



STATE OF KANSAS

Office of the Attorney General

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CURT T. SCHNEIDER
Attorney General

January 27, 1975

Opinion No. 75-26

Mr. Robert L. Earnest
City Attorney
Post Office Box 112
Russell, Kansas 67665

Re: Restricted drivers license,
K.S.A. 1974 Supp. 8-237 2(3)

Dear Mr. Earnest:

This is in reply to your letter of October 30, 1974, inquiring as to our interpretation of K.S.A. 1974 Supp. 8-237 2(3). Please pardon our delay in responding to your opinion request. The above mentioned statute provides that a restricted driver's license issued to any person under the age of sixteen (16) years allows the person to drive a vehicle for the purpose of performing errands for his parents in connection with farming or other agricultural pursuits. You have asked whether such a licensee may operate a motor vehicle in connection with an aerial spraying service owned and operated by his father. The question is whether this activity is an "errand for his parents in connection with farming or other agricultural pursuits" within the meaning of K.S.A. 8-237.

The first determination that must be made in responding to your question is whether aerial spraying is an "agricultural pursuit." Our research discloses no case in which the Kansas Supreme Court has ruled on the meaning of "agricultural pursuit" as it is used in 8-237 2(3). However, similar language is contained in K.S.A. 1974 Supp. 44-505 of the Workmen's Compensation Act, to wit: ". . . [the Workmen's Compensation] [A]ct shall not apply to . . . [a]gricultural pursuits and employments incident thereto. . . ." In construing this analogous language the court has held that the burden of showing that an activity is an agricultural pursuit and within the provisions of the compensation act is upon the one who asserts it. Campos v. Garden City Co., 166 Kan. 352, 201 P.2d 1017. In an attempt to classify a pursuit as agricultural or non-agricultural the language of 3 Am Jur 2d, Agriculture § 1 is helpful:

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Whether a particular type of activity is agricultural depends in large measure upon the way in which that activity is organized. The question is not determined by the necessity of the activity to agriculture nor by the physical similarity of the activity to that done by farmers in other situations.

The United States Supreme Court has provided a test in making this determination, it is whether the activity is separately organized as an independent productive one or whether it is carried on as part of the agricultural function. Farmers Reserve & Irrigation Co. v. McComb, 337 U.S. 755, 93 L.ed. 1672, 69 S.Ct. 1274.

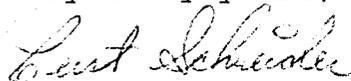
When faced with this issue the state of Texas held in Maryland Casualty Co. v. Dobbs, 128 Tex. 547, 100 S.W. 2d 349, that one engaged by an independent contractor in the independent business of spraying a citrus orchard was not engaged in agricultural or horticultural pursuits, and that neither was the company for which worked so engaged.

In an opinion issued by this office dated March 2, 1973, addressed to Mr. Bernard E. Nordling, we stated that the intent of K.S.A. 1974 Supp. 8-237 2(3) is to enable farm children to make direct contributions to family farming efforts as restricted drivers.

Applying the aforementioned authorities to the facts of this particular case it is our opinion that errands in connection with the aerial spraying operation are not errands in connection with farming or other agricultural pursuits. This is primarily because the aerial spraying operation is separately organized as an independent, productive one, and its connection to the agricultural function is only incidental.

We trust the foregoing adequately answers the questions you have presented.

Very truly yours,



CURT T. SCHNEIDER
Attorney General

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