

1963

# Wycoff Company Inc. v. Public Service Comm. Of Utah et al : Brief of Amicus Curiae

Utah Supreme Court

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# IN THE SUPREME COURT OF THE STATE OF UTAH

APR 16 1964

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WYCOFF COMPANY,  
INCORPORATED,

*Plaintiff-Respondent,*

vs.

PUBLIC SERVICE COMMISSION  
OF UTAH, HAL S. BENNETT,  
et al., Its Commissioners.

*Defendants-Appellants,*

UTAH MOTOR TRANSPORT  
ASSOCIATION,

*Amicus curiae.*

Case No. 9915

## BRIEF OF AMICUS CURIAE

Appeal from the Judgment of the Third Judicial District  
Court for Salt Lake County, Utah, Honorable Merrill  
C. Faux, Judge

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# IN THE SUPREME COURT OF THE STATE OF UTAH

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et al., Its Commissioners.

*Defendants-Appellants,*

UTAH MOTOR TRANSPORT  
ASSOCIATION,

*Amicus curiae.*

Case No. 9915

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## BRIEF OF AMICUS CURIAE

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Appeal from the Judgment of the Third Judicial District  
Court for Salt Lake County, Utah, Honorable Merrill  
C. Faux, Judge

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### STATEMENT OF THE KIND OF CASE DISPOSITION OF LOWER COURT RELIEF SOUGHT ON APPEAL STATEMENT OF FACTS

Utah Motor Transport Association, a non-profit  
trade association with approximately 225 members, hav-  
ing been granted leave by order of this court dated July

3, 1963, to appear amicus curiae adopts the statements made in Brief of Appellants for each of the above matters.

Amicus curiae will avoid discussion of matters clearly presented by appellant. It submits the following points require consideration and presents them to the court to assist in the determination of the constitutionality of the Utah Motor Vehicle Transportation Act.

## ARGUMENT

### POINT I

SMITH VS. CAHOON IS NOT AUTHORITY FOR DECLARING THE UTAH MOTOR CARRIER ACT UNCONSTITUTIONAL.

In briefs filed with the Third Judicial District Court the respondent relied primarily upon the United States Supreme Court decision of *Smith v. Cahoon*, 283 U.S. 553, 75 L ed 1264, 51 S. Ct. 582 (1931).

In analyzing the *Smith vs. Cahoon* decision it is important to consider the Florida statute which was therein declared unconstitutional. Important distinguishing features between the Florida statute at the time of the *Smith vs Cahoon* decision and the Utah Motor Carrier Act are as follows:

#### FLORIDA MOTOR CARRIER ACT AT TIME OF SMITH V. CAHOON

1. Statute made no distinction between a common carrier and a contract carrier. It required a tariff from every auto transportation company. (Chapter 13,000 Laws of Florida, 1929)



2. The exempt carriers were not required to give a bond or insurance policy for the protection of the public.

3. The exempt carriers were not bound by any safety regulations.

### *PRESENT UTAH MOTOR CARRIER ACT*

1. Distinguishes between "common motor carrier of property" and "contract motor carrier of property." (Section 54-6-1 of Utah Code Annotated 1953.)

2. Requires exempt carriers to furnish public liability insurance. (Section 54-6-12 of Utah Code Annotated 1953, as amended by Chapter 107 Section 1, Laws of 1957.)

3. Requires exempt carriers to maintain vehicles in a safe condition, (Section 54-6-12 of Utah Code Annotated, 1953 as amended by Chapter 107 Section 1, Laws of 1957) and to maintain safe conditions at all time and be subject to inspection by the commission. (Section 54-6-21 of Utah Code Annotated 1953.)

The importance of these three distinctions set out above between the statute declared unconstitutional in the *Smith vs. Cahoon* decision and our present Utah act are helpful in analyzing the *Smith vs. Cahoon* decision.

In its decision in *Smith vs. Cahoon* the Supreme Court of the United States first comments upon the failure of the Florida statute to distinguish between common carriers and a contract carrier such as Mr. Smith. The

Court described Smith as a private carrier, however it is clear that he would be a contract carrier under our Utah Motor Carrier Act from the following:

“There is no controversy with respect to the status of the appellant. The supreme court said that ‘he owned and operated two motor propelled vehicles in the business of transporting property for compensation upon the public highways between fixed termini and over regular routes, all within the state, not as a common carrier but as a private carrier under special contract.’ From the undisputed evidence upon the preliminary hearing, it appears that the appellant was employed under an exclusive contract with the Atlantic & Pacific Tea Company in hauling its merchandise from Jacksonville to various places in Florida. He has never held himself out as a common carrier.” (*Smith vs. Cahoon*, supra 283 U.S., Page 561)

This failure of the Florida statute to distinguish between common and contract carriers of property was the real basis of the Supreme Court’s holding the Florida act unconstitutional. The court said:

“The statute on its face makes no distinction between common carriers and a private carrier such as the appellant. It applies, without any stated exception, to every auto transportation company within the statutory definition and this admittedly included the appellant. It not only required an application for a certificate of public convenience and necessity but that this should be accompanied by a schedule of tariffs, and no such certificate was to be valid without the giving of

a bond by the applicant for the protection both of the public against injuries and of the persons or property carried. The state commission was explicitly vested with authority to supervise 'every' auto transportation company that was embraced within the definition, to fix or approve its rates and charges, to regulate its service, to prescribe its method of keeping accounts which should set up adequate depreciation charges, and generally to make rules governing its operations.' Schedules of rates of 'every such auto transportation company' were to be open to the public and all alterations in tariffs were to be subject to the commission's control. On the face of the statute, the scheme was obviously one for the supervision and control of those carriers which, by reason of the nature of their undertaking or business, were subject to regulation by public authority in relation to rates and service. No separate scheme of regulation can be discerned in the terms of the act with respect to those considerations of safety and proper operation affecting the use of highways which may appropriately relate to private carriers as well as to common carriers. All carriers within the act, whether public or private, are put by the terms of the statute upon precisely the same footing. All must obtain certificates of public convenience and necessity upon like application and conditions. It is true that the statute does not in express terms demand that a private carrier shall constitute itself a common carrier, but the statute purports to subject all the carriers which are within the terms of its definition to the same obligations. Such a scheme of regulation of the business of a private carrier, such as the appellant, is manifestly beyond the power of the state.

(*Smith vs. Cahoon*, supra 283 U.S., Pages 562, 563)

The second reason for the Supreme Court's decision in *Smith vs. Cahoon* is the discrimination between private carriers such as *Smith* and those exempt from the Act. This question of exemptions is the point relied upon by Respondent in this proceeding. That this point was secondary in the Supreme Court's decision is exemplified by:

"If we leave on one side the requirement that a certificate holder, who is a private carrier, shall give a bond or policy for the goods carried by him, irrespective of his contract with his employer whose goods he carries, and if we consider only the provision for the protection of the public with respect to the use of highways, *another constitutional difficulty* is encountered, that is, of an unconstitutional discrimination." *Smith vs. Cahoon*, supra (283 U.S., Pages 565 and 566)

The rationale of this second objection to the Florida Act was there is no reason to exempt any motor carriers conducting a business upon the highways from safety requirements. This is stated by the Court as follows:

"In determining what is within the range of discretion and what is arbitrary, regard must be had to the particular subject of the state's action. In the present instance, the regulation as to the giving of a bond or insurance policy to protect the public generally, in order to be sustained, must be deemed to relate to the public safety. This is a matter of grave concern as the highways become increasingly crowded with

motor vehicles, and we entertain no doubt of the power of the state to insist upon suitable protection for the public against injuries through the operations on its highways of carriers for hire, whether they are common carriers or private carriers. But in establishing such a regulation, there does not appear to be the slightest justification for making a distinction between those who carry for hire farm products, or milk or butter, or fish or oysters, and those who carry for hire bread or sugar, or tea or coffee, or groceries in general, or other useful commodities. So far as the statute was designed to safeguard the public with respect to the use of the highways, we think that the discrimination it makes between the private carriers which are relieved of the necessity of obtaining certificates and giving security, and a carrier such as the appellant, was wholly arbitrary and constituted a violation of the appellant's constitutional right. 'Such a classification is not based on anything having relation to the purpose for which it is made.'" (*Smith vs. Cahoon*, supra 283 U.S., Page 567)

The above quote from *Smith vs. Cahoon* shows that insofar as public safety is concerned there is no reason to exempt the carriers which were exempted in the Florida Act. The Florida legislature had failed to provide uniformly for the interests of the public as to safety.

The Utah Motor Carrier Act does not exempt anyone insofar as public safety is concerned. The Utah statute can be distinguished from the old Florida statute in that there are *no exemptions from the Utah Act regarding safety*. The Utah act provides :

“Except for the provisions of Section 54-6-17 relative to requirements of insurance, 54-6-21 relative to safety regulations, and 54-6-22 relative to accident report no portion of this act shall apply:” (lists exceptions respondent complains are discriminatory) Section 54-6-12 of Utah Code Annotated 1953 as amended by Chapter 107, Section 1, Laws of 1957.

and:

“Every motor vehicle and all parts thereof shall be maintained in a safe condition at all times and shall be at all times subject to inspection by the commission or its duly authorized representatives.” Section 54-6-21 Utah Code Annotated 1953.

Following the *Smith vs. Cahoon* decision the Florida legislature amended their motor carrier act. It is significant that they retained the same exemptions in this new act which were commented upon by the United States Supreme Court in *Smith vs. Cahoon*. The new Florida act contained every one of the exemptions which were contained in the prior act and in addition thereto added to the exemption list logs, lumber, other forest products, and vehicles operating within corporate limits of cities and towns and adjoining suburban territories and between cities and towns whose boundaries adjoin.

This new Florida Act was tested on August 24, 1932, when the Supreme Court of Florida decided the case of *Riley vs. Lawson*, 106 Fla. 521, 143 So. 619. This case concerned an action brought by Riley, a citizen of Florida who sought an injunction against Lawson, an auto trans-

portation company who was operating upon the highways of the State of Florida without first having obtained a certificate or a permit to do so. Lawson admitted that he was engaged in the transportation of freight over the public highways of the state under contract with one or more persons for compensation. The lower Florida court held that Chapter 14764, Acts of 1931, Laws of Florida, was unconstitutional as applied to private contract carriers such as Lawson. Riley appealed this decision to the Supreme Court of Florida which stated:

“In *Smith vs. Cahoon*, 283, U.S. 553, 51 S. Ct. 582, 75 L. Ed. 1264, the Supreme Court of the United States had under consideration the constitutional validity, under the Fourteenth Amendment to the Federal Constitution, of chapter 13700, Acts of 1929, which was superseded by chapter 14764, Acts of 1931. In that case the ratio decidendi of the decision holding the 1929 act invalid was that the statute either imposed upon the private contract carrier, who was the appellant in that case, obligations to which the state had no constitutional authority to subject him, or it failed to define such obligations as the state did have the right to impose, with that fair degree of certainty which is required of criminal statutes.

The present statute appears to have been passed by the Legislature in an attempt to obviate the objections pointed out by the Supreme Court of the United States concerning the former one. We are therefore incidentally called upon to determine in this case whether or not such objections have been overcome by the terms of chapter 14764, Acts of 1931, *supra*.”

The Supreme Court of Florida discussed the right of a state to regulate the use of public highways by auto transportation companies. The court noted that this right is based upon (1) the business done by such companies on state highways, and (2) the right to conserve and protect the enjoyment by the people of their public highways.

The Court held that the statute did not present a case of arbitrary discrimination such as was held to be the case in *Smith vs. Cahoon*. The Court said:

“The contention that the act provides for unconstitutional and unjust exemptions from its operation such as are specified in section 30 of the act (section 1335 (29) C. G. L. 1932, Supp.), and that thereby the appellee is denied the equal protection of the laws in violation of the Federal Constitution, has been considered but is not sustained. The section complained of is as follows:

‘Recognizing and declaring that the transportation exempted in this section is casual, seasonal and not on regular routes or schedules, is slow moving, frequently in special equipment, and for comparatively short distances over the improved highways of the State, there shall be exempted from the provisions of this Article, and from commission jurisdiction and control, motor vehicles (other than those engaged in common carrier service) used exclusively in transporting children to and from schools; transportation companies engaged in taxicabs service, or the operation of hotel busses to or from depots and hotels, serving the same town or city; and motor vehicles while engaged exclusively in transporting goods,



wares, merchandise, horticultural, agricultural, and/or logs, lumber or other forest products, fish, oysters and shrimp, and dairy products, from the point of production to the point of primary manufacture, or from the point of production to the point of assembling the same, or from either such point of production, primary manufacture or assembling to a shipping point of either a rail, water or motor transportation company, usually and generally serving the territory in which said production, manufacture or assembling takes place. There shall be further exempted from the provisions of this Article and from commission jurisdiction and control, persons, firms or corporations operating motor vehicles within the corporation limits of any city or town or the adjoining suburban territory, or between cities and towns whose boundaries adjoin, where such business of carriage is regulated by the legislative body of such cities or towns.

‘Nothing in this Article contained shall be construed or applied to require any private motor vehicle engaged in the transportation of goods, wares or merchandise belonging to the owner or operator of such vehicle to secure a permit or a certificate of public convenience and necessity under the provisions of this Article or to become subject to regulations prescribed by this Article or by the railroad commission in respect to common, private contract or for hire carriage, or to pay the mileage tax provided by this Article. Casual or irregular trips by motor vehicles not engaged in the business of for hire carriage but operated under private license shall not subject such motor vehicles to the provisions of this Article so long as such motor vehicles may not lawfully be required to operate under for hire license tags.’

The fact that the act could have been extended to embrace those classes of motor traffic which have been excluded is not necessarily proof of unjust discrimination or denial of the equal protection of the laws.

All state laws need not be perfect, nor is it necessary that they cover the entire field of permissible legislative action at one time. *Middleton vs. Texas Power & Light Co.*, 249 U.S. 152, 39 S. Ct. 227, 63 L. Ed. 527; *Rosenthal vs. New York*, 226 U.S. 260, 33 S. Ct. 27, 57 L. Ed. 212. The conditions of transportation recited in the act as applicable to those attempted to be exempted, exclude by their own terms continuous and recurring carriage, because seasonal and casual carriage is essentially different from continuous and recurring carriage. Such manifest differences in the traffic conditions necessarily resulting from slow moving, intermittent, casual, or seasonal haulage, as compared with continuous and recurring haulage, appear constitutionally sufficient to justify the classification made. And we must sustain it in the absence of demonstration beyond a reasonable doubt that no state of facts relating to one class of traffic as compared with the other can reasonably be conceived which will prevent the attempted distinction being considered unreasonable and arbitrary in its practical operation and effect. *Erb vs. Morasch*, 177 U.S. 586, 20 S. Ct. 819, 44 L. Ed. 897; *State vs. LeFebvre*, 174 Minn. 248, 219 N.W. 167; *L. Maxcy, Inc., vs. Mayo, Com'r (Fla.)* 139 So. 121; *Hiers vs. Mitchell*, 95 Fla. 345, 116 So. 81."

This statute again came before the Supreme Court of Florida on May 7, 1958 in the case of *Atlantic Coast Line Railroad Company vs. Boyd*, (Fla.) 102 So. 2d

709. This case involved an action contesting the Florida Railroad and Public Utilities Commission's construction of Section 30, Chapter 14764 Laws of Florida, 1931, as amended. This section is now entitled Section 323.29, Florida Statutes, 1955. No constitutional questions were raised in this latest case construing the Florida Motor Carrier Act.

The Brief of Appellants cites numerous cases which have distinguished the decision of the U. S. Supreme Court in *Smith vs. Cahoon*. The distinguishing features noted herein are helpful in analyzing these cases which have distinguished *Smith vs. Cahoon*.

If there was ever any doubt about the effect of *Smith vs. Cahoon* on our Utah Motor Carrier Law it was removed when the Utah Legislature amended the Motor Carrier Act in 1957. This amendment brought all of the exempt carriers within the provisions of the act relating to requirements of insurance, relative to safety regulations and relative to accident reports. (Chapter 107, Section 1 of the Laws of 1957) This amendment must have been completely overlooked by the respondent in its brief to the District Court that stated they could not find any changes in the law that would necessitate making different findings or conclusions than were made in the previous District Court case of *Newman vs. Public Service Commission*, Civil No. 92815 in the Third Judicial District Court in and for Salt Lake County, State of Utah.

## POINT II

THE POWER OF THE LEGISLATURE TO CLASSIFY OR SELECT THE OBJECTS OF REGULATION AND TO REGULATE SOME PERSONS WHILE EXEMPTING OTHERS UPON A RATIONAL BASIS HAS LONG BEEN UPHELD.

The brief of appellants points out that respondent has the burden of overcoming the presumption of constitutionality and that where any doubt exists the legislative will should be enforced. Additional Utah Supreme Court cases not cited by appellants and upholding this proposition are:

*State vs. Mason*, 94 Utah 501, 78 P. 2d 920, 117 A.L.R. 330; *Abrahamsen vs. Board of Review of the Industrial Comm. of Utah*, 3 Utah 2d 289, 283 P. 2d 213; *Hansen vs. Public Employees Retirement*, 122 Utah 44, 246 P. 2d 591.

The power of the Federal Congress to classify or select the objects of regulation and to regulate some persons while exempting others upon a rational basis was settled in the cases of *Curriu vs. Wallace*, 306 U.S. 1, 59 S. Ct. 379 83, L. Ed. 441 and *United States vs. Petrillo*, 332 U.S. 1, 67 S. Ct. 1538, 91 L. Ed. 1877.

These two Supreme Court decisions have been cited in numerous cases upholding exemptions from regulation pertaining to motor vehicles. In *Christian v. United*

*States*, 152 F. Supp. 561, the U.S. District Court of Maryland upheld the Interstate Commerce Act. In this case the appellant had contended that exemptions pertaining to agricultural products were discriminatory and constituted class legislation. The petition was dismissed relying upon the Currin and Petrillo cases.

Other cases not cited by appellants and upholding the exemptions in the Federal Motor Carrier Act are as follows:

*Fordham Bus Corporation vs. U.S.*, 41 F. Supp. 712;  
*Martin et al vs. United States*, 100 F. 2d 490.

State Court cases which were not cited in the brief of appellants and which uphold exemptions from their particular motor carrier acts are as follows:

*State vs. King*, Maine, 188 A. 775; *Pure Oil Company vs. Oklahoma Tax Commission*, 179 Okla. 479, 66 P. 2d 1097, (appeal dismissed 302 U.S. 635, 82 L. Ed. 494, 58 S. Ct. 15); *Rodgers vs. Nebraska State Hy. Commission*, 134 Neb. 832, 279 N.W. 800; *Welch Company vs. State of New Hampshire*, 89 N.H. 428, 199 At. 886, 120 A.L.R. 1939; *City of Duluth vs. Northland Greyhound Lines*, —.. Minn. —., 52 N.W. 2d 774; *Mid-States Freight Lines, Inc. vs. Bates*, 200 Misc. 885, 111 N.Y.S. 3d 568; *Bode vs. Barrett, Illinois*, 106 N.E. 2d 521, *Alabama Public Service Commission vs. Jones*, 236 Ala. 370, 182 So. 452.

## POINT III

EXEMPTIONS IN OTHER JURISDICTIONS GIVE WIDESPREAD AND UNIVERSAL RECOGNITION TO THE REASONABLENESS OF SUCH EXEMPTIONS.

In transportation legislation in the fifty states of the union and the Federal Government, exemptions of various commodities from regulation is practically universal. Many of these exemptions have stood the test of judicial determination as to their reasonableness. Many of these decisions have been cited to the court in appellant's brief. It is the purpose here to set out the exemptions resulting from legislative deliberation in the various states of the union.

Many of the following jurisdictions have exemptions from their Motor Carrier Act for:

1. Hauling of products by owners or without compensation.
2. Transportation performed within commercial zones including operations in suburbs and contiguous areas.
3. Operations performed within terminal areas and within corporate limits of municipalities.
4. Motor vehicles owned by the United States, state or local governments.

No attempt has been made to set out any of the above four exemptions to motor carrier acts in other jurisdictions because none of these exemptions are found in the Utah Motor Carrier Act.

The following list is a description of the persons, type of vehicles, persons or corporations operating vehicles and commodities which are exempt from regulation:

### *United States*

Livestock, fish, agricultural or horticultural commodities, newspapers, school busses, taxicabs, hotel vehicles, cooperative associations and farmer vehicles. (Section 203 (b) of the Interstate Commerce Act; Title 49, Section 303 (b) U.S. Code Annotated)

### *Alabama*

Agricultural commodities, cooperative associations, hotel vehicles, school busses, U.S. mail, newspapers, magazines, ambulances, hearses, milk, livestock, coal, logs, lumber, poles, pulpwood, cotton in bales, cotton seed, fertilizer and peanuts or potatoes. (Alabama Code Title 48, Section 301))

### *Alaska*

United States mail, newspapers and periodicals. (Alaska Motor Freight Carrier Act, Section 5 (1))

### *Arizona*

School busses. (Arizona R. S. Section 40-602)

### *Arkansas*

Livestock, unprocessed fish, unprocessed agricultural commodities, baled cotton, cottonseed, cottonseed meal, cottonseed hulls, cottonseed cake, soybean meal, commercial fertilizer, agricultural cooperative associations, taxicabs, school busses. (Arkansas Act No. 397, Acts 1955 Sec. 5 (b))

*California*

Agricultural or horticultural cooperative organizations, school busses and a farmer transporting livestock, agricultural commodities or supplies. (California Public Utilities Code Secs. 220, 226, 3511 and 3911 (c))

*Colorado*

Farmers transporting (1) livestock, (2) agricultural commodities, or (3) supplies, school busses, two trucks, hearses and ambulances. (Colorado Revised Statutes, Sections 115-9-25, 115-11-22, 115-10-32, 115-11-2 and 115-9-4)

*Connecticut*

Fertilizer, tree or plant spraying materials, farmer vehicles, cooperative marketing corporations, newspapers, armored cars. (Connecticut Statutes Sec. 16-282)

*Delaware*

No special statutory provisions.

*District of Columbia*

No special statutory provisions.

*Florida*

Agricultural or horticultural products, fertilizers, sprays, fish, oysters, shrimp, dairy products, ice, taxicabs, hotel busses, race horses, school busses, dump trucks, logs, lumber, forest products. (Florida Statutes, Sec. 323.29)

*Georgia*

Agricultural products, fruit, livestock, meats, fertilizer, wood, lumber, cotton, poultry, eggs, fish, oysters, timber, logs, peanuts in the shell, peaches, taxicabs, hotel vehicles, school busses, U. S. mail. (Georgia Code Sec. 68-502)



*Hawaii*

Hawaii has no motor carrier act.

*Idaho*

Agricultural products, supplies to farm, taxicabs, hotel vehicles, school busses, newspapers, U. S. mail, forest products and products of the mine. (Idaho Code Sec. 61-801)

*Illinois*

Agricultural supplies, livestock, agricultural products or commodities, farm or dairy products, livestock, poultry, fruits, cooperative associations, U. S. mail, agricultural machinery and tow trucks. (Illinois Revised Statutes Chapter 95 1/2 Sec. 282.3)

*Indiana*

Livestock, agricultural commodities, supplies to farm, cooperative associations, taxicabs, school busses, U. S. mail, armored cars, fertilizers. (Indiana Statutes, Section 47-1213)

*Iowa*

School busses, liquid products in bulk in certain instances, agricultural limestone, sand, gravel and stone. (Iowa Code Sec. 325.1, Sec. 327.1 and Laws of 1957, S. B. 167 Section 16)

*Kansas*

Grain, owners of livestock or farm products, school busses, U. S. mail, hearses, funeral coaches, ambulances and dump trucks. (Kansas G. S. Section 66-1, 109)

*Kentucky*

Agricultural, dairy products, livestock, meat, fruit, fertilizer, wood, lumber, cotton, products

of grove or orchard, poultry, eggs, frozen fish, airplanes, automobiles and trucks, barrels, beer, blocks, boats, brick, cement, clay, coal, coke, commercial papers, cotton, cottonseed, hulls, cross ties, sewer pipe, currency, feed, fertilizer, flowers, fluorspar, fly ash, fresh meat, fruits and vegetables, grain, grass sod, gravel, hides, highway markers, heavy machinery, industrial alcohol, lime, logs, milk, cream, newspapers, oil well rigs, peat moss, pilings, posts, poultry, race horses, rock, salt, sand, sawdust, scrap iron, scrap steel, seed, stove bolts, stone, tanks, boilers, telegraph poles, telephone poles, tobacco, tobacco hogsheads, trees, shrubs, U. S. mail, parcel post, voting machines, water, wool, wrecked vehicles, cooperative associations, school busses and church busses. (Kentucky Revised Statutes Sec. 281.605, Sec. 281.011 and the Department of Motor Transportation Regulations 13-01 and 13-02)

### *Louisiana*

Agricultural products, livestock, fish, shrimp, hotel vehicles, sightseeing vehicles, taxicabs, school busses, newspapers, funeral cars, ambulances, products of the forest, logs, moss, ties, stove bolts, shingles, pulpwood, rough lumber, sand, gravel, shells, cement, soil, clay and aggregates. (Louisiana Revised Statutes 45:172 and 45:162)

### *Maine*

Seed, feed, fertilizer, livestock, agricultural products, fresh fruits, fresh vegetables, milk, cream, agricultural cooperative associations, U. S. mail, newspapers, wood, pulpwood, logs and sawed lumber. (Maine Revised Statutes Chapter 48 Sec. 29)

*Maryland*

Farm products, school busses, milk to cooling stations or freight platforms. (Maryland Code, Article 78 Section 32 (b).)

*Massachusetts*

School busses, U. S. mail. (Massachusetts General Laws, Chapter 159A, Section 11 (A) and Chapter 159B, Section 13.)

*Michigan*

Farm products, livestock, milk, fruits, green vegetables, sugar beets, U. S. mail, newspapers, dump trucks, pulpwood and logs. (Michigan Compiled Laws, Section 479.2)

*Minnesota*

Agricultural, dairy, livestock, farm products, agricultural cooperative association, taxicabs, hotel vehicles, school busses, pulpwood, cordwood, mining timber, poles and posts. (Minnesota Statutes, Section 221.011.)

*Mississippi*

Farm products, fruit, livestock, poultry products, buttermilk, fresh milk, cream, butter, cheese, pecans, in shells, tung nuts, soy beans, small grains, soy bean meal, cotton, cotton seed, cotton seed meal, cotton seed hulls, agricultural and horticultural commodities, fertilizers, feed, insecticides, cooperatives, trolley busses, school busses, newspapers, U. S. mail, forest products, pulpwood, dressed lumber, naval stores, gravel, unmanufactured road building material, dry nitrates and religious busses. (Mississippi Code, Section 7635.)

*Missouri*

Livestock, farm products, dairy products, agricultural limestone, fertilizer, cooperatives, taxicabs, street railroads, school busses, U. S. mail, newspapers and vehicles with a gross weight of 6,000 pounds or less. (Missouri Statutes, Section 390.030, 390.031, 386.020)

*Montana*

Livestock, agricultural commodities, school busses, logging, mining operations and construction or maintenance of highways. (Montana Code, Section 8-101 and 8-123)

*Nebraska*

Ranch products, dairy products, farm products, livestock, trolley busses, school busses, religious busses, newspapers, U. S. mails, ambulances, hearses, tow trucks. (Nebraska Statutes Section 75-224.)

*Nevada*

Livestock, farm products, school busses, U. S. mail, ore and mining supplies. (Nevada Statutes, Section 706.670)

*New Hampshire*

Agricultural cooperatives, taxicabs, hotel vehicles, school busses and U. S. mail. (New Hamp. R.S.A. Sections 375 and 376)

*New Jersey*

Taxicabs, hotel busses and school busses. (New Jersey Statutes Section 48:4-1.)

*New Mexico*

Livestock, farm products, dairy products, hotel busses, taxicabs, school busses, U. S. mail,

ambulances, hearses, funeral coaches, sand, gravel, rock, crushed rock, rock ballast and dirt. (New Mexico Statutes, Section 64-27-25 and Section 64-27-14)

### *New York*

Fertilizers, soil conditioners, agricultural commodities, logs, pulpwood, milk, cream, fish, livestock, cooperative corporations, taxicabs, hotel busses, scholl busses, newspapers, sand, gravel, dirt, debris, road materials, ready mixed concrete, lime and limestone. (New York Public Service Law, Section 63-i (3) and Section 2 (28).)

### *North Carolina*

Farm products, dairy products, orchard products, livestock, fish, cooperative associations, taxicabs, airport vehicles, hotel vehicles, trolley busses, newspapers, firewood, logs, cross ties, stave bolts, pulpwood, rough lumber, insecticides, fungicides, sand, gravel, dirt, debris, paving materials, church busses and emergency vehicles. (North Carolina Statutes, Section 62-121.8 (a) and Section 62-121-47 (a).)

### *North Dakota*

Farm products, school busses, rural mail carriers. (North Dakota Revised Code, Section 49-1802 and 49-1804.)

### *Ohio*

Farm supplies, farm products, taxicabs and hotel busses. (Ohio R C Section 4921.02 (a) and Section 4923.02 (A).)

### *Oklahoma*

Livestock and farm products. (49 Oklahoma Statutes, Section 161 (b).)

*Oregon*

Farmer owned vehicles, fish scrap, taxicabs, school busses, U. S. mail, sand and gravel dump trucks, metallic ores or concentrates, logs, poles, piling, rough or planed lumber, towing vehicles, ambulances and hearses. (Oregon Revised Statutes Sections 767.030, 767.145, 767.035, 767.025, 767.425.)

*Pennsylvania*

Agricultural products, farm supplies, agricultural cooperative associations, school busses, towing vehicles, pulpwood, ambulances, hearses, and dump trucks. (Pennsylvania Statutes, Title 66 Section 1102.)

*Rhode Island*

Agricultural commodities, horticultural commodities, farm products, cooperative groups, U. S. mail, newspapers, garbage, ashes and debris. (Rhode Island Statutes Section 39-12-3)

*South Carolina*

Farmers, dairymen, perishable products, school busses, U. S. mails, lumber, logs, church busses, picnic and excursion vehicles. (South Carolina Code Sections 58-1402, 58-1404 and Regulations Rule 20.)

*South Dakota*

Agricultural and horticultural commodities, livestock, taxicabs, school busses, newspapers, vehicles used in construction or maintenance of highways. (South Dakota Code, Section 44.041 (9).)

*Tennessee*

Milk, milk products, perishable farm products, livestock, petroleum products when the

owner of vehicle is regularly engaged in such business; agricultural cooperative associations, taxicabs, school busses, ambulances, funeral vehicles and church vehicles. (Tennessee Code Section 65-1503 and Section 65-401)

### *Texas*

Fresh Fish. (Texas Civil Statutes, Article 911b, Section a (1) (e).)

### *Vermont*

U. S. mail. (Vermont S.A. Title 30, Section 236.)

### *Virginia*

Livestock, poultry, poultry products, butter-milk, fresh milk, cream, meats, butter, cheese, fish, cooperative associations, taxicabs, hotel vehicles, school busses, U. S. mail, newspapers, lumber, staves. (Virginia Code, Section 56-274)

### *Washington*

Farmer vehicles, taxicabs, hotel busess, school busses, U. S. mail, newspapers, periodicals, towing vehicles, water, garbage and refuse. (R. C. Washington 81.80.040, 81.68.010, and 81.72.010)

### *West Virginia*

Agricultural products, horticultural products, livestock, poultry, dairy products, agricultural or horticultural supplies, school busses, U. S. mail, newspapers, ambulances, excreta, coal (from mining operations to loading facilities for further shipment by rail or water carriers). (West Virginia Code Section 2577 (3).)

### *Wisconsin*

Livestock, milk, farm products, farm supplies, taxicabs, U. S. mail, tow vehicles and emergency

transportation (the movement of coal to a school or hospital during an exceptionally cold period is emergency transportation where authorized carriers cannot perform the service.) (Wisconsin Statutes, Section 194.01, 194.05 and 194.34 and PSC 20.03, 20.04.)

### *Wyoming*

Farmer and rancher vehicles, farm produce or commodities, school busses, U. S. mail, non-profit educational tours, ambulances and hearses. (Wyoming Statutes, Section 37-134 and Regs. Rule 2)

All of the exemptions from provisions of the act granted by the legislature in Section 54-6-12 of Utah Code Annotated 1953 can be found in some statutes listed above. The numerous legislative acts of the states of the union are recognition of the reasonableness of the Utah exemptions.

Numerous cases have been cited in appellant's brief upholding the exemptions cited above from various state motor carrier acts. Taking the Utah exemptions in order, we find the following reasons set forth by the cases for upholding these exemptions:

#### *a. Students or their instructors.*

Cases note that this is transportation for short distances and necessitates discipline and control not contemplated in regulated transportation. (*Riley v. Lawson, supra*; *Continental Baking vs. Woodring*, 286 U.S. 352, 76 L. Ed. 1155, 52 S. Ct. 595, 81 A.L.R. 1402; *Kelly*



*v. Finney*, 207 Ind. 577, 194 N.E. 157; *Ex Parte Irata-cable*, 55 Nev. 263, 30 P. 2d 284; and *Public Service Commission v. Grimshaw*, Wyoming, 53 P. 2d 1, 109 A.L.R. 534.)

b. *United States Mail.*

This exemption is justified by the public interest in receiving speedy delivery of a matter which is already regulated and under control of the Federal Government. (*Kelly v. Finney*, *supra*; and *Public Service Commission of Wyoming v. Grimshaw*, *supra*.)

c. *Livestock, Farm, Orchard, or Dairy Products; Farm or Dairy Supplies; Coal, Lumber, Logs.*

These exemptions have been the subject of numerous cases upholding their constitutionality. One of the reasons cited in the cases is the fact that these products travel over private roads and do not use state highways to the extent used by regulated carriers. Another is the seasonal nature of these commodities. It is well known that many agricultural commodities are harvested at the same time requiring large amounts of transportation facilities during emergency periods. Likewise coal, which is heavily used during the winter requires little transportations at other times.

In order to operate as a regulated carrier it must have volume and continuous recurring carriage. The legislature realized that such carriage could not be obtained from the agricultural commodities, coal, lumber and logs described in this exemption.

Further reasons advanced by the Courts in upholding these exemptions are the special equipment which is often used for these commodities. Whereas many regulated commodities can move on regular dump trucks, coal often times requires special equipment for loading and unloading. It is a well known fact that most regulated commodities can be shipped together with other regulated commodities. Regulated carriers put numerous items together in obtaining full truckloads. Many of the exempt commodities must be transported alone, such as coal. Another basis for the distinction is the incidental services performed in addition to and in connection with the transportation of these commodities which cannot be performed by regulated carriers operating on schedule. For instance the transportation of logs is primarily an incident of cutting trimming and loading.

In 1952 the Supreme Court of Illinois upheld the exemption for vehicles used in connection with agricultural pursuits stating:

“The plaintiff’s contention that the agricultural exemption contained in Section 9 is unconstitutional is not well taken in view of the long line of decisions consistently holding valid, both under state and federal constitutions, such provisions similar to those under consideration. *Brashear Freight Inc. vs. Hughes*, D.C., 26 F. Supp. 908; *Aero Mayflower Transit Co. v. Georgia Public Service Comm.*, 295 U.S. 285, 55 S. Ct. 709, 79 L. Ed. 1439; *Hicklin v. Coney*, 290 U.S. 169, 54 S. Ct. 142, 78 L. Ed. 247; *Continental Baking Co. v. Woodring*, 286 U.S. 352, 52 S. Ct., 595, 78 L. Ed. 115.” *Bode v. Barrett*, 412 Ill. 204, 106 N.E. 2d 521.

This Illinois case was appealed to the U.S. Supreme Court and that decision upholding the Illinois Court is cited at page 11 of the brief of appellants filed herein.

In *Rogers vs. Nebraska State Railway Commission*, 134 Neb. 832, 279 N.W. 800, the Supreme Court of Nebraska upheld the exemption for agricultural products in their state motor carrier act. The Nebraska Court relied upon the fact that railroad service is not adequate to remote areas and the encouragement to farm production.

In *State v. King*, Maine 188 Atlantic 775, the Supreme Court of Maine upheld an exemption in their motor carrier act for transportation of fresh fruits and vegetables on the basis that the transportation was occasional and infrequent rather than regular and constant and, therefore, less burdensome to the public highways.

The Supreme Court of Maine in *State v. King*, supra, also upheld the exemption of logs, wood and lumber. The court noted that this particular kind of transportation used different equipment, was seasonal or irregular and consisted of non-constant hauling.

Additional cases supporting these exemptions are *Pure Oil Company vs. Oklahoma Tax Commission*, Supra; *Schwartzman Service vs. Stohl*, 60 F. 2d, 1034; *Continental Baking Company vs. Woodring*, Supra; *Bushnell vs. People*, 92 Colo. 174, 19 P. 2d 197; *Public Utilities Commission vs. Manley*, Colo. 60 P.2d 913; *Hicklin vs. Coney*, 290 U.S. 169, 78 L. Ed. 247, 54 S. Ct.

142; *Anderson vs. Thomas*, 144 Or. 572, 26 P. 2d 60; *State ex rel Wisconsin Allied Truck Owners Assoc. vs. Public Service Commission*, 207 Wisc. 664, 242 N.W. 668.

d. *Agricultural Cooperative Association.*

The reasons given by the Courts upholding exemption of agricultural cooperative associations are the same reasons for agricultural products generally being exempted. This is the seasonal nature of their transportation and that to a large extent it is performed off the main highways.

In the case of *Baker v. Glenn*, 2 F. Supp. 880, the plaintiffs asserted that the Kentucky Motor Carrier Act was unconstitutional. The Federal District Court for the Eastern District of Kentucky upheld the exemptions in the Kentucky act relating to cooperative associations based upon the analogy between transportation by such associations and transportation by a farmer.

e. *Newspapers.*

Newspapers must move with dispatch and require numerous drop-offs. Regulated carriers are not able to perform a service on schedule and take care of the dispatch and numerous drop-offs required with such commodities as newspapers. Another reason for this exemption is that such transportation operates mainly in municipalities and transportation carried on beyond a suburban zone is negligible. Another recognized distinction is it involves only the use of small trucks or passenger cars. This exemption has been upheld in the

case of *Schwartzman Service v. Stohl*, supra; *Kelly v. Finney*, Supra; and *State v. King*, Supra; where the Court said:

“ ‘In this day and age the speedy dissemination of news is a matter which vitally concerns the general welfare of society. Moreover, the transportation of newspapers is not such as to wear greatly on the highways. It seems to fall, naturally into a class by itself in the whole transportation of property scheme, and the exemption is neither arbitrary nor unreasonable.’ The non-inclusion of books and magazines is justified by readily conceivable distinctions. The newspaper, with its up to the last minutes news, its legal notices, reports financial and weather, including forecasts, and much other information essential to present-day-life, it probably is true, has no substitute in the dissemination of like reading matter possible of transportation. An exemption that permits its unlicensed conveyance by motor vehicles to every nook and corner in the State, in many instances to places not served by common, nor even by contract, carriers, is warranted. Newspapers may be separately classified without favor, for the peculiar character of the business of the newspaper publisher, the speed and frequency with which the transportation of newspapers should take place, the purposes newspapers serve, and the resulting benefits to the people generally, sufficiently indicate non-similarity to the business of publishing books and magazines, however beneficial and essential they may be regarded . It was not necessary for the Legislature to regulate the transportation on the highways of all published matter or none, so long as the classification relating solely to newspapers did not lack a rational basis.” *State v. King*, supra.

f. *Towing, Armored cars, Hearses, Ambulances, and Taxi Cabs.*

Court recognize that transportation of this category is generally of a minor nature compared to a service which is actually being performed. Compensation received is generally for services rendered and not for the transportation of any commodity.

In the case of armored cars there is special handling, special security, special bonding, and special containers for transportation which a regulated general commodity carrier is not generally equipped to handle.

These services all run at infrequent and irregular intervals and generally do not operate over regular routes. These exemptions have been upheld in *ex parte Iratacable, supra* and *Riley v. Lawson, supra*.

g. *Group of Employees.*

This last exemption from Utah motor vehicle regulation enables pool driving. It falls under the heading of occasional transportation. The Utah legislature has placed well defined limits on this exemption:

1. Employees riding in auto of fellow employee,
2. Must be to and from employment,
3. Sharing only actual expenses of transportation,
4. Not exceeding five persons,
5. Not more than three persons in any one seat,
6. Does not apply to individuals so operating in excess of one vehicle. Section 54-6-12 (g) Utah Code Annotated 1953.

This reduces hazards on the highway by limiting the number of vehicles required to take employees to and from work. The exemption specifically protects the operator by limiting the number of persons who can ride in one vehicle and limits the number of vehicles which one person can operate. The legislature had the casual nature of this transportation in mind in making such an exemption. Another distinction is the short distances involved as opposed to regulated transportation moving over longer routes.

In 1938 the Supreme Court of New Hampshire decided that the exemptions from the New Hampshire Motor Carrier Act were not discriminatory and did not deny equal protection of the laws under either the state constitution or the constitution of the United States. The Court said:

“Recent decisions of the Supreme Court of the United States sustain the validity under the Fourteenth Amendment of classifications substantially similar to those made in the statute under consideration. Under these decisions a state, in the interest of highway safety, may not only single out carriers for hire by motor vehicle from such carriers in general and apply to the former regulations from which the latter are exempt, but it may also create classifications among carriers for hire based upon the nature and extent of their use of the highways.” *Welch Co. v. New Hampshire*, 89 N. H. 428, 199 At. 886, 120 ALR 1939.

The New Hampshire Court noted that one of the purposes of the Motor Carrier Act was to protect the

users of highways from dangers likely to result from drivers suffering from the effects of fatigue. The Court held that the legislative classification must stand noting that frequency and extent of operation may provide a sufficient basis for classification.

## CONCLUSION

The distinguishing features between the Florida Motor Carrier Act prior to the decision of the United States Supreme Court in *Smith v. Cahoon* and the existing Utah Motor Carrier Act are clear. The Utah Motor Carrier Act distinguishes between common and contract carriers and by its amendment in 1957, regulated exempt carriers respecting public safety. This satisfied the rule in *Smith v. Cahoon*.

The exemptions which the Federal Congress has seen fit to place in the Federal Motor Carrier Act and the exemptions which numerous state legislatures have placed in their respective state motor carrier acts give widespread and universal recognition to the reasonableness of such exemptions. The brief of appellants and this brief have cited cases where these exemptions have been upheld by both state and federal courts. These decisions support the exemptions provided by the legislature in the Utah Motor Carrier Act.

Respectfully submitted,  
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