

MOTOR VEHICLES: All operators of motor vehicles being operated within this state, whose height, width and length exceeds the inhibitions of the statute by reason of the use of clearance lights and rear vision mirrors, must obtain special permits therefor.

June 29, 1937

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**Mr. Louis V. Stigall, Chief Counsel
Missouri State Highway Department
Jefferson City, Missouri**

Dear Mr. Stigall:

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

"The matter of the use of clearance lights and rear view mirrors by common carriers operating over the highways of this State, the use of which devices increases the dimensions of such carrier vehicles beyond the statutory limit, has been referred to the Highway Department in connection with the existence of over-dimension permits.

Restrictions as to size and weight of motor vehicles are contained in Section 7776, R. S. No. 1929, which also provides for the issuance of permits when deemed necessary for the operation of vehicles whose sizes and weights exceed the limits prescribed under that Section. These permits have been issued in cases where deemed necessary by our Maintenance Department, therefore, the matter was referred to this department for consideration.

On April 20, 1937, our Maintenance Department was advised by the Secretary of the Public Service Commission of the importance as a safety measure of equipping busses and trucks with clearance lights and rear view mirrors, stating that the Interstate Commerce Commission and other regulatory bodies had prescribed clearance

lights and rear view mirrors in practically all states. Practically all the common carriers in Missouri are now using clearance lights and rear view mirrors, and in many cases it is the installation of such clearance lights, which are very small, and rear view mirrors which increases the dimension of the vehicle slightly beyond that provided for by statute. Our Maintenance Department is asking whether it is necessary that it issue overdimension permits in the case of every carrier for each trip for the use of such clearance lights and rear view mirrors when the same increases the dimension of the vehicle slightly beyond the statute, or whether a permit is necessary at all since both the lights and mirrors are necessary items for public safety and do not seem to be such an increase beyond the statutory limit as the Legislature had in mind when it passed the statute prohibiting widths beyond a certain distance.

I would very much appreciate an opinion from you as to whether it is necessary for us to issue permits to the many carriers operating in this State to cover the use of such clearance lights and rear view mirrors."

Your attention is directed to Section 7776, R. S. Mo. 1929, subdivision (a) which reads:

"No motor vehicle shall be operated on the highways of this state whose width, including load, is greater than 108 inches, or a greater height than 15 feet, or a greater length than 30 feet, and no combination of vehicles coupled together shall be so operated whose total length, including load, shall be

greater than 85 feet, except in specific cases when vehicles which exceed the foregoing may be operated under permits granted as hereinafter provided."

In determining your request for an opinion, it is necessary to consider Section 7787, R. S. Mo. 1929, as amended, Laws of Missouri, 1931, at page 265, which reads in part as follows:

"No motor drawn or propelled vehicle shall be operated on the highways of this state the width of which, including load, is greater than 96 inches, or the height of which, including load, is greater than 12 $\frac{1}{2}$ feet, or the length of which, including load, is greater than 33 feet, and no combination of such vehicles coupled together of a total or combined length, including coupling, in excess of 40 feet shall be operated on said highways, and not to exceed two vehicles shall be operated in combination."

It is obvious from the above sections that the restrictions imposed upon the width, height and length of motor vehicles that may be operated on our highways are inconsistent with one another and being so, we shall attempt to harmonize them so as to give effect to each. State ex inf. Major vs. Amick 152 S. W. 591. In so doing, we have considered Section 7791, as amended, Laws of Mo. 1933, page 283, which reads as follows:

"The provisions of sections 7787 to 7792 inclusive except the provisions of section 7787 regulating the length of motor vehicles shall not apply to motor vehicles operating exclusively within the corporate limits of cities now or hereafter containing 75,000 inhabitants or more and/or within two miles of the corporate limits of such

cities: Provided, however, the maximum size, width and weight, including load limits of such motor vehicles operating exclusively within the corporate limits of such cities, and/or within two miles of the corporate limits of such cities, shall in no case exceed the limits prescribed in paragraphs (a) and (b) of section 7776 of this article."

From these considerations, it will be noted that the restriction imposed by Section 7776 shall, in no case, exceed the limitations provided for in subdivision (a) whether operated within or without the corporate limits of a city having 75,000 inhabitants or more. However, the length of the motor vehicle is not to be governed by this subdivision of the statute, thus, section 7787, supra, would apply to all motor vehicles operated beyond a two mile limit of any incorporated city having a population of 75,000 inhabitants or more. Although repeals by implication are not favored by the courts, it will be noted that as relates to the length of motor vehicles, the Legislature intended by Section 7791, supra, to make the restriction imposed by Section 7787, relative to length, to be exclusive. State vs. Taylor 18 S. W. (2nd) 474. Lajoie vs. Central West Casualty Co. 71 S. W. (2nd) 803.

With these observations before us, we proceed to determine your request for an opinion. From reading Sections 7776 and 7787, supra, you will note that its provisions are plain and without ambiguity and where the words of the statute are plain or unambiguous, there is no need for construction. State ex rel Jacobsmeier vs. Thatcher 92 S. W. (2nd) 640. Note the inhibition:

"No motor * * * * vehicle shall be
operated upon the highways of this
state * * * *"

The words heretofore used of themselves bespeak a mandate and in construing the word "shall" as used in the statutes under consideration, your attention is respectfully directed to State ex rel Stevens vs. Wurdeman 246 S. W. 189 wherein the court in speaking of the word "shall" said:

" * * * the use of the word 'shall'

indicates a mandate"

As further evidence of the mandatory character of these sections of the statute, it will be noted that should any violations occur relative to the height, width and length of motor vehicles as imposed, a penalty is provided under the provisions of Section 7786 R. S. Mo. 1929, subdivision (d).

As you have probably noted from Section 7787, supra:

" * * * the state highway commission may, when in its opinion the public safety so justifies, issue special permits for the temporary operation of a vehicle or combination of vehicles which, including load, shall be greater than the lengths herein specified for transporting property the nature of which will not permit of such limitation of length, but such permit shall be issued only for a single trip or for a definite period of not to exceed 60 days, and shall designate the highways and bridges which may be used under the authority of such permit."

and the exceptions provided for in Section 7776, supra, reading:

" * * * in specific cases when vehicles which exceed the foregoing may be operated under permits granted as hereinafter provided"

and subdivision (e) reading in part as follows:

"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."

In reaching our conclusion, we are not unmindful of the provisions of Section 7778, R. S. Mo. 1929, relating to lights and Section 7779, subdivision (d) of R. S. Mo. 1929.

CONCLUSION

In view of the above, it is the opinion of this department that no motor vehicle shall be operated upon the highways of this State which exceeds the limitations specified under the provisions of Section 7776 R. S. Mo. 1929 and Section 7787, Laws of Missouri 1931, page 265, and that the use of clearance lights and rear vision mirrors which cause the dimensions specified in the statute to be exceeded are unlawful.

We further rule that the Commissioner of Motor Vehicles, with the written approval of the State Highway Engineer, may in his discretion issue special permits for the operation of vehicles whose sizes exceed the inhibitions specified, subject to the period of time for which such permits must be issued; excepting as to the length of motor vehicles, special permits

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must be issued, if issued by the State Highway Commission when, in its opinion, the public safety so justifies, subject also to the period of time mentioned in Section 7787, supra.

Respectfully submitted,

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APPROVED:

J. E. TAYLOR
(Acting) Attorney General

RCS:RT