

MOTOR VEHICLES: Rules governing right of way, erection of stop signs and failure to observe same and speed permitted on highways of the State.

January 3, 1942

Honorable M. Stanley Ginn  
Superintendent  
Missouri State Highway Patrol  
Jefferson City, Missouri



Dear Mr. Ginn:

We are in receipt of your letter of December 19, 1941, wherein you request our opinion based on the following facts:

"A question has arisen in our office which is to be determined by the laws and rules of the road prevailing in Missouri relative to the operation of motor vehicles at points where side roads intersect arterial highways.

"We would appreciate very much if you would supply us with a copy of the law or regulations of the State of Missouri concerning the following items:

- "(1) Law or regulation governing right-of-way at intersection of cross road and arterial highway where there is a stop sign for the party entering the arterial highway.
- "(2) The law or regulation governing the vesting authority in a state official to erect stop signs at various intersections.
- "(3) The law or regulation providing for the fine and punishment of

those failing to observe stop signs at the intersection of an arterial highway with a cross road.

"(4) The law governing the speed of automobiles and trucks on the highways of Missouri."

It is well established that the "State has right to regulate and control the movement of motor vehicles over its highways," (Park Transportation Co. v. Missouri State Highway Commission, 332 Mo. 592, 60 S. W. (2d) 388, 1. c. 391), and pursuant to said authority the General Assembly has enacted an Act regulating and licensing the operation of motor vehicles (Sections 8366-8470, R. S. Mo. 1939).

Section 8385, subsection "1" R. S. Mo. 1939, provides that:

"An operator or driver of a motor vehicle shall have the right of way over an operator or driver of another motor vehicle who is approaching from the left on an intersecting highway and shall give the right of way to an operator or driver of a motor vehicle approaching from the right on an intersecting highway. The right of way shall mean the right to proceed when two or more vehicles will reach such intersection at approximately the same time."

We note that the facts submitted relate to laws "governing right of way at intersection of cross road and arterial highway."

Section 8367, R. S. Mo. 1939, defines the term "highway" as:

"Any public thoroughfare for vehicles, including state roads, county roads

and public streets, avenues, boulevards, parkways or alleys in any municipality."

And in the case of Phillips v. Henson, 326 Mo. 282, 30 S. W. (2d) 1065, l. c. 1068, the court said:

"\* \* \*, it is reasonable to conclude that the word 'highways' was used in the statute in its popular rather than its technical sense, and was intended to include all highways traveled by the public, regardless of their legal status."

Thus, irrespective of whether it is a state or county road "where two cars arrive at an intersection at approximately the same time, the car coming from the right has the right of way" (Roberts v. Wilson, 33 S. W. (2d) (Mo. App.) 169, l. c. 172). In other words, any car approaching from the driver's right on an intersecting highway has the right of way, while such driver has the right of way over any driver of a motor vehicle approaching from the left.

Since the first three questions relate to entering an intersection where there is a stop sign, we will consider them together.

Section 8755, R. L. Mo. 1939, provides that the State Highway Commission may erect "danger signals or warning signs" at "highway intersections or other places along the state highways which the Commission deem to be dangerous."

The case of Roberts v. Wilson, supra, in considering Section 8755, supra, declared that there is no statute requiring one to observe the warning of a stop sign, but points out that failure to obey such warning sign may be found to constitute common law negligence. The court said (l. c. 172):

"There is no statute, so far as we know, requiring one to observe the warning implied in the stop signal, yet defendant's failure to obey it was a matter

for the consideration of the jury, in connection with the general negligence pleaded. Egan v. Palmer; Mitchell v. Brown, supra. It may well be noted that under section 17, p. 138, 1st Extra Session Laws 1921, the state highway commission is authorized to erect warning signs at points on highways within its discretion; and section 14 of the act further defines the commission's rights and duties in this respect. It naturally follows that when such warning signs are placed, any one who fails to observe and obey them is not acting in an ordinarily prudent manner, and may be found guilty of common-law negligence by the jury. Foulks v. Lehman (Mo. App.) 17 S. W. (2d) 994."

Not only have we found no statute requiring one to halt at a stop sign when approaching an intersection, but we have also found no statute prescribing any fine or punishment for failure to observe a stop sign at an intersection.

Section 8383, R. S. Mo. 1939, provides as follows:

"Every person operating a motor vehicle on the highways of this state shall drive the same in a careful and prudent manner, and shall exercise the highest degree of care, and at a rate of speed so as not to endanger the property of another or the life or limb of any person, provided that a rate of speed in excess of twenty-five miles an hour for a distance of one-half mile shall be considered as evidence, presumptive but not conclusive, of driving at a rate of speed which is not careful and prudent, but the burden of proof shall continue to be on the prosecution to show by competent evidence that at the time and place charged the operator was driving at a rate of speed which was not careful and prudent, considering the time of day, the amount of vehicular and pedestrian

traffic, condition of the highway and the location with reference to intersecting highways, curves, residences or schools: Provided, however, that no person shall operate a solid tire commercial motor vehicle having a rated live load capacity of two (2) tons and less at a rate of speed exceeding twenty miles per hour, or a solid tire commercial motor vehicle having a rated live load capacity of more than two (2) tons and not more than five (5) tons at a rate of speed exceeding fifteen miles per hour, or a solid tire commercial motor vehicle having a rated live load capacity of more than five (5) tons at a rate of speed exceeding ten miles per hour; and provided further, that no person shall operate a motor vehicle equipped with iron or other metal tires at a greater rate of speed than six miles per hour."

A person approaching an intersection and failing to stop might by reason of the time of day, amount of traffic, condition of highway, and other considerations, be found guilty of violating the above statute for failure to drive in a careful and prudent manner. In determining, however, whether the above section was violated, the guilt of the driver could not be conditioned upon the mere failure to halt at a stop sign.

Section 8395, subsection "b", R. S. Mo. 1939, provides that municipalities may by ordinance require vehicles to stop before crossing certain designated streets and boulevards:

"Municipalities may, by ordinance, make additional rules of the road or traffic regulations to meet their needs and traffic conditions; establish one-way streets and provide for the regulation of vehicles thereon; require vehicles to stop before crossing certain designated streets and boulevards; limit the use of certain

designated streets and boulevards to passenger vehicles; prohibit the use of certain designated streets to vehicles with metal tires, or solid rubber tires; regulate the parking of vehicles on streets and prohibit or control left-hand turns of vehicles; require the use of signaling devices on all motor vehicles, and prohibit sound-producing warning devices, except horns directed forward. No ordinance shall be valid which contains provisions contrary to or in conflict with this article, except as herein provided."

The above subsection provides, however, that no ordinance shall be valid which is contrary to or in conflict with the Motor Vehicle Act.

In the case of *City of Cape Girardeau v. Bennett*, 27 S. W. (2d) (Mo. App.) 447, l. c. 448, the court in holding that a prosecution would lie for the violation of a city ordinance requiring the operation of motor vehicles in a careful and prudent manner, said:

"There is some feeble attempt made to attack the ordinance, but the ordinance conforms to the state laws, and there is nothing in the ordinance which in any way conflicts with the statute. Municipalities are given authority to establish by ordinance reasonable regulations for the driving of motor vehicles within their limits, and a prosecution will lie for the violation of such ordinances, prohibiting the operation of motor vehicles in other than a careful and prudent manner. Laws of Missouri 1921 (Ex Sess.) Section 19, p. 91; *City of Mexico v. Sharp*, 221 Mo. App. 195, 300 S. W. 308."

A municipal ordinance requiring a person to observe a stop signal and providing a fine or punishment for failure

to observe same would obviously not be in conflict with a state statute since there is no statute (except those relating to municipalities) governing stop signs.

From the foregoing we are of the opinion that:

(1) Any motor vehicle approaching from the driver's right on an intersecting highway has the right of way, while such driver has the right of way over any driver or operator of a motor vehicle approaching from the left;

(2) The State Highway Commission has the authority to erect a stop sign as a warning signal on an intersection of a highway and municipalities have authority by ordinance to erect stop signs on such streets and boulevards as they may designate;

(3) There is no state statutes requiring one to observe a stop sign at an intersection nor is there a statute imposing a fine or other punishment for failure to observe and obey said stop sign. However, in failing to observe and heed a stop sign a person may be found guilty of common law negligence by a jury in a civil suit for damages arising out of an accident;

(4) A municipality may by ordinance require a driver to stop at certain designated streets and boulevards and may impose a fine or other punishment for failure to observe such stop signal.

(5) Section 8383, R. S. Mo. 1939, sets out the law governing the speed of automobiles and trucks on the highways of Missouri.

Respectfully submitted,

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Assistant Attorney-General

APPROVED:

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