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FILE NO. S-1090

MOTOR VEHICLES:
"Gooseneck" or "Fifth Wheeler"
Trailer - Registration.

Honorable William S. McKenzie
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Scott County
Winchester, Illinois 62694

Dear Mr. McKenzie:

I have received your letter in which you ask whether farm trailers of the type commonly referred to as "goose-neck" trailers or "fifth wheeler" trailers are required to be registered and licensed when they are used to transport harvested grain upon the highway from the field to the grain elevator.

The vehicles subject to registration and the exceptions from the requirement are enumerated in section 3-402

Honorable William S. McKenzie - 2.

of The Illinois Vehicle Code (Ill. Rev. Stat. 1975, ch. 95 1/2, par. 3-402), which provides in pertinent part:

"§ 3-402. Vehicles subject to registration —
Exceptions. A. Exemptions and Policy. Every
motor vehicle, trailer, semitrailer and pole trailer
when driven or moved upon a highway shall be subject
to the registration and certificate of title pro-
visions of this Chapter except:

* * *

(2) Any implement of husbandry whether of a type
otherwise subject to registration hereunder or
not which is only incidentally operated or moved
upon a highway;

* * *

Depending upon whether some part of its weight and that of
its load does or does not rest upon the towing vehicle, the
farm trailer to which you refer is either a semitrailer or a
trailer within the meaning of section 3-402A as those terms
are defined in sections 1-187 and 1-209 respectively of The
Illinois Vehicle Code. (Ill. Rev. Stat. 1975, ch. 95 1/2,
pars. 1-187, 1-209.) It is therefore clear that unless it
comes within an exception, the trailer about which you inquire
must be registered pursuant to section 3-402A.

The question is whether the "goose-neck" or "fifth
wheeler" trailer is an implement of husbandry operated only

Honorable William S. McKenzie - 3.

incidentally upon a highway. Assuming, as you do in your letter, that this type of trailer is an implement of husbandry as that term is defined in section 1-130 of the Code (Ill. Rev. Stat. 1975, ch. 95 1/2, par. 1-130), I am nevertheless unable to conclude that it is operated only incidentally upon a highway when it is used to haul grain from the field to the elevator.

Although I have not been able to find any Illinois cases interpreting the phrase "only incidentally operated or moved upon a highway", the Supreme Court of Iowa has construed a very similar phrase. In State v. Griswold, 260 N.W. 489 (Iowa, 1938), the Court said at page 491 concerning the phrase "incidentally operated or moved over the highways":

"It appears to us, however, rather improbable that the legislature had in mind the thought of chance or of something undesigned or unintended, when they used the word 'incidentally' in connection with such a subject matter as driving on the highway. It seems more reasonable to look upon this word 'incidentally' as characterizing the operation of a vehicle when the operating is something 'naturally happening or appertaining, esp. as a subordinate or subsidiary feature', these meanings being found in the same authority among the definitions of the noun and the adjective 'incident'. In saying 'incidentally

Honorable William S. McKenzie - 4.

operated' the legislature evidently had reference to such operation over the highways as naturally appertains to the use of the special mobile equipment."

In Griswold the vehicle in question was a feed grinder which the farmer used to grind feed for himself and for other farmers within several miles of his own farm and which was moved from farm to farm upon the highways to do the grinding at the various farms. The court held the grinder was only incidentally operated upon the highways and was not required to be registered. In that case, however, the feed grinder performed a function on the farm completely separate from being operated on the highways. Its principal function was to grind feed on the farm, and its movement over the highways was an incidental movement necessary to get it to the place where it would perform its main function.

In contrast, in the present case the only functions of the trailer besides its movement over the highways are to sit in the field and be filled with grain from the combine or corn picker and to be emptied at the elevator. It is an integral part of the main function of the trailer to carry

Honorable William S. McKenzie - 5.

the grain on the highways. While the feed grinder in Griswold completed its agricultural work at each farm and then moved to another farm, the filling of the trailer in the field in the present case does not complete the agricultural operation. The grain must be carried over the highways to the elevator to complete the work. One of my predecessors also quoted the language I have quoted from Griswold in an opinion (1960 Ill. Att'y. Gen. Op. 167) which discusses the meaning of the phrase presently under consideration, concluding at page 171:

"From the foregoing it is apparent that an implement of husbandry is exempt from the registration provisions of the Illinois Motor Vehicle Law, only if its movement upon the highway is a subordinate or subsidiary feature of its operation, naturally and solely relating to agricultural, horticultural or livestock raising operations."

Carrying grain upon the highways is simply not a "subsidiary or subordinate feature" of the operation of a "goose-neck" or "fifth wheeler" trailer used to haul grain from the field to the elevator.

The present case is more similar to one dealt with by my predecessor in an opinion (Ill. Att'y. Gen. Op. No. UP-1130, issued March 3, 1964) concerning whether a tractor and wagons were required to be registered under The Illinois

Honorable William S. McKenzie - 6.

Vehicle Code. The farmer had adapted farm wagons to use for hauling corn cobs and was hauling the cobs, which he was either buying from other farmers or hauling for hire, from the farms to a corn cob processor. The opinion stated that the vehicle required registration, in part because the facts of the case did not describe incidental operation or movement upon the highway. The hauling of the cobs upon the highway was an integral part of the vehicle's function. Similarly, in the present case the hauling of the grain upon the highway is a part of the trailer's primary function and not incidental to it.

Therefore, it is my opinion that a "goose-neck" or "fifth wheeler" trailer used to haul grain upon the highways from the field to the elevator is not operated incidentally upon the highways. It follows that such trailers are subject to the registration requirements of section 3-402 of The Illinois Vehicle Code.

Very truly yours,

A T T O R N E Y G E N E R A L