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STATE OF ALABAMA

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Honorable Jim Sullivan  
President  
Alabama Public Service Commission  
P. O. Box 991  
Montgomery, AL 36101

Public Service Commission -  
Motor Carriers - Exemptions

Where perlite is sold as  
fertilizer and is labeled as  
such as required under  
§ 2-22-7, it would fall under  
fertilizer exemption found in  
§ 37-3-4(a)(1)(c).

Where perlite is sold as liming  
material and is so labeled as  
required under § 2-23-4, it  
would fall under agricultural  
commodity exemption of  
§ 37-3-4(a)(1)(c).

Dear Mr. Sullivan:

This opinion is issued in response to your request for an  
opinion from the Attorney General.

QUESTION

Where a motor vehicle carrier is hauling  
perlite to nurseries where it will be mixed  
with other materials to produce potting  
soil, is such hauling operation exempt from  
the supervision and control of the Public  
Service Commission under Code of Alabama  
1975, § 37-3-4(a)(1)(c)?

FACTS AND ANALYSIS

Code of Alabama 1975, § 37-3-4(a)(1)(c) provides in pertinent part:

"This chapter shall not be construed to apply to:

\* \* \*

"c. Motor vehicles while used in the transportation of property when the owner of the vehicle is legally and regularly engaged in the business of selling such property and is the owner and has the legal title to the motor vehicle involved, also motor vehicles if engaged in hauling milk, livestock, coal, coke, logs, lumber, poles, pulpwood, cotton in bales, cottonseed, fertilizer, peanuts, potatoes or any other agricultural commodity of any kind (but not manufactured products thereof); . . ."

In formulating an answer to your question, we have consulted with the general counsel for the State Department of Agriculture and Industries, who informed us that perlite is not considered a liming material or fertilizer unless it is sold as such; and if perlite is sold as either a liming material or fertilizer, it must have a guaranteed analysis as required under Code of Alabama 1975, §§ 2-22-7 and 2-23-4.

Based upon this information, it is the opinion of this office that if perlite is sold as a fertilizer and is labeled as such as required under § 2-22-7, it would fall under the fertilizer exemption found in § 37-3-4(a)(1)(c).

Additionally, if perlite is sold as a liming material and is so labeled as required under § 2-23-4, we have been informed that it would fall within the definition of an agricultural liming material; hence, it would come within the agricultural commodity exemption provided for in § 37-3-4(a)(1)(c).

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CONCLUSION

Where perlite is sold as fertilizer and is labeled as such as required under § 2-22-7, it would fall under the fertilizer exemption found in § 37-3-4(a)(1)(c).

Where perlite is sold as a liming material and is so labeled as required under § 2-23-4, it would fall under the agricultural commodity exemption of § 37-3-4(a)(1)(c).

I hope this sufficiently answers your question. If our office can be of further assistance, please do not hesitate to contact us.

Sincerely,

DON SIEGELMAN  
Attorney General

By:



JEAN WILLIAMS BROWN  
Assistant Attorney General

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