

MOTOR VEHICLES: Section 8483(c) R. S. Mo. 1939, authorizing the issuance of overweight permits, was not repealed by implication in the enactment of Section 8406, R. S. Mo. 1939.

-----

May 20, 1942

Honorable Forrest C. Donnell  
Governor of Missouri  
Jefferson City, Missouri



Dear Governor Donnell:

You have requested our opinion on the following:

"May the Commissioner of Motor Vehicles, with the written approval of the state highway engineer, issue permits permitting the operation of overweight vehicles from the highways of Missouri."

Section 8384 R. S. Missouri, 1939, contains numerous subdivisions. The two with which we are concerned are subdivisions "(b)" and "(e)", and they are as follows:

"(b) No motor vehicle, except a combination of tractor and semi-trailer, the gross weight of which, including load, is more than 28,000 pounds, and no combination of tractor and semi-trailer, the gross weight of which, including load, is more than 42,000 pounds, and no motor vehicle having a greater weight than 22,400 pounds on one axle, and no motor vehicle having a load of over 800 pounds per inch width of tire upon any wheel concentrated upon the surface of the highway (said width in the case of rubber tires, both solid and pneumatic, to be measured between the flanges of the rim), shall be operated on the highways of this state: Provided, a combination of tractor and semi-trailer shall

be considered a vehicle of six (6) wheels for the purpose of computing the distribution of the load: Provided, that in special cases motor vehicles whose weight, including loads, exceed those herein prescribed may be operated under special permits granted as hereinafter provided.

\* \* \* \* \*

"(e) The commissioner may, with the written approval of the state highway engineer, in his discretion issue special permits for the operation of vehicles whose sizes and weights exceed the limits prescribed under this section, but 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: Provided, however, such permits may be issued by the officer in charge of maintenance of streets of any municipality for the use of the streets by such vehicles within the limits of such municipalities."

(These provisions were enacted in Laws of 1921, 1st Extra Session, page 91, section 20.)

It is clear from reading subdivision "(e)" that the Commissioner of Motor Vehicles has authority to issue such special permits, if said subdivision is still effective. In Laws of 1925, page 295, there appears an act, a portion of which is carried in the Revised Statutes of 1939 as Section 8406. Said section is as follows:

"No motor vehicle, except a combination of tractor and semi-trailer, the gross weight of which, including load, is more

than 24,000 pounds, and no combination of tractor and semi-trailer, the gross weight of which, including load, is more than 38,000 pounds, and no motor vehicle having a greater weight than 16,000 pounds on one axle, and no motor vehicle having a load of over 600 pounds per inch width of tire upon any wheel concentrated upon the surface of the highway (said width in the case of rubber tires, both solid and pneumatic, to be measured between the flanges of the rim), shall be operated on the highways of this state: Provided, a combination of tractor and semi-trailer shall be considered a vehicle of six (6) wheels for the purpose of computing the distribution of the load."

A comparison of Section 8406 and subdivision "(b)" of Section 8384, clearly shows that a conflict exists, in that, Section 8406 reduces the weight limit on motor vehicles. That being so, subdivision "(b)" of Section 8384 was repealed by implication on the enactment of Section 8406.

However, it will be noted that there is nothing in Section 8406, supra, pertaining to weight, which conflicts with the provisions of subdivision "(e)" of Section 8384, supra. Neither do we feel that it was the intention of the Legislature to repeal subdivision "(e)" by implication by enacting in 1925, Section 8406, pertaining to weight limits. The absence of such intent becomes fairly evident when we consider that in Laws of 1925, page 296, Section 3, the Legislature, by express language, continued on in force subdivision "(b)" of Section 8384 as applicable to cities now or hereafter containing 75,000 inhabitants or more. That section in full is as follows:

"The provisions of this act shall not apply to motor vehicles operating ex-

clusively within the corporate limits of cities now or hereafter containing 75,000 inhabitants or more; provided, however, the maximum size, width, length and weight, including load, limits of such motor vehicles operating exclusively within the corporate limits of such cities shall in no case exceed the limits prescribed in paragraphs (a) and (b) of section 20 of the act of the first extraordinary session of the 51st general assembly approved July 30, 1921, known as the 'Motor vehicle law of 1921' and found at pages 76 to 107 both inclusive of the session laws of Missouri, 1921, 1st extra session."

It seems to us that by making this provision the Legislation expressly recognized that by the enactment of what now appears as Section 8406, they were repealing by implication subdivision "(b)" of Section 8384 only (subdivision (a) was similarly treated by enactment of Section 8405), and only, as applied to all parts of the state except within the limits of cities containing 75,000 inhabitants or more. It is apparent that they intended subdivision "(b)" to continue in force and effect in such cities. Therefore, it cannot be said there was an outright repeal by implication, but rather only a limitation has been placed in the application of said subdivision. The placing of such limitations on the application of subdivision "(b)" however, does not affect subdivision "(e)". As heretofore stated, no conflict exists between the provisions of subdivision "(e)" of Section 8384 and Section 8406, which now fixes the weight limit. It is well settled in this state that repeals by implication are not favored and will only be held to occur when there is an irreconcilable conflict between an earlier and later statute. We think no conflict exists here because subdivision "(e)" of Section 8384 is in perfect harmony with the provisions of Section 8406. As we view it, Section 8406 merely changed the weight limit from that which had existed in subdivision "(b)" of Section 8384, and that subdivision "(e)" of said

May 20, 1942

section still continues in force permitting the granting of special permits for overweight vehicles.

It has been suggested, however, that certain positive language in Section 8406 creates conflict between these sections. The language referred to is, "no motor vehicle \* \* \* the gross weight of which \* \* \* is more than 38,000 pounds, \* \* \* shall be operated on the highways of this state." It is contended that this is an absolute prohibition and that since it appears in a later statute it prevents the language of subdivision "(e)" of Section 8384 from being invoked to authorize the granting of a permit to a vehicle of over that weight. Such is a conceivable construction, but we think the answer to such suggestion appears in Section 8384, as originally enacted by the Legislature. That section in subdivision "(b)" contained the identical positive language as follows: "no motor vehicle \* \* \* the gross weight of which \* \* \* is more than 42,000 pounds, \* \* \* shall be operated on the highways of this state." It thus appears that even though such positive language was used by the Legislature yet in subdivision "(e)" of the same section there was express authorization for the issuance of special permits to vehicles weighing more than 42,000 pounds. In view of this it can hardly be contended that when the Legislature used that identical language in Section 8406, supra, it intended it to be any more positive or absolute than it did when it used such language in subdivision "(b)" of Section 8384.

#### CONCLUSION

It is, therefore, our opinion that subdivision "(e)" of Section 8384, R. S. Missouri, 1939, has not been repealed by implication, and that the same is effective and authorizes the Commissioner of motor vehicles, with the written approval of the state highway engineer, to issue special permits, for overweight vehicles as provided in said section.

APPROVED:

Respectfully submitted

LAWRENCE L. BRADLEY  
Assistant Attorney General

---

ROY MCKITTRICK  
Attorney General of Missouri

LLB:RW