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MOTOR VEHICLES: Who must register where exclusive use granted by legal title holder to another for a period greater than ten days successively.

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December 31, 1934.

Hon. B. M. Casteel, Superintendent,
Missouri State Highway Patrol,
Jefferson City, Missouri.



Dear Sir:

A letter has been received from you dated November 26, 1934, enclosing a letter from Captain Thomas L. Leigh, Commanding Officer of Troop "C", Kirkwood, Missouri, dated November 22, 1934. In your letter you asked us for an opinion on the question raised by Captain Leigh's letter which was by whom must an application for registration and state license plates be made for a truck owned by Hertz-Drivursel Stations, Inc. and leased by it under its form lease for an indefinite period, or from year to year, or in fact for any period in excess of 10 days. We have had the benefit of examining the form of lease involved which is designated Hertz-Drivursel Stations Truck Lease Service Agreement, Form 233 B, and the memorandum furnished by Thompson, Mitchell, Thompson & Young as attorneys for that company.

I

LANGUAGE OF STATUTES

R. S. Missouri, 1929, Section 7761 (repealed and re-enacted Laws of 1933, Extra Session, page 98, irrelevantly) provides in part that "every owner of a motor vehicle or trailer, which shall be operated or driven upon the highways of this State, shall, except as herein otherwise expressly provided, cause to be filed, by mail or otherwise, in the office of the commissioner, an application for registration", and upon the payment of certain fees for such registration shall receive a certificate of registration and license plates. Also contained in Chapter 41, R. S. Missouri, 1929, entitled "Motor Vehicles" is Section 7759 which contains the following definition:

"Owner'. The term owner shall include any person, firm, corporation or association, owning or running a motor vehicle, or having the exclusive use thereof under lease, or otherwise, for a period greater than ten days successively."

Fitting this definition of the word "owner" into Section 7761 where it is used, Section 7761 would read as follows:

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"Every person, firm, corporation or association, owning or renting a motor vehicle, or having the exclusive use thereof under lease, or otherwise, for a period greater than ten days successively, of a motor vehicle or trailer, which shall be operated or driven upon the highways of this state, shall, except as herein otherwise expressly provided, cause to be filed, by mail or otherwise, in the office of the commissioner, an application for registration * * "

Section 7761 in its expanded form would thus require every title holder or lessee or exclusive user for a period greater than 10 days, to apply for registration for a motor vehicle. A person having the exclusive use of a motor vehicle for a period in excess of 10 days for present purposes will be treated as a lessee. Where there is a lease of a motor vehicle, by hypothesis there must be another person who holds the legal title, for by definition the lessee has not legal title.

Only one person would be required to be, or would be allowed to be, the registered owner of one motor vehicle at a given time, as the disjunctive "or" is used. The lessee must be the registrant in the contemplation of the statute in some instances, as there is always an owner of the legal title, and it would make the entire phrase "or renting * * or having the exclusive use thereof under lease, or otherwise, * * ", meaningless to require and allow the owner of the legal title always to be the registrant and the sole registrant, since only one registrant at a time is required or contemplated.

The 10 day proviso shows that all lessees are not to be considered owners, and consequently are not to apply for registration, but only those whose right to exclusive use has some substantial duration, and the General Assembly fixed 10 days as the line of demarcation.

Therefore, Section 7761, as expanded by the definition provided for it, must mean that registration must be applied for by the legal title holder unless he has leased the vehicle for at least 10 days successively, in which event it is to be registered not by the legal title holder but by the lessee.

II

PURPOSE AND FUNCTION OF STATUTES

The word "owner" or "owners" is used 42 times in Article I of Chapter 41 of R. S. Missouri, 1929, for which the definition above quoted is provided. We are unable to discover from these various uses

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any particular instance where the word was used in such a way as to compel the inference that it was for that particular use that the definition was provided, and consequently the definition would seem equally applicable to each such use of the word in this article, including the use in Section 7761.

The lease to be encompassed by the Hertz form is described by the attorneys for that company as a lease from year to year, although as far as the lessee's obligations are concerned, it is more like a contract of purchase by installments, for by its terms the lease provides that it is to continue indefinitely subject to termination at the end of any one year, but if the lessee elects to terminate he is obligated to purchase the vehicle. The lease likewise provides for exclusive use, control and right to possession by the lessee. Thus the lessee for a period of at least a year, and probably for the life of the vehicle, is, as far as the beneficial use is concerned, in the nature of an owner. Why should the State be interested as much in the disposition of the legal title as between the parties, as it is interested in having a record of the person who is responsible for the operation of the vehicle and has the exclusive use thereof for a long period of time?

R. S. Missouri, 1929, Section 7774, provides that where a motor vehicle is sold the new owner cannot keep or use the license plates for over five days, and that upon transfer of ownership the certificate of registration then in force shall expire, and that the new owner must get new license plates by applying for registration in his own name. Assuming that the transaction provided for in the Hertz-Driveyourself form is not a sale, Section 7774 shows that the intent of the statutory scheme of registration for motor vehicles was not an intent to see that every motor vehicle was registered as a chattel, and that the ownership thereof is immaterial, or that only revenue was sought by the registration scheme, but it rather shows that the statute intends that each successive owner must for himself and as a personal obligation register the vehicle of which he is the owner. Further confirming this construction is another part of Section 7774 under paragraph (c) thereof which, in dealing with a certificate of ownership, provides that "the certificate shall be good for the life of the motor vehicle or trailer, so long as the same is owned or held by the original holder of the certificate"

The memorandum furnished by the attorneys for Hertz-Driveyourself Stations, Inc. cites as the only authorities which they have been able to discover certain cases decided by the Supreme Judicial Court of Massachusetts as follows:

Downey v. Bay State St. Ry. Co., 225 Mass. 281, 114 N.E. 207;
Hurnanen v. Nickse, 228 Mass. 346, 117 N.E. 325;
Temple v. Middlesex & B. St. Ry. Co., 241 Mass. 124, 134 N.E. 641;
Murray v. Indursky, 165 N. E. 91;
Liddell v. Standard Accident Ins. Co., 137 N.E. 39.

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All of these cases were personal injury suits and all involved the question of whether registration by one having a special property in a motor vehicle, usually under a conditional sale, was sufficient registration to enable the vehicle in question to escape treatment as a trespasser on the highways of Massachusetts. Massachusetts has the rule that a person operating a motor vehicle not properly registered is a trespasser on the highway and liable, irrespective of negligence, to a person who has not been guilty of contributory negligence in an accident. (*Balian v. Ogassian*, 179 N. E. 232 (Mass. 1931)). This rather harsh rule would seem to furnish a strong incentive to a court to uphold the validity of the registration where to do otherwise would impose liability, irrespective of fault and causation, and consequently these Massachusetts cases are not highly persuasive. The lease in question is not a conditional sale such as was involved in the Massachusetts cases above cited, and the Massachusetts doctrine about registration in cases other than those involving conditional sales is far from liberal. See *Fairbanks v. Kemp*, 226 Mass. 75, 115 N. E. 240 (1917); *Shufelt v. McCartin*, 235 Mass. 122, 126 N.E. 362 (1920); *Hanley v. American Ry. Express Co.*, 244 Mass. 248, 138 N.E. 323 (1923); see also *Kaufman v. Hegeman Transfer Etc. Co.*, 100 Conn. 114, 123 Atl. 16 (1923).

In the memorandum furnished to us it was suggested that to require the lessees of Hertz-Drivurself Stations, Inc. to apply for registration on all trucks leased by them, and especially on substitute trucks furnished while other leased trucks were being repaired, might result in the necessity of as many as 25 different licenses in a single year. While this might be a severe burden, still it would seem that very few repairing or renovating operations require over 10 days.

In conclusion it is our opinion that a person having the exclusive use of a motor vehicle, by lease or otherwise, for a period greater than 10 days successively, is required under R. S. Missouri, 1929, Section 7761, as repealed and re-enacted by Laws of 1933, Extra Session, page 98, to apply for registration in his name of such motor vehicle, and that during such period registration in the name of the owner of the legal title thereof is neither sufficient as a registration for such vehicle nor permissible.

Very truly yours,

EDWARD H. MILLER
Assistant Attorney General

APPROVED:

ROY MCKITTRICK
Attorney General