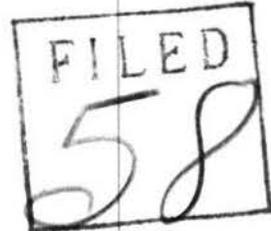


MOTOR VEHICLES: Lessee or renter of automobiles for a period of ten days successively is considered the owner of a motor vehicle and must register the same.

February 9, 1940

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Messrs. McCune, Caldwell & Downing  
Attorneys at Law  
2000 Fidelity Building  
Kansas City, Missouri

Attention - Mr. Stanley Garrity

Dear Sir:

We are in receipt of your request for an opinion, under date of February 1, 1940, which reads as follows:

"Mr. Moriarity, Deputy Vehicle Commissioner at Kansas City, has suggested that we write your office direct for an opinion on the question presented in this letter.

"We represent Fred Wolferman, Inc., of Kansas City, Missouri, which company recently negotiated a contract with the Columbia Transfer Company for delivery and transportation service, a copy of which contract is herewith enclosed. The question arises as to how the vehicles used in the fulfillment of this contract should be registered. We understand that where motor vehicles are leased to a concern, the practice is to register the same in the name of

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the owner as 'fee owner' and also to register the same in the name of the user as 'lessee'. Our attention has been called to Section 7759, R. S. Missouri, wherein the term 'owner' is defined, as the reason for such double registration.

"We do not consider our client a lessee of the vehicles used in connection with this contract for transportation and delivery service. We do not want these vehicles registered in the name of Fred Wolferman, Inc. as 'lessee' for the reason that our client has completely divorced itself from the transportation and delivery end of its business and now pays a certain rate for such delivery service in the same manner that one would employ a transfer company to transport and deliver a specific piece of property. We desire the registration of these vehicles to be in accordance with the facts as disclosed by the contract on account of questions that might arise under the National Labor Relations Act or the Wage and Hour Act.

"As is shown by the contract, Wolfermans have no control over the equipment. The Columbia Transfer Company simply contracts to keep a certain number of vehicles available which are to be used by the transfer company for our delivery and transportation service. The vehicles are operated by the employees of the Columbia Transfer Company. We simply purchase delivery and transportation service. Certainly, we do not have the exclusive use of any particular vehicles

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because the same can be changed around, sold, disposed of and substituted by the transfer company in connection with the delivery and transportation service. We do not use the vehicles. The Columbia Transfer Company uses them in fulfilling our contract for delivery and transportation service. We have protested against the registration of these vehicles in the name of Fred Wolferman, Inc. in any way. Mr. Moriarity asks that he be advised as to how the vehicles should be registered."

Section 7759 R. S. Missouri, 1929, defines the term "owner" 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 your request you have attached a copy of the memorandum agreement between Fred Wolferman, Inc., and the Columbia Transfer Company, which includes "Exhibit A". It will be noticed under "Exhibit A", Par. 1, sub-paragraphs (a), (b), (c) and (d) in which it specifically states in each of the sub-paragraphs the following:

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"\* \* \* which are to be used by the transfer company solely and exclusively for Fred Wolferman delivery and transportation services."

"Exhibit A", Par. 3, sub-paragraphs (a), (b), (c) and (d) set out the method of the charge for the use of certain automobiles contained in the contract proper and in "Exhibit A", which is part of the contract. Under this contract the courts would construe that Fred Wolferman has leased or rented for its exclusive use certain automobiles. It will also be noticed that the term for which the contract shall run is four years causing it to come within the definition of owner, as set out in Section 7759, supra.

Section 7761 Laws of Missouri, 1933-34, page 99, reads as follows:

"(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, containing: (1) a brief description of the motor vehicle to be registered, including the name of the manufacturer, the motor number and character, and amount of motive power, stated in figures of horsepower; (2) the name, residence and business address of the owner of such motor vehicle; (3) if said motor vehicle be a commercial vehicle the weight of the vehicle and its rated capacity of live load, in pounds or seating capacity;

(4) if such motor vehicle be a specially constructed or reconstructed motor vehicle, the application shall so state and the owner shall furnish the commissioner such additional information as he shall require.

(b) 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.

(c) Registration fees made payable to the State Treasurer shall be remitted to the Commissioner with the application for registration for that part of the calendar year of 1934, beginning with February 1, 1934, and ending December 31, 1934, at 11/12 of the schedule amounts hereinafter shown, and for the full calendar year of 1935 and each full calendar year thereafter in accordance with the following schedules: \* \* \* \* \*

It will be noticed the above section specifically states that the owner of a motor vehicle or trailer shall make application for registration of certain motor vehicles. It will also be noticed that this section contains the word owner. This section is mandatory, and it was held in the case of State v. Wymore, 119 S. W. (2d) 941, l.c. 944, as follows:

"Respondent argues that the remedy provided by this statute is an exclusive

remedy against respondent for misconduct. On reading the article it will be noted that the words 'may' and 'shall' are used many times in the several sections. They were used advisedly and must be given their usual and ordinary meaning. It is the general rule that in statutes the word 'may' is permissive only, and the word 'shall' is mandatory. \* \* \* "

In giving the wording of section 7759, supra, its ordinary meaning there can be no question but what the term "owner" shall include Fred Wolferman, Inc., who has rented for its exclusive use certain automobiles for a period more than ten days successively. Also, Section 7761, Laws of 1933-34, page 99, is a mandatory section and every owner or person declared to be an owner by law shall make application to register any motor vehicle owned by him.

Also, in the case of City of St. Louis v. Pope, 126 S. W. (2d) 1201, l.c. 1211, the court said:

"In the Senter Commission Company Case, City of St. Louis v. Senter Comm. Co., 337 Mo. 238, 85 S. W. 2d 21, this court laid down this rule (page 24), 'The primary rule of construction of statutes or ordinances is to ascertain and give effect to the lawmakers' intent \* \* \* this should be done from the words used, if possible, considering the language honestly and faithfully to ascertain its plain and rational meaning and to promote its object and manifest purpose.' \* \* \* ."

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In the case of State v. Becker, 233 S. W. 54,  
l.c. 55, par. 2, the court said:

" \* \* \* The owner of such vehicle may operate it on his own premises without being subject to the payment of the registration fee imposed by the statute. In such case he will pay the general property tax. The state maintains roads and bridges at great expense and exacts a license fee for the privilege of driving or operating these high-powered vehicles thereon. It is clear, therefore, that the registration fee is not a tax on the vehicle but upon the privilege of operating it on the highways of the state."

Under the above holding, the registration fee is not a tax on the vehicle but upon the privilege of operating it on the highways of the state. Under the facts in your request Fred Wolferman, Inc., is operating the automobiles under the lease from the Columbia Transfer Company. This matter was passed on by an opinion from this office dated October 4, 1938, and rendered to W. W. Graves, Prosecuting Attorney, Jackson County, Missouri. We are enclosing a copy of this opinion.

#### CONCLUSION

In reading Section 7759, supra, and also Section 7761, supra, there is no question but that

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the legislature intended that one who rents or leases a motor vehicle or having the exclusive use thereof under lease, or otherwise, for a period greater than ten days successively, is the owner as set out in Section 7761, supra. Since the contract shall be effective from and after November 15th, 1939, for a period of four years Fred Wolferman, Inc., is the owner and should make application for registration of the motor vehicles which he has rented or leased.

Respectfully submitted,

W. J. BURKE  
Assistant Attorney General

APPROVED:

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TYRE W. BURTON  
(Acting) Attorney General

WJB:RW