

MOTOR VEHICLES: 1) Commercial motor vehicles registered for a full year. Registration-- 2) Weight load change immaterial. 3) Maximum weight load permitted full year. 4) Over maximum weight limit permitted by highway department. 5) Credit to owner for fees paid before if fees increase. 6) Owner may operate vehicle under subsections (8) new law or (10) old law. 7) Farmer may borrow lease or rent licensed vehicle from another farmer for hauling distances over twenty-five miles to farm of operator under Secs. 10 and 19. House Bill No. 283. 8) Resident of Missouri cannot ~~operate~~ lease vehicle owned and registered outstate, vehicle not being subject of agreement for sale or lease and not in possession of potential mortgagor to operate from Missouri in either interstate or intrastate business on Missouri highways unless vehicle registered in Missouri. Foreign licenses no protection to operator on highways of Missouri.



November 10, 1952

11-26-52

Department of Revenue
State of Missouri
Jefferson City, Missouri

Attention: Mr. Olen B. Curtis, Supervisor

Gentlemen:

This will be the opinion you requested from this office on numerous legal questions which may arise in the administration of the terms of Conference Committee Substitute for Amended Senate Committee Substitute for House Bill No. 283, 66th General Assembly, relating to the licensing, taxation and regulation of the operation of motor vehicles in this State. Your letter in this behalf reads as follows:

"Several questions have come up regarding the administration and the enforcement of differences in requirements of registration of commercial vehicles under the old Statutes and the new law, effective July 29, 1952, as set out in Conference Committee Substitute for Amended Senate Committee Substitute for House Bill No. 283, 66th General Assembly, for which we respectfully request an official opinion to each of the questions listed herein:

"1. After the effective date of this law, are all commercial motor vehicles required to re-register?

"2. Is the owner of a commercial motor vehicle required to re-register said commercial motor vehicle after the effective date of this law providing he continues to haul the same weight load for which the vehicle has been

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previously registered for the year 1952?

- "3. If an owner purchased 1952 commercial license for over 44,000 pounds under Section 301.060, 1949 Statutes, and this license permitted him to haul up to 56,000 pounds, would this license permit him to haul up to 60,010 pounds after the effective date of this new law?
- "4. Several commercial truck owners engaged in heavy hauling purchased truck license for gross weight of 44,000 pounds under the (old law referred to above), expecting to be permitted with special permit issued by the Highway Department, to haul to the limit of the permit, which could be 75,000 pounds to 85,000 pounds on special occasions, without additional fees. Would this practice be permitted under the new schedule of fees as outlined in this House Bill 283, or must he re-register, paying for the maximum allowed under House Bill 283 before being permitted to obtain or operate under special excess weight permit?
- "5. When a registrant desires to increase the weight for which the commercial motor vehicle is licensed, may credit be allowed for fees originally paid to (a) Motor Vehicle Registration Department, (b) Public Service Commission
- "6. Assuming that commercial motor vehicles registered prior to the effective date of this new law are not required to re-register, will a commercial motor vehicle operator be permitted to operate his vehicle as defined in Section 301.010, sub-paragraph 8, Revised Statutes of 1949, or as defined in Section 301.010, sub-paragraph 9, of House Bill 283?

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- "7. Does this law permit a farmer to (a) borrow, (b) lease, (c) rent a commercial motor vehicle from another farmer who has local commercial license on his vehicle, for the purpose of hauling property to the farm of the operator, where the haul is for a greater distance than twenty-five miles?
- "8. May a Missouri resident lease from an out-state corporation or an individual owner, a motor vehicle owned and registered in the name of the lessor and the vehicle is not the subject of an agreement for conditional sale or lease with the right of purchase, operate this vehicle on the foreign license (1) intra-state, (2) inter-state, without registering it in the State of Missouri?"

Some of the questions submitted in your letter are based upon the further question whether the terms of numbered sections of Chapter 301, RSMo 1949, or the terms of said House Bill No. 283, shall be followed in the administration of the Act by your Department where some vehicles were registered under the old law for a year, and where there is an actual or an apparent conflict between such provisions of the statutes. Chapter 301, RSMo 1949, dealt, as do the provisions of said House Bill No. 283 deal, with licensing and taxing, among other provisions, of motor vehicles used upon the highways of this State, both for passenger and commercial purposes. Your letter indicates that here your Department is more particularly concerned with the questions of registration of commercial motor vehicles and the hauling weights and fees or taxes to be paid for the operation of such vehicles after July 29, 1952, after said House Bill No. 283 goes into effect. Investigation of the effective date of said House Bill No. 283 discloses that this bill was Truly Agreed To and Finally Passed by the 66th General Assembly on March 24, 1952, and that the General Assembly finally adjourned on April 29, 1952. Section 29 of Article III of the Constitution of this State, 1945, provides that no law passed by the General Assembly shall take effect until ninety days after the adjournment of the session at which it was enacted. Such periods of time and provisions, therefore, establish July 29, 1952, as the effective date of said House Bill No. 283.

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Section 301.030, RSMo 1949, provided for a system of registration of motor vehicles of all types.

A part of Section 1 of Section 301.030 so providing reads:

"* * * Commencing July 1, 1949, motor vehicles shall be registered for a period of twelve consecutive calendar months.* * *."

Section 301.030 of House Bill No. 283, makes a distinction in the period of time for which motor vehicles shall be registered according to the type of vehicle. Section 1 of Section 301.030, House Bill (No. 283, concerning such registration states, in part:

"* * * Commencing July 1, 1949, motor vehicles, other than commercial motor vehicles, shall be registered for a period of twelve consecutive months.
* * * ."

Section 3 of Section 301.030 of House Bill No. 283, respecting the registration of commercial motor vehicles, in part, reads as follows:

"All commercial motor vehicles must be registered with the director on a calendar year basis. * * * ."

Sections 301.060 in Chapter 301 and 301.060 in said House Bill No. 283, each, in providing for the registration fee to be paid on motor vehicles refers to the license fee as "annual registration fees." This supports and supplements the quoted text from Section 301.030, RSMo 1949, and the quoted text in Section 3 of Section 301.030 of said House Bill No. 283, supra, as indicating that the Legislature intended in the enactment of such above-quoted provisions, that the registration of motor vehicles shall be for a period of twelve months and on a yearly basis. If then, a commercial vehicle has been registered prior to the effective date of said House Bill No. 283, such commercial motor vehicle may not be required to be re-registered during the period of its existing certificate of registration. We believe the Legislature must have said in express terms that a new registration of such motor vehicles would be required after the effective date of said House Bill No. 283 and within the one year period after the date of the previous registration of such motor vehicle before any such

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vehicles may be required to be registered during 1952. The Legislature has not so said. The succinct answer then to question No. 1 is No.

Considering your second question whether the owner of a commercial motor vehicle may be required to re-register such vehicle after the effective date of said House Bill No. 283 providing he continues to haul the same weight of load for which the vehicle has previously been registered for the year 1952, our reply is that, since we have held in our answer to question number one, supra, that a commercial vehicle registered in 1952, prior to the effective date of said House Bill No. 283, is not required to be re-registered during 1952, the operator of such commercial vehicle may continue to haul during 1952 the same weight load for which such vehicle had been previously registered. Our direct answer, therefore, to your question number two is No.

Your third question inquires, if an owner purchased a 1952 commercial vehicle license for over 44,000 pounds under Section 301.060, RSMo 1949, and such license permitted the operator to haul up to 56,000 pounds, may such license permit him to haul up to 60,010 pounds after the effective date of said House Bill No. 283. We see no reason, nor do we find any authority to the contrary, why the operator of such commercial vehicle should not be permitted to haul up to the maximum rate limit, whatever it may be, during 1952, where the operator has registered for the highest weight haul permitted during 1952, and during the full period of his registration license for 1952. There is no provision in Chapter 301, RSMo 1949, or in said House Bill No. 283, preventing the operator from hauling whatever the maximum weight load would be in 1952 where he has previously procured a license for a commercial motor vehicle for the full year of 1952. Our answer, therefore, to your third question is Yes.

You submit in your fourth question the proposition first, whether if, and your letter so indicates that this practice has been followed, some commercial truck owners, engaged in heavy hauling, who have purchased truck licenses under the terms of Chapter 301, RSMo 1949, for gross weight of 44,000 pounds, anticipating that they will be permitted under a special permit from the Highway Department to haul the limit under such special permit which could be 75,000 pounds to 85,000 on special occasions, may be permitted so to do without additional fees, and would this practice be followed under House Bill #283, or must such truck owner re-register and pay for the maximum allowed under House Bill #283 before being permitted to obtain such special excess weight certificate or operate under such permit.

We believe that when a commercial truck license has been

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issued to the owner for hauling a gross weight of 44,000 pounds, under the old law for one year, he may be permitted to haul, under a special certificate issued by the official authorized to issue such certificates under Highway Department laws, up to the full limit of such special permits, without such owner and operator being required to re-register such vehicle or before being permitted to obtain and operate such vehicle under such special excess weight permit.

Manifestly, such operator of such commercial truck would be entitled under his license to operate for the full period of a year covered by the license and to haul a gross weight of 44,000 pounds under sub-section (1) of Section 301.060, RSMo 1949, without re-registering after the new law takes effect, Section 304.200 RSMo 1949, authorizes the Chief Engineer of the Highway Department, and in municipalities, certain municipal authorities of this State, to issue special over-weight certificates upon occasion, which said Section 304.200 reads as follows:

"1. The chief engineer of the state highway department, whenever in his opinion the public safety or public interest so justifies, may issue special permits for vehicles exceeding the limitations on width, length, height and weight herein specified. Such permits shall be issued only for a single trip or for a definite period, not beyond the date of expiration of the vehicle registration and shall designate the highways and bridges which may be used under the authority of such permit.

"2. The officer in charge of the maintenance of the streets of any municipality may issue such permits for the use of the streets by such vehicles within the limits of such municipalities."

This section authorizes the issuance of overweight certificates by such specified officers without regard to the time of the registration of such motor vehicles or the period over which it extends. The special overweight permit may be issued for a definite period not to exceed the expiration date of the registration period expressed in the license.

We believe, therefore, that an owner of a commercial motor vehicle, on occasion may, under a special overweight permit issued by the officer named in said Section 304.200, haul the full weight load specified in such permit without paying additional fees, and that such motor vehicles need not be re-registered under said House

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Bill #283 before the owner may obtain such special overweight certificate or operate such motor vehicle thereunder. Our answer, therefore, to the first problem in your fourth question whether the maximum weight limit may be hauled under a special permit by the officers named in Section 304.200, without additional fees, and would this practice be permitted under House Bill No. 283 is Yes.

On the further question whether the owner of such commercial truck must re-register such motor vehicle, paying for the maximum weight allowed under House Bill No. 283 before being permitted to obtain or operate under a special excess weight permit submitted in your fourth question, our answer is No.

Your fifth question asks whether the owner of a commercial vehicle has registered such vehicle for a certain weight and desires to increase the weight load for which the vehicle is licensed may ~~be~~ be allowed credit for the amount of the fee originally paid to the Motor Vehicle Registration Department or the Public Service Commission. We are unable to find any statute providing in express terms that such registrant of such commercial motor vehicle is entitled to have credit on the new fee required upon the increase of the weight load he may haul, nor do we find any authority, statutory or otherwise, holding that such registrant may not be entitled to such credit.

The State in the transaction of its business may, and should, transact the State's business with the people in a fair, just and reasonable manner, according to business principles in the same manner and to the same extent that the State expects its citizens to form and carry out their agreements with the State. It may not be contended that a license issued by the State when accepted by the licensee becomes a contract. A license is merely a privilege. But even so, when the licensing authorities issue a license to a licensee to transact business thereunder for a definite fee or tax, and that amount has been paid to the State for the license and later, if and when, the same licensee desires to increase his capacity or the amount of weight to be hauled; under such license, a larger fee or tax is required for the greater weight, fairness and justice would, as a matter of public policy, where it is not prohibited by law, require that such licensee should be entitled as a credit on the larger fee to be paid for the privilege of hauling greater weight by the amount he has paid originally to haul the lesser weight. Such transaction would not constitute a contract, yet it is an undertaking between the State and the licensee, which should be treated and carried out between the State through its authorized officers and the licensee as would any other lawful business transaction by the same rules of fairness and justice which bind individuals. We believe, therefore, that credit should be given by both the Motor

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Vehicle Registration Department and the Public Service Commission on larger fees later demanded of a registrant for fees originally paid for a license where an increase of weight or any other condition arises calling for a larger fee to operate such vehicle. Our answer then to your fifth question is Yes.

Your sixth inquiry is, whether a commercial motor vehicle registered prior to July 29, 1952, the effective date of House Bill No. 283, and not required to be re-registered, may be permitted to operate such vehicle as defined in subsection (8) of Section 301.010, RSMo 1949, or as defined in subsection (10) of Section 301.010 of House Bill No. 283.

Said subsections (8) and (10) are both descriptive definitions giving the meaning of "Local commercial motor vehicle."

We believe the operator of a local commercial motor vehicle previously registered should be permitted to operate the vehicle if it comes within the definition given in either of said subsections (8) or (10), noted, and this should be determined as the conditions in each case arise and appear at the time.

Your seventh question is, does House Bill No. 283 permit a farmer to borrow, lease or rent a commercial motor vehicle from another farmer who has a local commercial license for his motor vehicle, for the purpose of hauling property to the farm of the operator where the distance is greater than twenty-five miles.

Section 301.010, the Definition section of Chapter 301 of Missouri Revised Statutes, Cumulative Supplement of 1951, in subsection (10) defines a "Local commercial motor vehicle" as follows:

"(10) 'Local commercial motor vehicle,' a commercial motor vehicle whose operations are confined solely to a municipality and that area extending not more than twenty-five miles therefrom; or a commercial motor vehicle whose property carrying operations are confined solely to the transportation of property owned by any person who is the owner or operator of such vehicle, to or from a farm owned by such person or under his control by virtue of a landlord and tenant lease; provided that any such property transported to any such farm is for use in the operation of such farm;"

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The gist of this question narrows down to the above quoted definition. In the former section of Section 301.010, RSMo 1949, which was subsection (8), the definition was as follows:

"(d) When controlled or operated by any person principally engaged in farming when used exclusively in the transportation of agricultural products or livestock to or from a farm or farms or in the transportation of supplies to or from a farm or farms;"

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The intention of the Legislature seems to us to be clear. The Legislature meant to qualify vehicles of farmers as "local commercial." It is also evident that they intended to continue that qualification into the present law. The change being now that the owner or operator of the vehicle is required to be the owner of the property transported and the property must be used in the operation of the farm. From the way the new statute is drawn, it can therefore be said that it does not permit any farmer to (a) borrow, (b) lease, or (c) rent a commercial motor vehicle from another farmer who has a commercial motor vehicle license on his vehicle for the purpose of hauling property to the farm of the operator. The borrower must further qualify himself by being the owner of the property which he is hauling and he must be the owner or lessor of the farm to or from which he is hauling.

The distance of the haul we believe to be ruled out by the use of the word "or" after a semicolon in subsection (10). From the text it appears that the semicolon prior to the word "or" and the word "or" gives a completely alternative definition of "Local commercial motor vehicle," both as it was arranged in the old Section 301.010, subsection (8), paragraph (d) thereof, and as it is now arranged in the new section.

In *Rust v. Missouri Dental Board*, 348 Mo. 616, l.c. 627, 155 S.W. (2d) 80, l.c. 85-86, the Court said: "'or' is seldom used in penal statutes other than as a disjunctive. 48 C.J. Sec. 7, P. 1127." We believe that "or" was and is intended as a disjunctive in this statute.

In answer to your seventh question we believe that a farmer may borrow, lease or rent a commercial motor vehicle from another farmer who has a local commercial license on his vehicle, provided that the borrower or lessor is the operator of the vehicle, and subject to the further provisions and qualifications of subsection (10), Section 301.010, Missouri Revised Statutes, Cumulative Supplement, 1951.

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Your eighth question submits the following: May a Missouri resident lease, from an outstate corporation, or an individual owner, a motor vehicle owned and registered in the name of the lessor, and the vehicle is not the subject of an agreement for conditional sale or lease with the right of purchase, and under the lease operate such vehicle on the foreign license (1) intra-state, (2) interstate, without registering it in the State of Missouri?

We believe the answer to this question is: No.

A Missouri resident, as lessee of a commercial motor vehicle, owned and registered by a corporation or an individual in a foreign state, the vehicle not the subject of an agreement for conditional sale or lease with the right of purchase, and the operator is not entitled to the possession thereof as a mortgagor, has no right whatever to operate such vehicle on the highways of this State without registering the vehicle in this State. In order to do either an interstate or intrastate business with such vehicle, assuming his business is located in Missouri, such lessee must register the vehicle in Missouri. 12 C.J. 103, under the subject of "COMMERCE" states its text in support of this view with the following:

"In the exercise of its general police power and its power to license occupations and businesses, a state or municipality may impose a license tax for the doing of local or domestic business within its territorial jurisdiction, although the property involved may have come originally from another state, or although a contract relating to the business may have been made in another state or although the person or corporation involved may also be engaged in interstate commerce, or although the business, when carried on wholly within the state, may involve deliveries outside the state. * * *"

Section 301.020, RSMo 1949, is in part as follows:

"Every owner of a motor vehicle or trailer, which shall be operated or driven upon the highways of this state except as herein otherwise expressly provided, shall file, by mail or otherwise, in the office of the director of revenue, an application for registration on a blank to be furnished by the director of revenue for that purpose, containing:"

In the matter of Hendrick v. Maryland, 235 U.S. 610, l.c. 623-624, 59 L. Ed. 385, l.c. 391, the Court said:

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"In view of the many decisions of this court there can be no serious doubt that where a state at its own expense furnishes special facilities for the use of those engaged in commerce, interstate as well as domestic, it may exact compensation therefor. The amount of the charges and the method of collection are primarily for determination by the state itself; and so long as they are reasonable and are fixed according to some uniform, fair, and practical standard, they constitute no burden on interstate commerce. * * *"

We do not believe the provision of our statute can be interpreted to interfere with or put an unreasonable burden upon interstate commerce so as to come within any prohibitions of the commerce clause. If such lessee is doing business as a Missouri enterprise, the foreign state license on such vehicle would furnish him no protection whatever in operating a vehicle on the highway of Missouri.

CONCLUSION

It is, therefore, the opinion of this Department, considering the foregoing, that:

- 1) Commercial motor vehicles previously registered during 1952 are not required to re-register after July 29, 1952, the effective date of the new truck law, House Bill No. 283;
- 2) The owner of a commercial motor vehicle is not required to re-register said vehicle after the effective date of House Bill No. 283 if he continues to haul the same weight load for which the vehicle has been previously registered for the year 1952;
- 3) If the owner of a commercial motor vehicle purchased a license for over 44,000 pounds under Section 301.060, RSMo 1949, permitting him to haul up to 56,000 pounds, the maximum weight, he would be permitted under such license to haul up to 60,010 weight load after July 29, 1952, the effective date of the new law, during 1952;
- 4) Where commercial motor vehicle owners engaged in heavy hauling have purchased a truck license for gross weight of 44,000 pounds under Chapter 301, expecting to be permitted under a special permit issued by the Highway Department to haul to the limit of the permit which could be 75,000 to 85,000 pounds on special occasions, he may do so without paying additional fees. This practice may be

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permitted under the new schedule of fees as outlined in House Bill No. 283 without the owner being required to re-register such commercial motor vehicle and without being required to pay for the maximum weight allowed under House Bill No. 283, before being permitted to obtain such special excess weight permit or to operate thereunder;

5) When a registrant of a commercial motor vehicle desires to increase the weight for which such vehicle is licensed he may be allowed credit on increased license fees for fees originally paid to (a) the Motor Vehicle Registration Department, or (b) the Public Service Commission;

6) An operator of a local commercial motor vehicle previously registered, may operate the vehicle on the highways of this State if it complies with either of said sub-sections (8) or (10) noted, under conditions then and there appearing;

7) A farmer may borrow, lease or rent a commercial motor vehicle from another farmer who has a license for such vehicle for hauling property to the farm of the operator for a greater distance than twenty-five miles, if he qualifies to do so under the terms of Section 10 of House Bill No. 283;

8) A Missouri resident assuming that his business is located in Missouri, may not under a lease of a commercial motor vehicle owned and registered by a corporation or individual in a foreign State, and such vehicle not being the subject of an agreement for conditional sale or lease with the right of purchase, and such lessee not being entitled to the possession thereof, as a mortgagor, do either an interstate or an intrastate business with such vehicle on the highways of this State without registering the vehicle in this State.

Respectfully submitted,

APPROVED:

GEORGE W. CROWLEY
Assistant Attorney General



J. E. TAYLOR
Attorney General

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