambulances and other vehicles used by a mortician in the conduct of his business, and motor vehicles rented without drivers, when the vehicles are equipped wholly with pneumatic tires, in accordance with the following schedule:
*** "

"Sec. 28-206.01. Exemption from unladen weight fee; affidavit; penalties

"A. Notwithstanding the provisions of Sec. 28-206, the owner of a vehicle commonly known as a station wagon or ranch wagon, or of a vehicle commonly known as and referred to by manufacturer's rating as one-half ton or less pickup trucks, may file an affidavit, under oath, with the vehicle division at the time of registration, stating that the vehicle will not be used for transportation of passengers for compensation, or for transportation of property in the furtherance of a commercial enterprise. Upon filing of the affidavit, the owner of the vehicle shall not be subject to the unladen weight fee, but shall pay the regular fees and in lieu taxes required for passenger vehicles. * * *"

§28-206 includes the phrase "designed, used, or maintained primarily for transportation of passengers for compensation, or for transportation of property, including hearses, ambulances, and other vehicles used by a mortician in the conduct of his business." (Emphasis supplied.) Not only does the section include the carriage of passengers for compensation but it also includes the carriage of property for no compensation.

A one-half ton or less pick-up truck is designed primarily for the transportation of property. An exemption is given by the new section if the vehicle is not used for the transportation of property in the furtherance of a commercial enterprise. Exemptions from taxation are construed strictly.

Arizona State Tax Commission v. Frank Harmonson Co. Metal Products, 63 Ariz. 452, 163 P.2d 667 (1945); State v. Yuma Irr. Dist., 55 Ariz. 178 99 P. 2nd 704 (1940); Gietz v. Webster, 46 Ariz. 261, 50 P. 2d 573 (1935); Oglesby v. Poage, 45 Ariz. 23, 40 P. 2nd 90 (1935); Conrad v. Maricopa, 40 Ariz. 390, 12 P.2d 613 (1932).

The broadest definition of commercial enterprise reserves the smallest exemption. But a broad definition of commercial enterprise includes any business carried on for a profit.

CF Jones v. Robertson, 79 Cal. App. 2d 813, 180

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P.2d 929, 932 (1947): Baumgardner v. City of Boston
304 Mass. 100, _____ N.E. 2d. 121, 126 ().

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