

DARRELL F. SMITH, THE ATTORNEY GENERAL
STATE CAPITOL
PHOENIX, ARIZONA

October 31, 1967

DEPARTMENT OF LAW OPINION NO. 67-27 (R-115)

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REQUESTED BY: DAVID H. CAMPBELL, Superintendent
Motor Vehicle Division
Arizona Highway Department

QUESTION: Are agricultural chemical trailers "implements of husbandry" and, therefore, exempt from the registration requirements of A.R.S. § 28-302 and the imposition of unladen weight fees prescribed by A.R.S. § 28-206?

ANSWER: No.

On April 22, 1958, the Attorney General's Office stated in a letter opinion to the Assistant Superintendent of the Motor Vehicle Division that agricultural chemical trailers used for the transportation of fertilizers from the manufacturer or suppliers to the farms were no more "implements of husbandry" than trucks used in the business of supplying animal feeds to farmers.

Since the issuance of the 1958 opinion, we are advised that the Motor Vehicle Division has instituted a continuing program of responsible enforcement of the registration and unladen weight fee statutes hereinabove cited. It should perhaps, be parenthetically added that although such vehicles existed in limited quantities before 1958, it was not until about that period of time that their numbers began to significantly increase.

As a direct result of the enforcement of these statutes, approximately \$30,000.00 is being collected annually in unladen weight fees and \$15,000.00 in registration fees. In addition, another \$30,000.00 is being collected in "lieu taxes", a portion of which is by statute deposited with the State Treasurer and credited to the State General Fund and the balance distributed to the cities and counties. While the above figures are only approximate, they, nevertheless, represent the best estimates obtainable without doing a complete audit and inspection of all trailers registered to segregate

agricultural chemical trailers from all other classifications (no provision is made on the registration records which would draw this distinction).

It is with this background that we review the status of the law relative to the definition of the term "implement of husbandry" and its application to trailers whose owners are engaged in the business of selling chemical fertilizer to farmers.

"Implements of husbandry" are mentioned in two separate code provisions which are germane to this interpretation. In A.R.S. § 28-118, the term is simply defined without any additional expression by the Legislature.

"Implements of husbandry include, but are not limited to vehicles designed primarily for agricultural purposes and used exclusively in the conduct of agricultural operations. Any implement or vehicle whether self-propelled or otherwise, which is used exclusively for carrying products of farming from one part of a farm to another part thereof, or from one farm to another farm, and is used solely for agricultural purposes, including but not limited to the preparation of harvesting of cotton, alfalfa, grains and other farm crops, and which is only incidentally operated or moved on a highway whether as a trailer or self-propelled unit, shall constitute an implement of husbandry exempt from registration as a motor vehicle."

In A.R.S. § 28-302 the Legislature specifically used the term "implements of husbandry" in granting an exemption to the owners of such vehicles from the payment of registration fees. In the latter statute, however, the Legislature did more than simply decree such exemptions. It was provided that for an owner of an implement of husbandry (as previously defined in A.R.S. § 28-118) to be entitled to the exemption, it must have been "designed primarily for or used in agricultural operations and only incidentally operated or moved upon a highway." It, therefore, becomes necessary to read the requirements

of both statutes to determine those vehicles (implements of husbandry) which are entitled to the exemption. Reading these code provisions together, a vehicle must be:

- (1) "designed primarily for agricultural purposes. . ."
- (2) "used exclusively for carrying products of farming . . .and is used solely for agricultural purposes. . ."
- (3) "designed primarily for or used in agricultural operations. . ." (emphasis supplied).

"Whether a given article is an implement of husbandry depends on the facts of any particular case." Hester v. State, 108 So.2d 385 (1959).

The best reasoned authority on the subject and the only opinion precisely in point is so persuasive an expression that we quote quite liberally from it. The following is the language of the Illinois Supreme Court in Mid South Chemical Corp. v. Carpenter, 14 Ill.2d 514, 153 N.E.2d 72:

"In the present case it may be concluded, first, that the legislature has not in express terms granted exemption to tank trailers used for the hauling of gaseous fertilizer and, second, that plaintiff, the owner of the vehicles under scrutiny, is not engaged in an agricultural pursuit. The question for determination then is whether or not it was the legislative intent to include vehicles of such nature within the exemption extended to 'farm wagons, or like vehicles, ***which are used primarily***in connection with the agricultural pursuits of others.' Plaintiff sees in this language a clear application to all its tank trailers whether used by a distributor to make delivery, by a farmer who hauls fertilizer for a neighbor, or by a farmer hauling plaintiff's product for his own use. Defendants, however, insist with equal force that neither the vehicles nor their use qualify them for exemption.

"By the body of section 9 of the Motor Vehicle Act, the legislature has provided that all owners of vehicles 'which are designed or equipped or used for carrying freight, goods, wares or merchandise' shall register such vehicles each year and pay a license fee 'for the use of the public highways of this state.' Plaintiff's vehicles clearly fall within this description and, under the provisions of the exemption proviso, two requirements must be met to entitle such vehicles to exemption, viz, they must be farm wagons, or like vehicles, and they must be used 'primarily' in connection with the agricultural pursuits of others. Even assuming that the vehicles involved meet the first requirements, we are of the opinion that they fail to satisfy the second.

"Provisos in a statute, being designed to qualify or limit what is affirmed in the body of an act, should be strictly construed. *Doubler v. Doubler*, 412 Ill. 597, 107 N.E.2d 789; *State Public Utilities Commission v. Early*, 285 Ill. 469, 121 N.E. 63. Likewise, it is a fundamental rule of statutory construction that each word, clause and sentence in a statute must, if possible, be given some meaning. *People ex rel, Roan v. Wilson*, 405 Ill. 122, 90 N.E. 2d 224. Under these rules it is of significance in the case at hand that exemption has been granted to the vehicles enumerated in the proviso only where they are used 'primarily' in connection with agricultural pursuits. Webster's New International Dictionary, 2d ed, defines the adjective 'primary' as follows: 'First in order of time or development or in intention.' The adverb 'primarily' is defined as 'pre-eminently; fundamentally.' To be exempt under the statutory language, therefore, a farm wagon or like vehicle, the owner of which is not engaged in an agricultural pursuit, must be used fundamentally and pre-eminently in connection with the agricultural pursuits of others. Here the plaintiff is engaged in the commercial enterprise

of selling fertilizer, and it may reasonably be inferred that its intention and purpose is adapting and maintaining tank trailers as it does is to further its sale of fertilizer. Bearing in mind that the vehicles are used exclusively on the public highways for the purpose of effecting delivery of the plaintiff's merchandise and that such vehicles are in no manner used in subsequent agricultural processes, the inescapable conclusion to be reached is that their primary use relates to plaintiff's commercial enterprise rather than to the agricultural pursuits of others. Unlike the chancellor below, we are of the opinion this is true even of those vehicles which have been set apart by the plaintiff for its farmer customers to haul fertilizer for their own use. No matter who employs the vehicles, plaintiff's distributors, neighbors, or the purchasing farmers themselves, it is manifest that any use in connection with the pursuit of agriculture is secondary to their primary use of facilitating the sale and delivery of plaintiff's product. A contrary construction, carried to its logical conclusion, would extend exemption to every vehicle of the second class used to make delivery of supplies, tools, equipment and the like, to those engaged in agricultural pursuits. Such a result would not only be absurd in face of the language used in the body of section 9, but would also ignore the clearly expressed legislative intent to grant exemption only to farm wagons and vehicles used primarily for, or in connection with, agricultural pursuits.

"For the reasons expressed we conclude that none of the uses to which plaintiff's vehicles are put serves to bring them within the exemption proviso."
(Emphasis supplied)

We endorse the reasoning of the court in the above cited case and apply it to the instant situation.

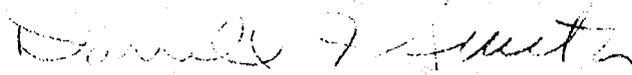
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The intent of our Legislature in enacting the exemption to A.R.S. § 28-302, as amended, which is essentially a taxing statute, was to lift the burdens of taxation from the farmer and thereby encourage him to continue in the profitable pursuit of agricultural operations. The legislative intent was to directly benefit the farmer. By using the phrase, "used exclusively for carrying products of farming" (A.R.S. § 28-118), the Legislature intended to limit implements of husbandry to vehicles carrying products which were the product of the farmer's agricultural operations. The chemical trailers involved here are not carrying products which are the result of the farmer's agricultural operations, but are carrying chemical fertilizer products in furtherance of a direct pecuniary benefit to a commercial enterprise. Chemical trailers are not "used solely for agricultural purposes."

We are informed that some manufacturers are not actually transporting chemical products to the farm in the chemical trailers in question, but are delivering the chemical trailers empty to the farm. After delivery, the chemical trailers are then filled by the manufacturer from registered truck tankers. Following their arrival at the farm, these chemical trailers are used for storage of the manufacturer's product and, when empty, moved to another farm and re-filled from the registered truck tankers. In our opinion, it makes no difference that the chemical trailers, which are the subject of this opinion, are actually used to carry the manufacturer's product to the farm or to store the product on the farm. The simple fact remains that such trailers must necessarily use public roads and streets. Whether they are used by the manufacturer for delivery or storage of his product, their primary purpose is the furtherance of direct pecuniary benefit to a commercial enterprise.

It is the opinion of this office that agricultural chemical trailers are not implements of husbandry and, therefore, not exempt from registration and unladen weight fees.

Respectfully submitted,


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The Attorney General

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