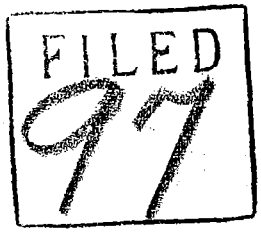
COMMERCIAL MOTOR VEHICLE: A one-half ton pickup truck, although used primarily for the transportation of persons and not regularly used for the transportation of freight and merchandise, is a commercial motor vehicle within the meaning of numbered paragraph one of Section 301.010, RSMo, C.S. 1957, and being so its owner must comply with Section 301.330, RSMo, C.S. 1957.

December 24, 1959



Honorable Paul E. Williams
Prosecuting Attorney
Pike County
Bowling Green, Missouri

Dear Mr. Williams:

Your recent request for an official opinion reads:

"Your opinion furnished to me relative to my last inquiry did not answer the precise point in question which is simply this: Is a one-half ton pick-up truck used principally for a passenger conveyance in the style of most farmers who own such a truck a commercial vehicle within the meaning of the law which requires lettering of the name, gross weight, and scope of operation on the side of said pick-up?"

In numbered paragraph one of Section 301.010, RSMo, C.S. 1957, we note a definition of commercial motor vehicles which reads:

"'Commercial motor vehicle,' a motor vehicle designed or regularly used for carrying freight and merchandise, or more than eight passengers."

We also note Section 301.330, RSMo, C.S. 1957, which reads:

"All commercial motor vehicles shall display in a conspicuous place on both sides thereof:
(1) The name of the owner;
(2) The address from which such motor vehicle is operated;
(3) The gross weight for which said vehicle is licensed;
(4) Local commercial vehicles in addition shall display in a conspicuous place the word 'local'."

It would appear that the case of State v. Lasswell, Mo.App., 311 SW2d 356, a 1958 opinion of the Springfield Court of Appeals, is directly in point. In that case the defendant was driving a

half-ton pickup truck. The bed was empty. The vehicle had on it a truck license plate, but none of the information required by Section 301.330, supra. At the trial the defendant testified that he carried simply incidental property of his own in this truck, such as spare tires, tools, et cetera. His contention was that this truck was not "a commercial motor vehicle", and such being the case he did not need to comply with Section 301.330, supra. We may note here that none of the information required by that section was displayed on the truck, which, of course, was the reason that the arrest was made.

In finding that the defendant was operating a commercial motor vehicle and should have complied with Section 301.330, the court stated (l.c. 358 [5], [6]):

> "[5]* * *In consideration of this question, we must be controlled by the statutory definition of 'commercial motor vehicle' in Section 301.010(1), to-wit, 'a motor vehicle designed <u>or</u> regularly used for carrying freight and merchandise'; and, since the state frankly concedes that there was no evidence that defendant's Ford pickup had been '<u>regularly used</u> for carrying freight and merchandise,' our inquiry is restricted further to the narrow question as to whether the jury reasonably might have found that such pickup was 'a motor vehicle <u>designed</u> * * * for carrying freight and merchandise.' (All emphasis herein is ours.)
>
> "[6] 'Designed' has been defined as 'appropriate, fit, prepared, or suitable' and also as 'adapted, designated, or intended.' 26A C.J.S. 863; Smith v. Commonwealth, 190 Va. 10, 55 SE2d 427, 429. See also Black's Law Dictionary (4th Ed.), pp. 533-534. When applied to property, 'designed' ordinarily refers to the purpose for which it has been constructed [26A C.J.S. 863], and the purpose contemplated and intended by <u>the manufacturer, not the purchaser</u>, usually becomes the controlling factor. Consult United States v. Sommerhauser, D.C. Kan., 58 F.2d 812, 813; Jacobs v. Danciger, 328 Mo. 458, 467, 41 SW2d 389, 391(5), 77 A.L.R. 1237; State v. Etchman, 184 Mo. 193, 201, 83 SW 978, 980. 'Freight is defined as the transportation of goods' [Ex parte Lockhart, 350 Mo. (banc) 1220, 1228, 171 SW2d 660, 663]; and, merchandise' is a broad and comprehensive term, embracing all tangible articles of commerce--whatever is usually bought or sold in trade. State v. Jeffords, Mo., 64 SW2d 241, 242; 57 C.J.S., Merchandise, p. 1055.

> 'Merchandise may mean cambric, needles, or crowbars, sugar or vinegar, Coates No. 200 cotton thread or two-inch cable rope, or * * * any one of the hundreds of articles classed as merchandise' [Whitewater Mercantile Co. v. Devore, 130 Mo.App. 339, 347, 109 SW 808, 809], and the term 'merchandise' also may encompass agricultural or horticultural products. State v. Long, 203 Mo.App. 427, 429, 220 SW 690, 691. So, it may be said that a 'commercial motor vehicle' within the contemplation of the statutory definition here controlling, to-wit, 'a motor vehicle designed * * * for carrying freight and merchandise' [Section 301.010(1)], is a motor vehicle suitable and adapted for the purpose, intended by the manufacturer, of the transportation of goods and tangible articles of commerce, whatever they may be."

In the instant case you have informed us orally, as you have also indicated in your letter, that the truck in question was not used to transport passengers or merchandise or any other thing for hire but simply used by its owner to carry about things which are used upon the farm, groceries, farm products and, et cetera, that the truck is used as a passenger car by its owner in transporting him from place to place.

In view of the opinion in the Laswell case, we must conclude that the truck in question is a commercial motor vehicle.

CONCLUSION

It is the opinion of this department that a half-ton pickup truck, although used primarily for the transportation of persons and not regularly used for the transportation of freight and merchandise, is a commercial motor vehicle within the meaning of numbered paragraph one of Section 301.010, RSMo, C.S. 1957, and being so its owner must comply with Section 301.330, RSMo, C.S. 1957.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Hugh P. Williamson.

Yours very truly,

JOHN M. DALTON
Attorney General

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