

MOTOR VEHICLES: States of Missouri and Tennessee do not have full reciprocity.

October 20, 1941

Missouri State Highway Patrol
Jefferson City, Missouri

Attention: Sergeant Major E. P. Clark

Gentlemen:

This will acknowledge receipt of your letter of September 22, enclosing a copy of a request for an official opinion from Sergeant O. L. Wallis at Poplar Bluff, Missouri. Said request reads as follows:

"1. It is requested that the office of the Attorney General be asked for an opinion on the following: The Kroger Grocery and Baking Company, an Ohio corporation, has a branch office in Memphis, Tennessee, from which their trucks make deliveries to their stores in Southeast Missouri. These trucks bear Tennessee plates but since trailers are not required to be licensed in Tennessee, the Kroger trailers have no plates of any kind on them. Occasionally a trailer load of merchandise will be pulled from Memphis to Missouri by a Tennessee licensed truck and upon arrival at some point in Missouri the trailer will be disconnected from the Tennessee truck, hitched to a Missouri licensed truck and the trip continued in Missouri, with the trailer bearing no license.



Tennessee grants reciprocity to trucks and trailers of other states only for occasional and irregular trips. The trips of the Kroger Company trucks could hardly be called occasional and irregular since they deliver merchandise to their Missouri stores at rather regular intervals. Request that an opinion be obtained as to whether Kroger trucks can legally operate upon the highways of the State of Missouri with only Tennessee license plates and if Tennessee trailers can be legally operated upon the highways of the State of Missouri with no license plates."

The State of Missouri has enacted a reciprocal provision for nonresident owner of a motor vehicle operating in the State of Missouri. Section 8375, R. S. Missouri 1939, reads as follows:

"A nonresident owner, except as otherwise herein, provided, owning any motor vehicle which has been duly registered for the current year in the state, country or other place of which the owner is a resident and which at all times when operated in the state has displayed upon it the number plate or plates issued for such vehicle in the place of residence of such owner may operate or permit the operation of such vehicle within this state without registering such vehicle or paying any fee to this state, provided that the provisions of this section shall be operative as to a vehicle owned by a nonresident of this state only to the extent that under

the laws of the state, country or other place of residence of such nonresident owner like exemptions are granted to vehicles registered under the laws of and owned by residents of this state."

The State of Tennessee has also enacted a reciprocal provision for nonresidents operating in that State. Section 1148 (22a), Michie's Tennessee Code of 1938 also provides that the Commissioner of Finance and Taxation is authorized to enter into reciprocal agreements with the proper officials of other states where the motor vehicles are properly licensed and bear license tags or plates of such states, but only when like privileges to citizens of Tennessee are granted.

"The commissioner of finance and taxation of the state of Tennessee is hereby authorized to enter into reciprocal agreements with proper officials of other states of the United States under which agreements motor vehicles of non-resident owners properly licensed and bearing license tags or plates of such states may be operated over the highways of the state, and without being registered or licensed in said state; provided that this law shall not warrant said commissioner in entering into any agreement with the officials of any other state which does not grant like privileges to citizens of Tennessee operating motor vehicles in such state or states."

Section 1152 (1), Michie's Tennessee Code of 1938, provides how the Commissioner of Finance and Taxation of the State of Tennessee may enter into agreements with like authorities of border states to Tennessee and reads as follows:

"The commissioner of finance and taxation of the state of Tennessee is hereby authorized to enter into

reciprocal agreements with proper officials of border states or states adjoining Tennessee, under which agreements motor vehicles of nonresident owners properly licensed and bearing tags or plates of a border state or states adjoining Tennessee may be operated over the highways of the state of Tennessee without being registered or licensed in said state; provided, that authority conferred on said commissioner by this section shall not authorize him to enter any reciprocal agreement, the effect of which would be to permit regular operations of motor vehicles from border states or states adjoining Tennessee without Tennessee registration or license, the intent of this section being to authorize said commissioner to make such agreements as may permit occasional or temporary operations of such vehicles in Tennessee without the necessity of registration or license in Tennessee; and provided, further, that this section shall not warrant said commissioner in entering into any agreement with the officials of any border state or states adjoining Tennessee which does not grant like privileges to citizens of Tennessee operating motor vehicles in such border states or states adjoining Tennessee. Provided, further, that nothing in this section shall apply to, or give the commissioner of finance and taxation any power to make such regulations or agreements in regard to, common carriers by truck or bus or in regard to contract carriers for hire except for a distance of thirty miles from the state line."

You state that trailers in Tennessee are not required to be registered in that State, while in Missouri the law specifically requires that these be registered.

Whenever it is at all possible this Department endeavors to hold that there is full reciprocity between this State and other states in order to carry out the purpose of such reciprocal provisions as Section 8375, supra. However, in this case the clear words of the Tennessee reciprocal law definitely prohibits full reciprocity with Tennessee. One of the well established rules of statutory construction is that when there is no ambiguity in a statutory provision there is no room for construction.

Since our law specifically requires all trucks and trailers to be registered in the State where the owners are residents and, since Tennessee requires no registration of such owners, said reciprocal provision in Tennessee fails to comply with our reciprocal provision. Furthermore, it is practically impossible to identify such Tennessee trailers while operating in the State of Missouri and the enforcement officers of the State of Missouri would find it very difficult to enforce our motor vehicle act under such conditions.

Furthermore, the Tennessee law herein above referred to requires the owners of Missouri trucks and trailers to request a free permit of the Department of Finance in Tennessee before operating therein. No such provision is required of Tennessee trucks and trailers in Missouri. While this permit is free it nevertheless is an additional burden placed upon residents of Missouri. Furthermore, the Tennessee reciprocal provision only allows occasional and irregular trips in Tennessee while Missouri places no such limitations on Tennessee trucks and trailers operating in this State.

"Occasional" and "irregular" have been defined in various ways according to the various uses of these words. We fail to find wherein such words have ever been construed when used as they are in the instant case. Such words have very broad meaning.

Webster's New International Dictionary, Second Edition, unabridged, defines "occasional"--"2. Of or pertaining to an occasion or occasions; acting, met with, or occurring now and

then; made or happening as opportunity requires or admits; casual; incidental.* * * 3. Occuring at irregular intervals; infrequent."

Ballentine, Law Dictionary, defines "occasional" thus:-
"For the occasion; not regularly; pertaining to the cause; casual."

Webster's New International Dictionary, Second Edition, unabridged, defines "irregular" -- "Not regular; not according to established law, method, or usage; not conformable to nature, to the rules of moral rectitude, or to established principles; not normal; disorderly; immethodical; erratic; not straight; not uniform; * * *. Syn.- unsystematic, desultory; eccentric; unsettled, variable, changeable, mutable, uneven; abnormal, anomalous; devious, crooked; immoderate, intemperate, wild. Ant.- Normal, usual, customary; orderly, methodical, level, even; straight; uniform."

In *Palle vs. Industrial Commission of Utah*, 7 Pac. (2) 284, l. c. 290, the court defined "regularly employed" in the Workmen's Compensation Act as follows:

"There of course is a difference in the popular or ordinary meaning of the phrase three or more men 'regularly employed' in the business of the employer, and of language three or more men employed in the regular or usual business of the employer. The first excludes mere casual or occasional employments, in the business, while the other includes all kinds of employments, whether regular, casual, or otherwise in the usual or regular business of the employer. While the term 'regular' in its ordinary and popular meaning is the clear antonym of 'casual' or 'occasional,' yet it seems the Legislature declared that the term as used in the statute shall not have that meaning, and that it was in-

tended to include all employments, regular, casual, or occasional, in the usual trade or business of the employer."

In Biermann vs. Guaranty Mut. Life Ins. Co., 120 NW. 963, l. c. 965, the court defined 'occasional' as used in an insurance policy, where the insured stated he took a glass of beer occasionally, as follows:

"The application itself discloses his habits, to some degree at least; for, while saying that the applicant did not use malt or spirituous liquors 'to excess,' it further informs the company that he did take 'a glass of beer occasionally.' This was sufficient disclosure to suggest to a discreet person the advisability of further inquiry if the subject was one deemed of vital importance. What constitutes 'excess' in this respect is largely a matter of opinion, and varies all the way between a 'drink' and a 'drunk'; while an 'occasional' glass of beer may mean anything from a glass once a month to one every 15 minutes, according to the capacity of the individual, or, perhaps, according to the 'liberality' of his views. * * * * *

From the foregoing definitions it is not an easy matter to determine the meaning of such words. The same definition may not apply in each case. Much depends upon the facts in the particular case.

In the instant case we are not in possession of all the facts, but assume the Kroger Grocery and Baking Company has established a more or less regular route where they transfer trailers at Benton, Missouri, or some other common meeting place within this State. It is the assumption that for such a business,

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with retail stores in Missouri and Tennessee, it is necessary that such a meeting be at rather regular intervals. The business is dependent upon certain definite deliveries. While as herein above stated this is a mere assumption, yet to the writer it seems to be a reasonable one.

We have not overlooked the fact that the State of Missouri, through its Secretary of State, and the Department of Finance in Tennessee have entered into a written agreement as to the reciprocity between the two states; however, since there is no authority under the laws of Missouri, for the Secretary of State entering into such agreement it has no legal status. Even in said proposed agreement it also requires a permit to be secured by Missouri residents.

Therefore, it is the opinion of this Department that since the State of Tennessee under its law requires no registration of trailers in that State, that they require any trucks or trailers registered in the State of Missouri to obtain a free permit before operating in that State, that they further require that such operation be permitted only without registration in the State of Tennessee when said trucks or trailers are being used on an occasional or irregular trip within the State, that the State of Missouri does not recognize such reciprocal provision of the State of Tennessee as being tantamount to full reciprocity and, therefore, such trucks and trailers registered within the State of Tennessee carrying goods or wares belonging to the owner of said trucks or trailers must likewise be registered in this State before operating herein.

Respectfully submitted,

AUBREY R. HAMMETT, JR.
Assistant Attorney General

APPROVED:

VANE C. THURLO
(Acting) Attorney General

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