

**OPINION
47-198**

August 26, 1947 (OPINION)

RAILROAD

RE: Right-of-Way - Use of by Truck

Your letter under date of August 22, 1947, addressed to the Public Service Commission has been referred to the Attorney General for his consideration and reply.

In your letter you say:

"We have been planning on trucking some of our grain on account of the car shortage. The depot agent told us that the G. N. Ry. Co. would not allow trucks to load upon the right-of-way. Please tell us if they can stop us.

"What would be the possible result if we just went there anyway and loaded up?

"Another angle, suppose we lease a truck would we be allowed to truck our own grain, that is driving truck onto the right-of-way?

"I suppose that if trucker will drive on to right-of-way that if Ry. Co. can sue for damages that the claim would be against the trucker and not the Elevator Co.? Please tell us."

It is not clear to me what you mean by the term "right-of-way". The term "railroad right-of-way" ordinarily means the land on which the railroad track is built and a strip of land on either side of the track, generally at least fifty feet wide in the country and often considerably wider than that in villages and cities to allow for side tracks, elevators, loading platforms, etc. If by the term "right-of-way" you mean the railroad track, it is my opinion that trucks may not be driven thereon for loading grain. The railroad cannot in any manner be hampered or inconvenienced in the operation of its trains nor in its switching operations.

The Landa Cooperative Elevator is undoubtedly located on the railroad right-of-way. That is to say on a so-called "leased site". In the absence of a copy of the lease agreement entered into between the Elevator Company and the G. N. Ry. Co. I am unable to say what obligations your elevator company has assumed thereunder. It may be that under the terms of the lease your elevator company is obligated to ship its grain to the terminal markets by rail. And if the G. N. Ry. can supply the cars needed to move the grain out of the elevator it is probable that you are required to ship by rail. But if the railroad company is unable to make available the cars needed by the elevator company to carry on its business as a buyer and shipper of grain, then I can see no legal reason why the Elevator Company may not operate its own or leased trucks as a private carrier until railroad cars are supplied, provided the trucks are loaded in the elevator, or on the site leased by the Elevator but not on the

railroad track.

The lease agreement between your Elevator Company and the G. N. Ry. Co. undoubtedly implies, if it does not specifically require, your elevator to ship its grain to the terminal markets by rail. But such lease also obligates the railroad company to furnish cars for grain shipments. In fact the statutes require railroads to furnish cars when needed.

The railroad company can undoubtedly deny the right to load grain on trucks on any part of its right-of-way, including tracks, outside of the site leased by the Elevator Company. But if and when a railroad company cannot furnish cars needed to ship grain from an elevator and thus, in effect force the elevator to discontinue buying grain until cars are made available, it is my opinion that the grain may be shipped by truck provided the loading can be done in the elevator and not out of the spouts used for loading railroad cars. For I assume that if these spouts are used trucks would have to be driven upon the railroad track.

NELS G. JOHNSON

Attorney General