

MOTOR VEHICLES - Commissioner of Motor Vehicles may, in his discretion, with the approval of the State Highway Engineer, issue overweight permits in accordance with the terms of the statute.

November 24, 1937

Honorable V. H. Steward, Commissioner
Motor Vehicle Department
Secretary of State's Office
Jefferson City, Missouri

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Dear Sir:

This is to acknowledge receipt of your request for an opinion reading as follows:

"For a number of years it has been the practice of this office, upon proper application, to grant overweight permits over certain designated highways, permitting motor carriers to operate vehicles exceeding the maximum weights provided for general application over all highways and roads of the State. These permits have been issued by myself and my predecessors with the approval of the State Highway Engineer, the overweight permits being limited to use of certain definitely specified highways. At times it is necessary to move exceptionally heavy articles of machinery, heavy tanks and things of that character, which call for permits for single trips. Another type of permit is one issued to motor vehicle passenger carriers, whose weights vary from time to time according to the number of passengers. This type of permit has been issued for a definite period, and in no event beyond the date of expiration of the vehicle's registration. These permits have been issued under authority of section 7776, paragraph "E" R. S. Mo. 1929 as amended. These permits to motor passenger carriers have never been issued to a maximum weight of more than 28,000 pounds gross, or an axle weight of 18,000 pounds, nor have they been issued at any time

when the maximum weight per inch width of tire concentrated on the surface would exceed the statutory maximum of 600 pounds per inch.

"Some confusion has arisen pertaining to this matter, and I am writing your office for an opinion as to my authority to issue overweight permits over certain definitely prescribed highways for single trips, definite periods, or a period not beyond the date of expiration of the vehicle's registration, by and with the written approval of the State Highway Engineer, and shall appreciate your early advice in this matter."

At the outset of this opinion we observe that the Legislature has seen fit to regulate the use of the highways of this state by providing that no motor vehicle shall be operated which exceeds the limits of size, length and weight, specified by statute. Laws Mo. 1931, page 265, Sections 7776, 7788 of R. S. Mo. 1929.

Regulations concerning the use of our highways have challenged the attention of our courts. In the case of Park Transportation Company vs. Missouri State Highway Commission, 60 S. W. (2d) 388, 389, the Supreme Court quoted approvingly from an opinion in the case of Schwartzman Service vs. Stahl, 60 Fed. (2d) 1034, wherein the constitutionality of a statute regulating the use of our highways was challenged as being discriminatory. The court said:

"The state has the right to regulate and control the movements of motor vehicles over its highways and may exercise it in the interest of public convenience and safety and for the protection of the highways."

To the same effect is the ruling in the case of State vs. Dixon, 335 Mo. 478, 481. It was realized by the Legislature, however, that the inhibitions regarding sizes and weights of motor vehicles must neces-

sarily give away to the exigencies that may arise, and the Legislature provided by the enactment of Subdivision (e) of Section 7776, supra, that:

"(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: *** "

The reason underlying the enactment of the above statute, which is plain and unequivocal in its terms and needs no construction, is obvious. The statute places a discretion in the Commissioner of Motor Vehicles to determine whether a special permit should be issued for the operation of such vehicles whose sizes and weights exceed the statutory limits. Thus, the Commissioner is to determine the necessity for such a permit. So that no abuse of such discretion will arise, the approval of the State Highway Engineer must necessarily be obtained. The reason for this requirement is also apparent in view of the technical knowledge which the Highway Engineer has concerning the construction of our highways, and whether or not, in his opinion, an overweight vehicle may injure the highway.

CONCLUSION

In view of the above, it is the opinion of this department that the Commissioner of Motor Vehicles, with the approval of the State Highway Engineer, may issue special permits for the operation of vehicles whose weights exceed the statutory inhibition, but that such permits may be issued only for a single trip or for a definite period, not be-

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yond date of expiration of the vehicle registration,
which permit shall also designate the highways and
the bridges over which such vehicle is to be operated.

Yours very truly,

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Assistant Attorney General

APPROVED:

J. E. TAYLOR
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RCS:FE