

1984 S.C. Op. Atty. Gen. 75 (S.C.A.G.), 1984 S.C. Op. Atty. Gen. No. 84-34, 1984 WL 159841

Office of the Attorney General

State of South Carolina

Opinion No. 84-34

April 3, 1984

*1 Honorable Alex C. Harvin, III
Majority Leader
State House of Representatives
505 Blatt Building
Columbia, South Carolina 29201

Dear Representative Harvin:

Thank you for your letter of March 13, requesting an opinion of this Office whether the Public Service Commission's Transportation Division Inspectors may seek business records and documents of an unlicensed motor vehicle carrier doing business in South Carolina.¹ The statutory authority of the Public Service Commission appears to authorize the Commission to seek such records and information.

We do not by way of this opinion question the enforcement policies of the Public Service Commission and note, parenthetically, that the Commission enjoys a very broad discretion in determining how to utilize its limited resources to best enforce various laws and regulate the various industries within its jurisdiction. These broad discretionary enforcement decisions by the Commission are generally outside the scope of review by this Office except when such decisions may be in violation of the law.

[Sections 58-3-90](#) thru [58-3-210](#), [CODE OF LAWS OF SOUTH CAROLINA](#) 1976 authorize the Commission, *inter alia*, to require a 'full and detailed report and information' to be furnished by a motor vehicle carrier doing business in this State. In addition, [§ 58-3-190](#) authorizes the Commission to propound questions and interrogatories to a motor vehicle carrier doing business in this State. 'Motor vehicle carrier' is defined at [§ 58-23-10\(4\)](#) of the [SOUTH CAROLINA CODE](#) in the following: The term 'motor vehicle carrier' means every corporation or person, their lessees, trustees or receivers, owning, controlling, operating or managing any motor propelled vehicle, not usually operated on or over rails, used in the business of transporting persons or property for compensation over any improved public highway in this State; . . .

This legislative definition of motor vehicle carrier being in para materia with [§§ 58-3-190](#) thru [58-3-210](#) must be deemed controlling. Importantly, the statutory definition of motor vehicle carrier makes no reference to, or distinction based upon licensure, thus, it would appear that the General Assembly intended that [§§ 58-3-190](#) thru [58-3-210](#) are to be applicable both to licensed and unlicensed motor vehicle carriers doing business in this State. Consistent with this application of [§§ 58-3-190](#) thru [58-3-210](#) is the Commission's jurisdiction and authority over all motor vehicle carriers operating in this State. *See, i.e.*, [§ 58-23-20](#), [CODE OF LAWS OF SOUTH CAROLINA](#) 1976.

The statutory scheme for providing of records and obtaining of information appearing at [§§ 58-3-190](#) thru [58-3-210](#) provides for the following. The Commission may request from a business certain identified information and reports, and in addition may request and propound certain questions and interrogatories to be answered by the business. If the business refuses to provide the information and reports, or if the response is inadequate the Commission, in person or through its agents, may compel the production of the records and may compel witnesses to attend to be interrogated under oath. While the Commission has not promulgated any regulations amplifying the procedures to be followed in compelling the production of documents and testimony pursuant to these statutes, it appears that the format envisions the issuance of a subpoena, subpoena duces tecum or some similar process by the Commission if the business refuses to respond to the request or responds in inadequate fashion.

Regardless of the precise format utilized, whether it be a subpoena, warrant or motion to produce, the contemplated procedure clearly envisions and involves the issuance of some process by the Commission, and, consequently, the statutes do not provide, either expressly or by implication, for an involuntary search or inspection of documents without some process. Likewise, the scheme envisioned does not provide for a search or forceable entry of private premises without process. Absent express statutory language permitting such a search, this authority cannot be presumed.

*2 It is well settled that administrative searches and seizures and regulatory inspection of commercial property are subject to Fourth Amendment protection. [See v. Seattle](#), 387 U.S. 541, 87 S.Ct. 1737, 18 L.Ed.2d 943 (1967); 69 L.Ed.2d 1078 ANNOT: ‘Fourth Amendment’s Prohibition of Unreasonable Search and Seizure as Applied to Administrative Inspections of Private Property.’ Nonetheless, investigative authority similar to that enjoyed by the Commission is not rare, and such authority is generally upheld as reasonable when challenged upon Fourth or Fifth Amendment grounds. [Oklahoma Press Publishing Co. v. Walling](#), 327 U.S. 186, 66 S.Ct. 494, 90 L.Ed. 614 (1946); [Endicott Johnson Corp. v. Perkins](#), 317 U.S. 501, 63 S.Ct. 339, 87 L.Ed. 424 (1942). DAVIS, ‘Administrative Law Treatise’ (2d Ed. 1979) §§ 4:4 et seq. Moreover, motor vehicle carriers may well enjoy less privacy protection than commercial establishments in general. [Smith v. I.C.C.](#), 245 U.S. 33, 38 S.Ct. 30, 62 L.Ed. 135 (1917):

. . . it may be it is entirely true, . . . that ‘there can be nothing private or confidential in the activities and expenditures of a carrier engaged in interstate commerce.’

[Smith, supra](#), 245 U.S. at 43.

In addition, the U.S. Supreme Court has concluded that an agency need not have ‘probable cause’ that a business subject of its inquiry is within its jurisdiction, since often times the conduct of the investigation or inquiry discloses that information. Thus, there appears to be no constitutional constraint upon the General Assembly making §§ 58–3–90 thru 58–3–210 applicable to licensed and unlicensed motor vehicle carriers.

Accordingly, it appears that the Public Service Commission may seek certain business records and information of a business thought to be operating as a motor vehicle carrier in this State. As noted, however, these provisions do not specifically authorize searches of business premises without some legal process by Transportation Division Inspectors. Thus, a Transportation Division Inspector is not authorized to compel production of documents or information absent some process.

With continued best wishes, I remain

Very truly yours,

Edwin E. Evans
Senior Assistant Attorney General

Footnotes

1 [Sections 58–3–310 et seq. CODE OF LAWS OF SOUTH CAROLINA](#) 1976 (1983 Cum.Supp.) detail generally the authority of Transportation Division Inspectors.

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