

MOTOR VEHICLES AND LICENSES: Lessor owning and leasing truck to lessee for more than ten days must procure a license.

6-22

June 20, 1935.



Honorable V. H. Steward,
Commissioner, Motor Vehicle Department,
Jefferson City, Missouri.

Dear Sir:

This will acknowledge your request for an opinion which is as follows:

"This department desires your opinion and advice as to the proper method of handling a problem with which we are confronted. The facts are as follows:

"The Anderson Motor Service Company of St. Louis is engaged in the business of transporting property for hire as a motor carrier of freight as defined by Article 8 of Chapter 33, as amended by the Laws of 1931. The Anderson Motor Service Company also leases trucks and employs the owners of said trucks as the drivers, and uses said trucks and drivers in the carrying on of its business as a motor carrier, the Anderson Motor Service Company paying the fees to the Public Service Commission on said leased truck, as required by the Motor Carrier Act of 1931. The lease is for a period of one year.

"The owner and driver of the truck leased to the Anderson Motor Service Company has procured proper license tags in his own name from the Motor Vehicle Department of the State of Missouri. Despite the fact that the real owner and driver of the truck leased to and operated for the Anderson Motor Service Company in its business of a Motor carrier,

June 20, 1935.

has registered the vehicle in the name of its real owner and has obtained proper license plates from this department, the Anderson Motor Service Company has been notified by the Highway Patrol, or its officers, that the actual owner and driver of the truck will be arrested because the Anderson Motor Service Company has not registered the vehicle in its own name and obtained proper license plates issued to it. This is evidently done on the theory that the Anderson Motor Service Company is the "owner" as defined by Section 7759. We, therefore, face the situation of knowing the actual owner and driver of the vehicle has properly registered the same with this department, and, because of the lease to the Anderson Motor Service Company, a requirement of the Public Service Commission, the Anderson Motor Service Company is now required to register such vehicle and obtain a second license. The Anderson Motor Service Company has mailed check in the proper amount to this department, giving the motor number and name of the actual owner of the vehicle. We have declined to issue a license to Anderson Motor Service Company unless there is a transfer of title from the real owner of the vehicle to the Anderson Motor Service Company. There has been no sale of the vehicle and consequently we cannot receive the registration and issue a title to the Anderson Motor Service Company.

"In view of the above facts, do you consider the Anderson Motor Service Company the "owner" of the leased vehicle, and if so what is the proper method to use in receiving the application for registration from the Anderson Motor Service Company as the "lessee owner" of the motor vehicle."

Section 7758, R. S. No. 1929, provides as follows:

"This article shall be exclusively controlling on the registration, regulation,

operation, ownership and sale of motor vehicles, their use on the public highways and upon the registration and regulation of chauffeurs, operators, and other drivers of motor vehicles, on the accessories, equipment, safety and signaling devices and lights of motor vehicles and on the regulation of traffic on the highways of the state, and all laws, ordinances, or regulations of municipal corporations or political subdivisions in conflict, inconsistent with, or contrary to the provisions of this article shall be void except as herein otherwise expressly provided."

Section 7761, R. S. No. 1929, provides:

"(a) 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 on a blank to be furnished by the commissioner for that purpose", etc.

Subsection (b) thereof provides:

"Upon the filing of such application, exhibition of certificate of ownership and the payment of the fees hereinafter provided, the commissioner shall assign a number to such motor vehicle, and without other expense to the applicant shall issue and deliver to the owner a certificate of registration in such form as the commissioner shall prescribe, and a plate, or set of plates, bearing such number."

Section 7770 provides for the issuance of number plates.

Subsection (c) thereof states:

"Every motor vehicle or trailer shall at all times have displayed the registration plates issued by the commissioner, entirely unobscured, unobstructed, all parts thereof plainly visible and kept reasonably clean, and so fastened as not to swing. On all

motor vehicles one plate shall be displayed on the front and the other on the rear of such motor vehicle", etc.

Subsection (e) thereof provides in part as follows:

"No person shall operate a motor vehicle or trailer on which there is displayed on the front or rear thereof any other plate, tag or placard bearing any number except the plate furnished by the commissioner or the placard herein authorized, and the official license tag of any municipality of this state."

Section 7772 provides in part:

"The commissioner shall file such application and register such motor vehicle, trailer, chauffeur, registered operator, manufacturer or dealer, together with the facts stated in the application", etc.

Section 7774 provides the program followed when the transfer of ownership of the motor vehicle is made. "Upon the transfer of ownership of any motor vehicle or trailer its certificate of registration and the right to use the number plates shall expire", but on permission in writing of the owner the purchaser may use the plates for five days.

Subsection (c) of Section 7774 says:

"No certificate of registration of any motor vehicle or trailer, or number plate therefor, shall be issued by the commissioner unless the applicant therefor shall make application for and be granted a certificate of ownership of such motor vehicle or trailer, or shall present satisfactory evidence that such certificate has been previously issued to the applicant for such motor vehicle or trailer."

It further provides that the application shall contain, among other things,

"a statement of the applicant's source of title and of any liens or encumbrances on the motor vehicle or trailer."

And if the commissioner is

"satisfied that the applicant is the lawful owner of such motor vehicle or trailer, or otherwise entitled to have the same registered in his name", he shall issue the appropriate certificate, and the certificate shall contain a "statement of any liens or encumbrances which the application may show to be thereon. * * * 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."

Further:

"In the event of a sale or transfer of ownership of a motor vehicle or trailer for which a certificate of ownership has been issued the holder of such certificate shall endorse on the same an assignment thereof, with warranty of title in form printed thereon, and prescribed by the commissioner, with a statement of all liens or encumbrances on said motor vehicle or trailer, and deliver the same to the buyer at the time of the delivery to him of said motor vehicle or trailer."

It then provides that the buyer shall present this assigned certificate and get a new one, etc.

Further:

"It shall be unlawful for any person to buy or sell in this state any motor vehicle or trailer registered under the laws of this state, unless, at the time of the delivery thereof, there shall pass between the parties such certificate of ownership with an assignment thereof, as herein provided, and the sale of any motor vehicle or trailer registered under the laws of this state, without the assignment of such certificate of ownership, shall be fraudulent and void."

The word "owner" is defined in Section 7759 as follows:

"The term owner shall include any 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."

In the case of Baltimore & Ohio R. Co. vs. Walker, 16 N. E. 475, 480, 45 Ohio St. 577, "owner" is defined as one who owns; a rightful proprietor. And in said case it is stated that an owner is not necessarily one owning the fee simple, or one having in the property the highest estate it will admit of. One having a lesser estate may be an owner, and indeed there may be different estates in the same property vested in different persons and each be an owner thereof. In this case it was held that lessees of a railroad were owners of the tracks of the roads operated by them in the sense of a statute requiring the owner of a railway track to make grade crossings and keep them in repair and maintain a watchman thereat.

In the case of Proctor vs. Hannibal & St. Joseph R. Co., 64 Mo. 112, 123, it is held that a statute giving a right of action against the owner of any locomotive or car by the defects in which a person is injured, means the owner at the time of the injury--owner for the purpose of operating the road--and not necessarily the party in whom the absolute right of property is vested. In this case it is also stated, if a corporation hires cars from a car builder and runs them on its road, the corporation, not the lessor, is the party liable to the statutory action.

In the case of Camp v. Rogers, 44 Conn. 291, 298, the court in construing a statute providing that the driver of any vehicle, meeting another on the public highway, who shall neglect to turn to the right, and thereby drive against the vehicle so met and injure its owner, shall pay to the party injured treble the damages, and that the owner of the vehicle so driven shall, if the driver is unable to do so, pay such damages, holds that the word "owner" means the person in control of the vehicle, either mediately or immediately, and not the literal and technical owner, and that any person hiring a carriage, for the time for which he takes it, in a certain sense, is its owner, that he has a special property in it.

We see no expression in the statute of an intent that the "owner", as applied to the person who actually purchased the auto and has the certificate of title, be relieved from the duty of taking out a license before his motor vehicle is driven on the highways of this state.

Section 7761 provides that certain things shall be done as to such vehicles "which shall be driven upon the highways of this state". In other words, the statute contemplates that if a man buys and owns a car and it is driven upon the highways of this state, either by him or someone else, he shall take out the statutory license.

Section 7774 states that on a transfer of ownership the right to use the license number plates shall expire, etc. By subsection (c) provision is made that no certificate of registration shall be issued unless the applicant has a certificate of ownership and makes full disclosure as to the source of title and liens thereon.

It is a recognized fact that the state receives annually several million dollars by reason of licensing motor vehicles, and the Legislature, after providing for the course of handling of licenses and for the collection thereof, and of tracing ownerships by requiring the registration of motor vehicles and the issuance of certificates of title to them when the owners have satisfied the commissioner of motor vehicles that they are entitled to them, also defined the word "owner" to include lessees for a period greater than ten days successively.

This definition is part of one law, all enacted at the same time, and the proper interpretation of the law should give effect to all parts of the act.

Bearing in mind that this is a revenue measure, as stated in the case of State ex rel. vs. Becker, 288 Mo. 807, 223 S. W. 54, we are of the opinion that this definition of "owner" was so defined and stated because the Legislature thought it would, and intended that it should, bring others under the provisions of the act who would not be thereunder without this definition.

The lessee has a special interest in the car, and it must be a beneficial one, otherwise he would not have it, and having a limited ownership in the motor vehicle, he must pay a license fee to the state for operating it on the highways.

A lessee is for many purposes considered the owner and under the interpretation of that word as construed by the courts in the above three cases, it appears to us entirely reasonable that the Legislature had in mind in defining this word

"owner" that it would thereby require a license from people who operate in the fashion that the Anderson Motor Service Company is stated in your inquiry to be operating. It evidently so defines "owner" in order to widen the scope of the law and to take care of just such instances as the one inquired of.

By Section 7761 the commissioner is authorized to prepare the form of application for registration. Under Section 7772 the commissioner files the application together with the facts stated therein.

While under Subsection (c) of Section 7774 it is provided that before a certificate of registration shall be issued, the applicant must first procure a certificate of ownership, etc., and that the application shall contain a statement of the applicant's source of title and all liens thereon, there is no prohibition in the act of there being a qualified ownership, and if the contract or lease, or a duly authenticated copy thereof, between the lessor and lessee is attached to the application, and the commissioner is satisfied that the title at that time is in the lessor and that the limited owner applicant is "otherwise entitled to have the same registered in his name" as such qualified owner, he may issue a qualified or limited ownership certificate, and the original certificate of title should show the existence of the limited or qualified ownership, and likewise the certificate of title issued to the limited owner should plainly show, in such form and words as the commissioner selects, that it is a limited ownership certificate. Then the lessee, having procured this certificate of limited ownership, may present the same and procure the certificate of registration and license plates on payment of the proper statutory fees.

By the Extra Session Laws of 1933-1934, page 99, Sections 7761, 7762 and 7769 of the Revised Statutes of 1929 are repealed and two new sections are enacted in lieu thereof, known as Sections 7761 and 7769.

Section 7761 contains the same provisions as the repealed Section 7761 except that it decreases the amount of the license fees and provides for the termination of the license to be the end of the calendar year.

Section 7769 as enacted by the 1933-1934 Legislature, provides for the registration of motor vehicles and that they be renewed annually, and that all certificates of registration and number plates shall expire on the succeeding thirty-first day of December, and that if the application for registration is made between the first of July and the last of September, only

June 20, 1935.

half of the annual fee shall be paid, and that if the application is made during the period beginning October 1 and ending December 31, one-fourth of the full annual fee shall be paid.

Of course, the payment of the whole annual fee should be required if a license is issued prior to the end of the first six months.

An opinion has been heretofore rendered by this department of date December 31, 1934, to Hon. E. K. Casteel, Superintendent, Missouri State Highway Patrol, and to the extent that said opinion conflicts with this one, that opinion is hereby modified.

CONCLUSION

It is our opinion that if the Anderson Motor Service Company has leased from the owner a motor vehicle and, as lessee, has the exclusive use thereof for a period greater than ten days continuously, said Anderson Motor Service Company is a limited owner of said motor vehicle within the meaning of the motor vehicle laws of Missouri and should procure a limited ownership certificate of title and pay the statutory fees required for obtaining licenses and license plates before being permitted to operate said leased motor vehicle upon the highways of this state.

Yours very truly,

DRAKE WATSON,
Assistant Attorney General.

APPROVED:

JOHN W. HOFFMAN, Jr.,
(Acting) Attorney General.

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