

MOTOR VEHICLES: Unlawful to use red lights on front of vehicle without special permission; not unlawful to use sirens.



August 8, 1945

Hon. Hugh H. Waggoner, Superintendent  
Missouri State Highway Patrol  
Jefferson City, Missouri

Dear Sir:

We have your letter of recent date which reads as follows:

"Your attention is directed to Sections 8386 and 8386f, Laws of Missouri 1941, wherein the Commissioner of Motor Vehicles is authorized upon receipt of proper application, to issue permits for the display of red warning lights of certain motor vehicles.

"Since last fall, when the Commissioner wrote to our department for assistance in the issuing of red warning light permits, the following procedure is carried out. When a request for a 'red light' permit is received by the Motor Vehicle Department the application is sent to the Patrol, and the troopers working in that area are instructed to investigate the request, with the following guides in mind: Is the vehicle actually an emergency vehicle; what is the vehicle intended to be used for; the nature of the applicant's employment, his character, general reputation and the necessity for the display of a red warning light on his automobile. A copy of the investigating officer's report, with his recommendations, is then sent to the Motor Vehicle Department. The approval or rejection of the permit is usually determined by the investigating officer's report.

"The practice as outlined above works very well, but our problem is this: Many motorists get and install the red light and today in some areas red lights are very common--there are a few sirens, also. How can we legally cause or bring about the removal of these unauthorized red lights and sirens?

"We are experiencing difficulties in various counties throughout the State, where a 'red light' epidemic is in progress, of securing the proper prosecution against those individuals. In other words, prosecuting attorneys claim this law is vague and weak.

"We should like to have your advise or opinion as to how we can handle this problem."

The sections referred to in your letter are part of an act of the Legislature found at page 438, Laws of Missouri, 1941, and we shall hereinafter refer to various sections as being sections of this act.

Section 8386f of the act reads as follows:

"Headlamps, when lighted shall exhibit lights substantially white in color; auxiliary lamps, cowl lamps and spot lamps, when lighted, shall exhibit lights substantially white, yellow or amber in color. No person shall drive or move any vehicle or equipment, except an emergency vehicle authorized by the commissioner, upon any street or highway with any lamp or device thereon displaying a red light visible from directly in front thereof."

It will be seen by the foregoing section that no person is permitted to use a red light on the front of his motor vehicle except when such vehicle is an emergency vehicle which has been approved by the Commissioner of Motor Vehicles as an emergency vehicle. Section 8386 of the act gives the commissioner authority to pass upon applications for permission to use particular lighting devices. Said section reads as follows:

"The Commissioner of Motor Vehicles is hereby given authority to pass upon the lighting equipment of any vehicle, motor vehicle, or motor-drawn vehicle with a view to its safety for use on a street or highway. The Commissioner is hereby authorized to promulgate rules and regulations not inconsistent with this chapter and publish same. The Commissioner may require the approval of any lighting equipment or lighting device, and charge a fee therefor of \$50.00 for each device or each single lighting device submitted for approval, and may set up the procedure

which may be followed when any lighting equipment or lighting device is submitted for approval. The Commissioner may revoke or suspend for cause, after hearing, any certificate of approval that may be issued covering any lighting equipment or lighting device under this article."

Therefore, if a motor vehicle owner thinks his vehicle is an emergency vehicle and he desires permission to use a red light on the front of same, he can make application to the Commissioner for permission so to do. If the commissioner denies his application, he can appeal to the members of the State Highway Commission and the Secretary of State, and if not satisfied with their decision, he can have his application reviewed by the Circuit Court by complying with the Provisions of Section 8386t of the act. A complete method is, therefore, set up for those entitled to use red lights on the front of motor vehicles to obtain proper permission so to do. Using a red light on the front of a motor vehicle without having obtained such permission would be in violation of Section 8386f, supra.

Section 8386a of the act provides a penalty for violating any of the provisions of the act. Said section reads as follows:

"Any person violating any of the provisions of this act shall, upon conviction thereof, be deemed guilty of a misdemeanor. The term 'person' as used in this act shall mean and include any individual, association, joint stock company, co-partnership or corporation.

We see nothing vague or weak about this act in so far as it relates to the use of red lights. If a person uses a red light on the front of his motor vehicle without permission, he is subject to prosecution in the same manner as if he violated any other law. Section 8386g permits a motor vehicle to be equipped with not to exceed three auxiliary lamps in front, and Section 8386i authorizes a person to use a spot lamp, but these sections do not authorize those lamps to reflect a red light. Section 8386f specifically provides that:

"Auxiliary lamps, cowl lamps and spot lamps, when lighted, shall exhibit lights substantially white, yellow or amber in color."

Nothing in any of the various sections authorizes the use of red lights on the front of a motor vehicle, except the provision in Section 8386f, supra, and use of a red light

on the front of a motor vehicle without a permit issued by the Commissioner of Motor Vehicles is a violation of law.

There can be no question as to the right of the state to make regulations as to the kind of lights to be used on motor vehicles. In *Schwartzman Service, Inc., v. Stahl et al.*, 60 F/ (2d) 1034, the District Court, Western District of Missouri, Central Division, said (l.c. 1037):

"At the outset it must be acknowledged that the state has the power to regulate and control the movements of motor vehicles over its highways. This it may do in the interest of public convenience and safety and for the protection of the highways.

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The highways belong to the state. It may make provisions appropriate for securing the safety and convenience of the public in the use of them."

In *Ex Parte Kneidler*, 243 Mo. 632, l.c.641, the Court said:

"Common observation and experience show that unrestricted use of motor vehicles on public streets would be extremely dangerous to life and limb and the property of the public. Their use thus becomes a fit subject for state regulation. Every person who operates or uses a motor vehicle must be regarded as exercising a privilege, and not an unrestricted right. It being a privilege granted by the Legislature, a person enjoying such privilege must take it subject to all proper restrictions."

As to the use of sirens on a motor vehicle, we find a somewhat different situation. Section 8387, R. S. No. 1939, provides in part as follows:

"(a) Signaling devices: Every motor vehicle shall be equipped with a horn, directed forward, or whistle in good working order, capable of emitting a sound adequate in quantity and volume to give warning of the approach of such vehicle to other users of the highway and to pedestrians. Such signaling device shall be used for warning purposes only and shall not be used for making any unnecessary noise, and no other sound-producing signaling device shall be used at any time.

By the foregoing section each motor vehicle is required to be equipped with a horn or whistle "capable of emitting a sound adequate in quantity and volume to give warning of the approach of such vehicles to other users of the highway and to pedestrians." It will be noticed that the statute does not describe the kind of sound which shall be given, except that it shall be adequate in quantity and volume to give warning of the approach of the vehicle. The Statute specifically authorizes the use of a whistle as well as a horn, and the Statute does not define what kind of horns or whistles can be used. In Webster's New International Dictionary, we find the following definition of a horn:

"A horn-shaped element of a mechanism, as an electric horn (which see)."

The same authority defines an electric horn as:

"A device for producing sound signals, consisting of \* \* \* \*"

The same authority defines a whistle as:

"An instrument for producing<sup>a</sup>/shrill whistling sound."

The same authority defines a siren as:

"A device for sounding signals, esp. of warning, as on a steamer or automobile."

In the light of the above definitions, we cannot say that a siren is not a horn or even a whistle. The Statute authorizes the use of a horn or a whistle without specifically defining either, and from the best definitions we can obtain, it would appear that a siren might be classed as a horn or a whistle. Criminal Statutes must strictly construed and, therefore, if an effort were made to prosecute a person for using a siren, it would be necessary that the law clearly forbid the use of such an instrument. We do not believe the Statutes are clear in forbidding the use of a siren on a motor vehicle.

It should be noticed, however, that by Section 8387:

"Such signaling device shall be used for warning purposes only and shall not be used for making any unnecessary noise."

If, therefore, a motorist uses a siren for the mere purpose of making unnecessary noises, he would be violating

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said Section 8387. Section 8404 (d) provides as follows:

"(d) Any person who violates any of the other provisions of this article shall, upon conviction thereof, be punished by a fine of not less than five dollars (\$5.00) or more than five hundred dollars (\$500.00) or by imprisonment in the county jail for a term not exceeding two year, or by both such fine and imprisonment."

It would seem, therefore, that the only remedy which the State would have to combat the use of sirens on automobiles is criminal prosecution for using such sirens to make unnecessary noises. However, we would advise caution in the use of criminal prosecution in such cases, because we can readily see how it would be very difficult to convict a person of such a charge. He could easily claim that he was trying to give warning of the approach of his automobile and thereby raise a doubt in a jury's mind as to whether he was intentionally making unnecessary noises. It would only be in an aggravated case that the State could hope to obtain a conviction.

#### CONCLUSION

It is, therefore, the opinion of this office that (a) a person who uses a red light on the front of his motor vehicle without having obtained permission from the Commissioner of Motor Vehicles so to do is guilty of violating Section 8386f, P. 440, Laws 1941, and is subject to the penalties provided by Section 8386a, P. 439, Laws 1941; (b) it is not unlawful for a motor vehicle to be equipped with a siren; but (c) a person who would use a siren to make unnecessary noises violates the provision of Section 8387, R. S. No., 1939, and would be subject to the penalties provided by Section 8404 (d) R. S. No., 1939.

Respectfully Submitted,

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APPROVED:

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RHK/vlv