

## ATTORNEY GENERAL OPINION NO. 93-7

Senator Mark Ricks, Chair  
Senate State Affairs Committee  
**STATEHOUSE MAIL**

Senator Dennis Hansen, Chair  
Senate Transportation Committee  
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Representative JoAn Wood, Chair  
House Transportation and Defense Committee  
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Representative Pam Ahrens, Chair  
House State Affairs Committee  
**STATEHOUSE MAIL**

Per Request for Attorney General's Opinion

### QUESTION PRESENTED

What authority does the Idaho Public Utilities Commission have under chapters 1 and 8 of title 61, Idaho Code, to provide for the regulation of tow trucks and require certain standards to be adhered to such as equipment requirements, safety requirements, operator requirements, insurance requirements, log book requirements and other requirements as if the tow trucks were common carriers?

### CONCLUSION

Tow trucks fit the statutory definition of a common carrier under the Motor Carrier Act, chapter 8, title 61, Idaho Code. However, statute also provides that all common carriers operating within a municipality (or in certain circumstances, within the municipality and contiguous territory) are exempt from the Commission's regulation. Accordingly, the Idaho Public Utilities Commission has statutory authority to prescribe rules concerning equipment requirements, safety requirements, operator requirements, insurance requirements, log book requirements and other requirements for tow truck operations, unless the tow truck operations fall under the municipal exemption from the Commission's regulation.

### ANALYSIS

The Idaho Public Utilities Commission has no authority other than the statutory authority granted to it by the legislature; it exercises a limited jurisdiction, and nothing is presumed in favor of its jurisdiction. However, when necessary to enable the Public Utilities Commission to exercise powers expressly granted to it, and once jurisdiction is clear, the Idaho Public Utilities Commission is allowed all power that is either expressly granted by statute or which may be fairly implied. *See Idaho State Homebuilders v. Washington Water Power Company, 107 Idaho 415, 418, 690 P.2d 350, 353 (1984).*

Accordingly, the question to be determined is whether regulation of tow truck operations falls within the Commission's statutory authority.

The relevant statutes are found in the Motor Carrier Act, chapter 8, title 61, Idaho Code. In examining statutory language, there are a number of general rules of statutory construction to keep in mind:

It is a basic rule of statutory construction that, unless the result is palpably absurd, we must assume that the legislature means what is clearly stated in the statute. It is also well established that statutes must be interpreted to mean what the legislature intended the statute to mean, and the statute must be construed as a whole. Statutory interpretation always begins with an examination of the literal words of the statute. In so doing, every word, clause and sentence should be given effect, if possible. The clearly expressed intent of the legislature must be given effect and there is no occasion for construction where the language of a statute is unambiguous. Finally, when construing a statute, its words must be given their plain, usual and ordinary meaning.

In the Matter of Application for Permit No. 36-7200 in the Name of the Idaho Department of Parks and Recreation, 121 Idaho 819, 822-23, 828 P.2d 848, 851-52 (1992) (citations omitted).

The statute containing the relevant definitions is Idaho Code § 61-801, the first section of the Motor Carrier Act. It provides, in pertinent part:

**61-801. Definitions of Terms.**--The following definitions shall apply to this chapter:

a. The term "person" means any individual, firm, copartnership, corporation, company, association, or joint stock association, and includes any trustee, receiver, assignee, or personal representative thereof.

b. The term "commission" means the Idaho Public Utilities Commission.

c. The term "permit" means a permit issued under this chapter to any motor carrier.

d. The term "highway" means the public roads, highways, streets, and ways of the state.

e. The term "motor vehicle" means any vehicle, machine, tractor, trailer, or semi-trailer propelled or drawn by mechanical power and used upon the highway in the transportation of passengers and/or property that does not include any vehicle, locomotive, or car operated exclusively on a rail or rails.

f. The term "common carrier" means any person, which holds itself out to the general public to engage in the transportation by motor vehicle in commerce in the state of Idaho of passengers or property or any class or classes thereof for compensation, whether over regular or irregular routes, or by scheduled or unscheduled service.

.....

i. The term "motor carrier" means common carrier, contract carrier or private carrier.

j. The term "transportation" includes all vehicles operated by, for, or in the interest of any motor carrier irrespective of ownership or contract, express or implied, together with all services, facilities and property furnished, operated or controlled by any such carrier or carriers and used in the transportation of passengers and/or property in commerce in the state.

Tow truck operators are persons holding themselves out to the general public to provide transportation services by motor vehicle in intrastate commerce. The transportation services that they provide are towing of disabled vehicles and incidental passenger transportation along with the disabled vehicles. They operate motor vehicles on the highways of the state. Thus, tow truck operators squarely fall within the definition of "common carrier" (which is one of three kinds of motor carriers defined in the act--the other two are "contract carrier" and "private carrier").

The definitions in paragraphs (a) through (j) are the beginning of this analysis, but not the ending. That is because paragraph (k) of Idaho Code § 61-801 contains a number of explicit exemptions. It provides, in pertinent part:

k. Exemptions. Notwithstanding the definition of "motor carrier" as defined in this section, the following transportation shall be exempt from regulation by and payment of fees to the commission:

(1) motor vehicles employed solely in transporting school children . . . ; or

(2) taxicabs . . . ; or

(3) motor vehicles owned or operated by or on behalf of hotels and used exclusively for the transportation of hotel patrons between hotels and local railroads or airports or other common carrier stations; or

(4) motor vehicles controlled or operated by any farmer . . . ; or

(5) motor vehicles used exclusively in the distribution of newspapers; or

(6) transportation of persons or property by motor vehicle at an airport . . . ; or

(7) transportation of persons and/or property, including mobile and modular houses manufactured with wheels and undercarriage as part of the substructure, but not transportation of other houses, buildings or structures within a municipality or territory contiguous to such municipality if such operation outside such municipality be a part of a service maintained within the limits of a municipality with the privilege of transfer of passengers to vehicles within the municipality without additional fare; or

(8) the transportation of agricultural products . . . or livestock and livestock feed; or

(9) motor propelled vehicles for the sole purpose of carrying United States mail or property belonging to the United States; or

(10) motor carriers transporting products of the forest; or

(11) motor carriers transporting products of the mine . . . , except petroleum products; or

(12) motor carriers transporting household goods . . . .

Exemption (7) is the only one of these 12 exemptions that arguably could apply to tow truck operators. The seventh exemption, which has been amended several times, can best be understood by examining its version and the amendments to it.

The seventh exemption first appeared in the 1951 amendment to Idaho Code § 61-801. Chapter 291 of the 1951 Session Laws added subsection (k) to Idaho Code § 61-801. The following is the seventh paragraph of the 1951 version of subsection (k), which is the predecessor to the current version. It is reproduced once as it appears in the session law and a second time broken by line spacing and bracketed subdivisions not appearing in the text to assist in parsing the statute:

(7) Transportation of persons and/or property within a municipality or territory contiguous to such a municipality if such operation outside such municipality be a part of a service maintained within the limits of a municipality with the privilege of transfer of passengers to vehicles within the municipality without additional fare;

(7) Transportation of persons and/or property

[a] within a municipality or

[b] territory contiguous to such a municipality if such operation outside such municipality

[i] be a part of a service maintained within the limits of a municipality

[ii] with the privilege of transfer of passengers to vehicles within the municipality without additional fare;

Paragraph (7) contains two municipal exemptions. The first is a "pure" municipal exemption: All carriage of persons and/or property within a municipality is exempted from the Public Utilities Commission's regulation. The second is an exemption for operations in and contiguous to municipalities that are part of a service maintained within the municipality and with a privilege of transfer within the municipality without additional fare. Although the words "municipal bus" or "municipal bus services" never appear in the 1951 version of paragraph (7), the plain and natural reading of paragraph (7)'s second exemption to the general definition of common carrier would clearly apply to municipal bus services because they are transportation of persons and/or property within a municipality (or territory contiguous to such municipality) with the privilege of transfer of passengers to vehicles within the municipality without additional fare. Any other kind

of transportation service qualifying under this second exemption would have to provide for similar transfer rights to a service provided within the municipality.

Paragraph (7) was next amended in 1963 by Chapter 160 of the Session Laws. The title to that act described the amendment to Idaho Code § 61-801 as amending that section "BY INCLUDING THE TRANSPORTATION OF HOUSES, BUILDINGS OR STRUCTURES WITHIN THE JURISDICTION OF THE PUBLIC UTILITIES COMMISSION." Section 1 of the Session Law amended paragraph (7) of subsection (k) by adding the underlined words shown below:

(7) Transportation of persons and/or property except transportation of any house, building or structure within a municipality or territory contiguous to such municipality if such operation outside such municipality be a part of service maintained within the limits of the municipality with the privilege of transfer of passengers to vehicles within the municipality without additional fare;

The combination of the explanation in the title to the 1963 amendment and the plain language of the 1963 amendment itself shows that the "pure municipal" exemption and the "contiguous municipal bus exemption" were continued in all regards but one: the municipal exemption for housemovers was repealed. In all other regards, the two exemptions continued as before.

Paragraph (7) was last amended in 1981, by Chapter 230 of the Session Laws. That amendment provided:

(7) Transportation of persons and/or property, including mobile and modular houses manufactured with wheels and undercarriage as part of the substructure, but not except transportation of any other houses, buildings or structures within a municipality or territory contiguous to such municipality if such operation outside such municipality be a part of a service maintained within the limits of the municipality with the privilege of transfer of passengers to vehicles within the municipality without additional fare;

The plain and clear reading of this amendment is to clarify the existing law that the municipal exemption applies to movement of mobile and modular homes and to further clarify that the municipal exemption does not apply to movement of houses, buildings, or structures.

Nothing in the original version of paragraph (7) or either of its two amendments specifically addresses tow truck operations. Accordingly, tow truck operations may fall

under the general municipal exemption: tow truck operations, like all other transportation of persons and/or property not specifically addressed in paragraph (7), are not subject to the Commission's regulation when they are conducted exclusively within the borders of the municipality or territory contiguous to the municipality with the privilege of transfer. However, tow truck operations that hold themselves out to the general public to operate outside municipal limits do not fall within the exemption from the Commission's regulation and they are common carriers subject to the regulation prescribed by the Motor Carrier Act.

Under Idaho Code § 61-802, "it shall be unlawful for any motor carrier . . . to operate any motor vehicle and motor transportation without first having obtained from the Commission a permit covering such operation." Accordingly, the Motor Carrier Act itself requires tow truck operators who do not qualify for the municipal exemption to obtain a permit from the Commission as a condition of operating their common carrier tow truck services.

Idaho Code § 61-802 further provides that the Commission must find that any applicant for a permit be "fit, willing, and able properly to perform the service proposed and to conform to the provisions of this chapter and the requirements, rules and regulations of the commission thereunder . . . ." This statutory requirement subjects all motor carriers to the Commission's rules concerning motor carriers.

The Motor Carrier Act provides a number of specific requirements with which motor carriers must comply:

**61-804. Liability and Property Damage Insurance.**--The commission shall, before granting any permit to any motor carrier for transporting persons and/or property, require such motor carrier to procure and file with said commission liability and property damage insurance or a surety bond . . . on each motor propelled vehicle used in transporting persons and/or property providing for indemnity for loss or damage legally imposed upon such motor carrier, in an amount to be determined by general order of the commission for any personal injury suffered by one (1) person, by or while being transported in any vehicle, and in such additional amount as the commission shall determine, for all persons receiving personal injury; and also in an amount as shall be determined by the commission by general order for damage to the property of any person other than the insured . . . .

. . . .

**61-807. Rules, Regulations and Rates.**--The commission is hereby vested with the power and authority, and it is hereby made its duty, to fix just, fair, reasonable and sufficient rates, fares, charges, and classifications, and to alter and amend the same, and to prescribe such rules and regulations for common carriers as may be necessary to provide for adequate service and safety of operation, and to require the filing of such reports and other data with the commission as may be necessary, and to adopt any such other rules and regulations as may be necessary to govern the relationship between such common carriers and the traveling and shipping public; and also to prescribe such rules and regulations for contract carriers and private carriers as may be necessary to provide safety of operations. Such rules and regulations as may be adopted and promulgated by the said commission shall be adopted and promulgated by general order of such commission or otherwise.

The specific provisions of these two sections of the code give the Commission authority to provide requirements for equipment, safety, operators, insurance, log books, etc. The Commission may do so by "general order," which is the pre-Administrative Procedure Act term for what are now called rules. The Commission has done so by its adoption of the Motor Carrier Rules, IDAPA 31.B (in the current codification, which will be transferred to IDAPA 31.61.01000 *et seq.* in the new codification effective July 1, 1993).

Unless Idaho Code § 61-801 is amended to specifically address tow truck operators in its exemptions from the general definition of common carriers subject to the Motor Carrier Act, all tow truck operators that do not fall within the municipal exemptions fall within the statutory definition of common carrier. They are subject to the statutory requirement of obtaining a permit before operating outside the municipality and are subject to the Commission's rules concerning equipment, safety requirements, insurance, log books, etc. The Commission is, however, authorized by statute to prescribe various classifications of common carriers. It has the statutory authority to provide different requirements for equipment, safety, operators, insurance, log books, etc., for tow truck operators differing from the rules for common carriers as a whole.

## **AUTHORITIES CONSIDERED**

### **1. Idaho Statutes:**

Idaho Code § 61-801.

Idaho Code § 61-802.

Idaho Code § 61-804.

Idaho Code § 61-807.

1951 Idaho Session Laws, Chapter 291.

1963 Idaho Session Laws, Chapter 160.  
1981 Idaho Session Laws, Chapter 230.

**2. Idaho Cases:**

Idaho State Homebuilders v. Washington Water Power Company, 107 Idaho 415,  
690 P.2d 350 (1984).

DATED this 27th day of May 1993.

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**Analysis by:**

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