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DISTRICT IV

December 19, 2016

To:

Hon. Todd J. Hepler
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Woleske Construction Company, Inc.
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You are hereby notified that the Court has entered the following opinion and order:

2016AP624

State of Wisconsin v. Woleske Construction Company, Inc.
(L.C. #2015TR4116)

Before Kloppenburg, P.J.¹

Woleske Construction Company, Inc. was cited for operating as a “contract motor carrier” without a license, in violation of WIS. STAT. § 194.34(1), while transporting a load of stone it had purchased for use in a sewer and water construction project it was building in the City of Portage pursuant to a contract with the City. The circuit court found Woleske guilty after a bench trial at which both the officer who issued the citation and Woleske’s president, Joseph Woleske, testified. Woleske appealed and filed an

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(g) (2013-14). All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

appellant's brief; the State has not filed a respondent's brief. After reviewing the record, I conclude that this case is appropriate for summary disposition on the merits. *See* WIS. STAT. RULE 809.21. Because the undisputed evidence shows that Woleske Construction was not a "contract motor carrier" transporting materials "for hire" within the meaning of WIS. STAT. § 194.01(2) and (4), I reverse.

WISCONSIN STAT. § 194.34(1) provides that, "No person may operate any motor vehicle as a contract motor carrier" without a license. A "[c]ontract motor carrier" is defined in WIS. STAT. § 194.01(2) as "any person engaged in the transportation by motor vehicle ... of property for hire" "For hire" is defined in WIS. STAT. § 194.01(4) as "for compensation," but not including "motor vehicle operations which are conducted merely as an incident to or in furtherance of any business or industrial activity." The question here is whether Woleske was transporting the stone for hire or "merely as an incident to or in furtherance" of its business as a sewer and water construction company.

The application of a statute to undisputed facts is a question of law reviewed *de novo*. *Barritt v. Lowe*, 2003 WI App 185, ¶6, 266 Wis. 2d 863, 669 N.W.2d 189. Here, the undisputed evidence shows that Woleske was transporting stone it had purchased not because its "primary business" was hauling the stone, but in furtherance of its "primary business" of building sewer and water construction projects. *See Gensler v. DOR*, 70 Wis. 2d 1108, 1118, 236 N.W.2d 648 (1975) (stating that the question to be resolved under the definition of "for hire" is whether the operator is "involved in a hauling operation and by the hauling make[s its] profit" or whether the "hauling is merely

incidental to the [operator's] primary business.” Here, it is undisputed that the stone was for a sewer and water construction project for the City of Portage, and it is by such projects that Woleske “make[s its] profit.” *Id.*

Because Woleske was transporting its property using its equipment in furtherance of its construction activities, it was not hauling property for hire and was, therefore, not a contract motor carrier requiring a license under WIS. STAT. § 194.34(1). Accordingly, I reverse.

IT IS ORDERED that the judgment is summarily reversed under WIS. STAT. RULE 809.21(1).

Diane M. Fremgen
Clerk of Court of Appeals