

FILE

Subject

*Transportation
Trucks & Trailers*

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Legislature 1974



STATE OF KANSAS

Office of the Attorney General

State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

VERN MILLER
Attorney General

May 14, 1974

Opinion No. 74- 143

Col. W. L. Albott
Superintendent
Kansas Highway Patrol
State Office Building
Topeka, Kansas 66612

Dear Colonel Albott:

You request our opinion concerning specially designed vehicles which are configured exclusively to haul and distribute manure from feedlot to farm. You enclose a photograph of the vehicle in question. In appearance, it is a truck, mounted with a body designed to haul solid waste, with a spreader mechanism on the rear of the bed.

You inquire whether these vehicles come within the statutory meaning of "implement of husbandry." Senate Bill 587, L. 1974, defines "implement of husbandry" at Section 8-1427:

" . . . every vehicle designed or adapted and used exclusively for agricultural operations and only incidentally moved or operated upon the highways."

This section establishes two criteria which must be met before an implement or vehicle may be considered an "implement of husbandry." First, in the plain language of the statute it must be a vehicle that is originally designed or later adapted for agricultural operations and used exclusively for that purpose. The truck you describe apparently falls within that provision. Next, the statute requires that such agricultural operations only incidentally involve the use of the highways. The question then becomes one of defining "incidentally." The American College Dictionary defines "incidentally" to mean "in an incidental manner" and defines "incidental" as "happening or likely to happen in fortuitous or subordinate conjunction with something else."

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In our opinion the legislature recognized in this definition that farm implements must, on occasion, be moved upon public highways. It is clear from the statute that incidental use of the highways does not itself remove a vehicle from the statutory classification of "implement of husbandry," but is, in fact, anticipated. On the other hand, predominant use upon the highways of what would otherwise be an "implement of husbandry" would seem to remove such vehicle from the statutory definition. We conclude that a truck designed exclusively to haul manure from a feedlot to farms long distances away and using public highways cannot be an implement of husbandry. The test is not exact, but in the situation you describe, hauling manure from feedlots in Garden City to farms in Pratt, the statutory requirements for implements of husbandry are not met. Such use, in our opinion, is predominantly of the nature of commercial hauling and only incidentally, agricultural.

Secondly, you inquire whether a truck designed or altered to haul and dispense raw fertilizer from a feedlot to farm fields is exempt from registration or the payment of fuel tax. Any "[f]arm trailer," or "self-propelled farm implements," including such an implement which is "designed and used exclusively for dispensing liquid or dust fertilizer" is exempt from registration. These terms are not otherwise defined, and as used in this section, bear no necessary legal relation to the term "implement of husbandry" as used in 1974 Senate Bill 587. The specially designed vehicle depicted in the photograph enclosed with your letter appears to be designed exclusively for the hauling and spreading of fertilizer. If the mounted assembly were removed, of course, the truck itself appears to be fully adaptable to any other use. Thus, the entire vehicle is not solely designed exclusively for fertilizer operation. A nice question of some technicality arises here, whether the entire vehicle must be intrinsically and exclusively designed for dispensing "liquid or dust fertilizer," or whether any ordinary truck which is mounted with an assembly specially designed for that purpose is sufficient to fall within the exemption. K.S.A. 8-126(y) defines "self-propelled farm implement" as

"[e]very farm implement designed for specific use applications with its motive power unit permanently incorporated in its structural design."

A conventional truck chassis which is mounted with a rear assembly designed for a specific use application is not such a self-propelled vehicle. Thus, we conclude that the truck in question is not exempt from registration under K.S.A. 8-128.

As to the payment of fuel taxes, K.S.A. 79-3453 provides in pertinent part:

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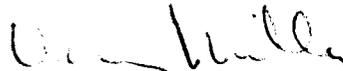
"Any person who shall use any motor vehicle fuels on which the motor-fuel tax imposed by law has been paid by him, for any purpose other than operating or propelling motor vehicles on the public highways, shall be entitled to be reimbursed and refunded the tax paid upon complying with the applicable conditions and provisions of this act."

Under other provisions of the "Refund of Motor-Fuel Tax Act" users of motor vehicles are not entitled to refunds of motor fuel taxes for that portion of the consumption expended on public highways.

A further question concerning weight limit restriction for such vehicles has been brought to our attention. We find no authority in the present articles of Chapter 8 or in Senate Bill 587 exempting such vehicles from weight limitations.

We are hopeful the foregoing will be of assistance.

Yours very truly,



VERN MILLER
Attorney General

VM:DRH:jsm