

**OPINION
64-165**

February 5, 1964 (OPINION)

MOTOR VEHICLES

RE: Registration - Exemptions

This is in response to your letter in which you ask for an opinion on the question whether a person who is a grain farmer and also engaged in the seed business can use a farm plate on his truck which has a gross weight of 42,000 pounds. You also advise that this person buys grain from one elevator and hauls it to another. This transaction is either for resale or for securing different types and qualities of grain. Your letter does not disclose whether the grain initially is raised by the farmer and then exchanged, nor does it disclose the extent of his seed business--whether it stems out of his grain farming business or whether he is in the seed business independent of his farm business.

There appears to be no question that the vehicle involved must be registered as required by Section 39-04-18 of the North Dakota Century Code.

Under Section 39-04-19(5), as amended, relating to registration fees and mile tax, we find the following provisions:

5. Vehicles having a gross weight of more than 24,000 pounds but not more than 57,000 pounds and which are used as farm vehicles only shall be entitled to registration upon payment of fifty percent of the fee prescribed in subsection 2b of this section. A farm vehicle shall be considered for the purpose of this subsection, as a motor vehicle owned and operated by a bona fide resident farmer who uses such vehicle exclusively for transporting his own property between farms and the usual local trading places and not for hire. The registrar shall issue a distinctive registration plate for such vehicles." (Underscoring ours.)

As pertaining to the above section, it is noted that a farm plate may be issued for a vehicle which is owned by a bona fide resident farmer and uses such vehicle exclusively for transporting his own property between farms and usual local trading places and not for hire.

As to the application of Section 39-04-17, Subsection 5 of the North Dakota Century Code, it is to a great degree a question of fact whether or not the vehicle in question comes within the statutory provisions. Inasmuch as the above statute sets forth special provisions for certain vehicles and permits a registration on a reduced basis, it is necessary that the vehicle in question comes fully within such definition or statutory provision to avail itself of such provisions.

The facts submitted in your letter are not sufficiently adequate to resolve the question as a matter of law. It is not known nor are we furnished with any facts showing ownership of the grain transported, or if it is grain that the farmer raised and then exchanged for other grain or that any hire for such vehicle is involved. The facts disclosed do not show that the transportation of the grain was or was not with usual local trading places. We can only say, with the limited information available, that any person who wishes to avail himself of the foregoing provisions of law must meet all the criteria set forth therein and not just a portion thereof.

Chapter 39-04A, as amended, pertains to additional fee for motor vehicles engaged in transportation of property. We find that a motor vehicle as defined in such chapter would include the vehicle described. We also find that the definition of the terms "person" and "public highway" would apply to the question you submitted, etc. However, Section 39-04A-06, as amended, sets forth an exception. This section provides as follows:

"EXCEPTIONS. This chapter shall not apply to any bona fide resident farmer or beekeeper who shall:

1. Transport property between farms and the usual local trading places, between farms locally, or transport farm equipment owned by a bona fide resident farmer of this state when such farm equipment is transported in vehicles owned by such resident farmer;
2. Transport his own livestock or commodities from his farm with his own truck to any village, market, or place where such livestock and commodities are to be sold, stored, or otherwise disposed of, or transport livestock or commodities from any village, city or place where same is purchased or acquired to his farm where such supplies are to be used, consumed, or processed;
3. In the normal course of his business exchange work with his neighbors.

In addition, any person transporting property within the city or village limits or not to exceed two miles from the corporate or recognized limit of such city or village shall be excepted from the provisions of this chapter."

The exception is available to a bona fide resident farmer who transports his own commodity or property with his own truck to any village, market or place where such commodity is sold, stored or otherwise disposed of, or to transport commodities from any village, city or place from which same is purchased, or acquired to his farm where such supplies are to be used, consumed, or processed. It also permits the farmer to engage in a normal course of exchanging work with his neighbors.

Here again we do not have sufficient facts to apply to the statute. It is a question of fact whether or not the person and vehicle in question come within the provisions of this section.

We note further that under Section 39-05A-02, as amended, the motor vehicle registrar is given authority to promulgate rules and regulations to carry out the provisions of this chapter. This authority is substantially different than the authority contained in Section 39-02-03, which merely authorizes the registrar to adopt and enforce administrative rules and regulations subject to approval of the governor as may be necessary to carry out his duties. The authority granted here is largely administrative in carrying out his administrative duties within the office and matters pertaining to color of license, size, context, etc. The authority found in Section 39-04A-02 pertains to authority to promulgate rules and regulations to carry out the provisions of Chapter 39-04A. This authority is not merely to adopt administrative regulations but to adopt regulations which will complement the statutes already enacted and to bridge or fill any void that might be left by the statute.

Thus, in direct response to your question, we can only advise with the limited facts available, that the answer is still a question of fact. It is our opinion that a person and vehicle must meet all of the requirements of the above cited statutes in order to qualify for the special provisions set forth therein or to be considered excepted from the general provisions. The person and vehicle must meet all of the statutory provisions in an "exception" statute in order to benefit under said section. Similarly, a person and vehicle must meet all of the requirements of a special provisions in order to qualify for the special consideration provided for in the statute or special provisions.

Independent of your letter, we did find that the person in question was also a grain farmer in addition to being in the seed business. We were also advised by the Truck Regulatory Department that the vehicle in question had 42,000 pounds gross weight instead of 60,000 pounds as stated in your letter. However, we were not able to obtain any additional information as to the product hauled from place to place and ownership of the product, etc.

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