

1976 S.C. Op. Atty. Gen. 75 (S.C.A.G.), 1976 S.C. Op. Atty. Gen. No. 4262, 1976 WL 22882

Office of the Attorney General

State of South Carolina

Opinion No. 4262

February 13, 1976

***1 An armored car company that is engaged in the business of transporting small items of property and money is an express company within the meaning of Section 65–608 and 65–609 of the Code.**

Director

Income Tax Division

You have asked whether an armored car company is an express company subject to the provisions of Sections 65–608 and 65–609 of the Code of Laws of South Carolina?

The provisions of both Sections 65–608 and 65–609 apply to a railroad company, express company, street railway company, navigation company, waterworks company, power company, electric cooperative, light company, gas company, telegraph company, telephone company, parlor, dining or sleeping car company, tank car company, refrigerating car company and fruit growers' express car company, and all privately operated car lines. Of these enumerated companies the term 'express company' is, in our opinion, the only one which may include an armored car company.

In 1883 the Supreme Court of the United States defined the words 'express business' used in a revenue statute stating that this term must be given meaning in the common acceptance. *Retzer v. Wood*, 109 U. S. 185, 3 S. Ct. 164, 27 L. Ed. 900. Since this decision express companies have changed their methods of operation, however, the service which they render has generally been the same.

Webster's New Collegiate Dictionary defines 'express' as 'a messenger sent on a special errand; a dispatch conveyed by a special messenger; a system for the prompt and safe transportation of parcels, money, or goods at rates higher than standard freight charges.' A characteristic of express company as distinguished from other common carriers is that they are involved in the speedy delivery of small and valuable packages of goods any money. *Alsop v. Southern Express Co.*, 104 N. C. 278, 10 S. E. 297, 6 L.R.A. 271.

There are numerous cases concerning the obligations entrusted to the Interstate Commerce Commission. In the case of *Auclair Transportation, Inc. v. United States*, 221 F. Supp. 328, affirmed 376 U. S. 514, 84 S. Ct. 966, the Court quoted the Commission's definition of 'express service' as follows:

"generally the expedited handling of small parcel traffic which common carriers of ordinary freight do not desire usually or are not able to perform. It is a service superior to that rendered as a rule by common carriers of general freight, and thus requires the payment of premium charges."

This case went on further to distinguish this service from ordinary freight service:

'The Commission has long recognized the 'historical cleavage' between ordinary freight service and express service and that '(Express) service may be said to be competitive with ordinary freight service to a very limited extent only, and the mere fact that it can and does survive in competition with general freight service conducted generally at lower rates is indicative of the inherent difference between the two services.'

*2 We have been advised in regard to the question that an armored car company is restricted as to the property which it is authorized to transport. Its authority is limited to small valuable items or money which require special protection. It is our opinion that the service which armored car companies provide generally falls within the definition of services provided by an express company. It is therefore taxable under the provisions of Sections 65-608 and 65-609.

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