

grant but a limitation of legislative power (*State vs. Mursda*, 116 N. J. L. 219), the constitutional prescription of duty for the State Auditor is, we think, *pro tanto* a constitutional restriction upon the Legislature. We are not to be understood as saying that it was the intention of the Legislature to relieve the State Auditor of post-audit jurisdiction over the Turnpike Authority. We are only to be understood as making the point that the Legislature could not, even if it so desired, make effective provision to transfer to another person or other persons the duty assigned to the State Auditor by the Constitution in clear and imperative language.

In this connection, it is to be observed that neither the Constitution nor the implementing statute relating to the State Auditor (R. S. 52:24-1 *et seq.*) requires the State Auditor to conduct an *annual* post-audit of all departments, offices and agencies of the State Government. Therefore, the requirement, in the Turnpike Authority Act, of an audit to be made "at least once in each year by certified public accountants" evinces an unmistakable legislative intent that the annual report, which the same section of the act (N. J. S. A. 27:23-14) requires the Turnpike Authority to make to the Governor and the Legislature, shall truly, in the words of the Legislature, "set forth a complete operating and financial statement covering its operation during the year."

Very truly yours,

THEODORE D. PARSONS,
Attorney General.

By: DOMINIC A. CAVICCHIA,
Deputy Attorney General.

JUNE 4, 1951.

COL. CHARLES H. SCHOEFFEL, *Superintendent,*
New Jersey State Police,
Trenton, New Jersey.

FORMAL OPINION—1951. No. 21.

DEAR COLONEL SCHOEFFEL:

This will acknowledge receipt of your letter regarding summons issued to Arthur G. Nelson, Annandale, New Jersey, for overloading a truck which bore farmer's registration license, with your request as to whether or not a farmer can be arrested and convicted for overloading a truck, where he is carting farm products.

The term "commercial motor vehicle" includes every type of motor-driven vehicle used for commercial purposes on the highways, such as the transportation of goods, wares and merchandise, excepting such vehicles as are run only upon rails or tracks and vehicles of the passenger car type used for touring purposes or the carrying of farm products and milk, as the case may be. Under this section the exemption would apply only to vehicles that are run on rails or tracks and the passenger car type used for touring purposes. These words must be read in connection with the words "or the carrying of farm products and milk, as the case may be." (39:1-1.)

Chapter 142 of the Laws of 1950 states that an applicant for registration for automobile commercial vehicles, trailers, semitrailers and tractors shall pay a fee based on the gross weight of the vehicle and load, and then proceeds to give the respective loads. Section 1 of the act reads in part:

"It shall be unlawful for any vehicle having gross weight of load and vehicle in excess of the gross weight provided on the registration certificate to be operated on the highways of this State."

This act refers to any vehicle having excess of gross weight provided on the registration certificate, and the registration certificate provides for the gross weight.

The act further states that the gross weight imposed on the highway by the wheels of any one axle of a vehicle shall not exceed 22,400 pounds.

We then come to the question concerning license plates for farmers.

Under 39:3-25 license plates are issued for trucks marked "farmer" upon evidence satisfactory to the commissioner that the applicant is a farmer who is actually engaged in the growing, raising and producing of farm products as an occupation. License plates issued under authority of this section are to be placed upon motor vehicles engaged exclusively in the carrying or transportation of applicant's farm products, raised or produced on his farm, and farm supplies, and not engaged in hauling for hire.

The last paragraph of this section states that the term "farmer" means any person engaged in growing, raising and producing farm products on a farm not less than three acres in area, and who does not engage in the business of buying farm products for re-sale. The term "farm products" means any food crop, cattle, hogs, poultry, dairy products and other agricultural products designed and to be used for food purposes.

The law in question does not exempt farmers from overloading. It only confers a special privilege on farmers for reduction of fees for the purposes of farmer license plates. In every other place the act refers to "vehicle" and the intent of the Legislature was that the owner of every vehicle that violates the act concerning overloading should be prosecuted and a farmer should not be exempt from the same offense. It only confers on him special privileges for the price that he has to pay for a license, because the motor vehicle and traffic regulations set forth that a vehicle means every device in, upon and by which a person or property is or may be transported upon a highway, excepting devices moved by human power or used exclusively upon stationary rails or tracks. (39:1-1.)

It is my opinion, from the facts and law stated above, that any person driving a vehicle with a farmer's license, who violates the overloading act, can be successfully prosecuted and convicted.

Yours very truly,

THEODORE D. PARSONS,
Attorney General.

By: ROBERT PEACOCK,
Deputy Attorney General.