MOTOR VEHICLES: Transfer of ownership by corporation to partnership requires purchase of new license plates.

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Attorneys at Law
First National Bank Building
Kansas City, Missouri

Attention: Miss Jennie F. Cockrum

Gentlemen:

This will acknowledge receipt of your request for an official opinion under date of April 15, 1943, which reads:

> "We represent Edward Aaron Company, a partnership, engaged in the business of processing poultry and eggs, which was formerly carried on by Edward Aaron Inc. The corporation was dissolved and has transferred all assets to the new company, the partners being the former stockholders of the corporation. Among the assets so transferred are several trucks and automobiles for which Edward Aaron Inc. secured 1943 Missouri license plates. They are now making application for new certificates of title covering these vehicles to be issued in the name of the partnership. Please advise whether or not it will be necessary for Edward Aaron Company to secure license plates for these vehicles in the name of the partnership or whether, in view of the fact that the same individuals own the vehicles, the licenses secured in the name of Edward Aaron Inc. may be transferred to Edward Aaron Company."

One of the purposes of registration and licensing motor vehicles is to regulate traffic and to know those

responsible for improper conduct of said motor vehicles. Section 75, 42 C. J., page 659 reads:

> "The registration and numbering of motor vehicles is necessary to secure a proper observance of their duties on the highway and for the purpose of aiding in the detection of such vehicles and of those responsible for their movements and conduct, in case they fail to observe such duties, and the object of the license is to furnish a further guaranty that proper use of the vehicle will be made and that it will be operated in compliance with the law. Like other licenses, a license to operate a motor vehicle is a personal privilege granted to the licensee; and, in the case of a license to operate an automobile for hire, it is in the nature of a special privilege or right grated to the licensee. Since it is such a privilege, it is not transferable unless a transfer is authorized by the regulations, and is subject to revocation.
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> "An ordinary motor vehicles license, however, is not a license to do business as a transportation company as a common carrier. The former is a license or tax on the motor vehicle or rather on the privilege of operating the vehicle on the streets and highways, while the latter is not only a tax upon the privilege of using the highways but also an occupation tax on the business of the person or company operating the motor vehicles, although in some jurisdictions such a license fee or tax is not regarded as an occupation tax."

However, under Section 8382 (a) it is provided that upon the transfer of ownership of any motor vehicle the same number plates shall not under any circumstances extend beyond five days thereafter.

> "Upon the transfer of ownership of any motor vehicle or trailer its certificate of registration and the right to use the number plates

> shall expire, and the number plates shall be removed at the time of the transfer of possession, unless the seller shall give the buyer written permission to use such number plates for a period of five days, in which event the buyer shall have and display on demand of any proper officer said written consent of the previous owner. The buyer shall remove such number plates at the expiration of said five days, and return them to the previous owner of the motor vehicle, and it shall be unlawful for the buyer, or any person other than the person to whom such number plates were originally issued, to have the same in his possession after the expiration of such five days, whether in use or not: Provided, however, that in the case of a transfer of ownership the original owner may register another motor vehicle under the same number, upon the payment of a fee of $2.00, if such motor vehicle is of horse power or tonnage not in excess of that originally registered; or upon the payment of a fee of $2.00 and the difference between the fee originally paid and that due in case the new motor vehicle is of greater horse power or tonnage."

If this corporation were merely changing its name we might see some reason for not requiring new licenses as was stated in Thompson on Corporations, Volume 1, third edition, Section 71, page 76:

> "It is evident that a mere change of the name of a corporation can have no effect upon its existence or identity, or upon rights and liabilities flowing either to or from it, a corporation being said to be one and the same entity notwithstanding the change of its name. The change in the name has no more effect on the identity of the corporation than a change in the name of a natural person has upon his identity. The mere change of a name does not create a new corporation. * * * * * * * * * "

But here we have a corporation who, upon dissolution, transfers all assets to a new concern, a partnership, which is an entirely new

entity not similar in any respect to a corporation. Section 11, 18 C. J. S., page 389, distinguishes between a corporation and a partnership and holds that the two are essentially different concepts.

> "There are several distinctions between a corporation and a partnership. (1) That a partnership is formed by mere agreement between the parties and rests solely on their common-law right to contract with each other, while a corporation may not be so formed, but as is explained in Sec. 23 infra, requires authority from the sovereign power or state. (2) While a corporation is a distinct legal entity, see Sec. 4 supra, in a partnership there is no legal entity separate and distinct from the members, but the partnership business is conducted, and the partnership property is owned, by the partners simply as individuals, and unless otherwise provided by statute suits are brought by and against them as individuals only. (3) A corporation possesses 'perpetual succession,' see Sec. 78 infra, while a partnership does not; that is to say, the members of a corporation may freely transfer their shares to outside persons, except so far as restrained from so doing by the terms of the charter or other constituent instrument, and thus introduce new members into the corporation in their stead, while in case of a partnership if a member retires from the firm or dies it works a dissolution, unless there is statutory provision to the contrary. (4) In the case of a corporation the members are not agents for the incorporated body, unless specially clothed with power as such; the shareholders act through a board which they create and cannot in general bind the corporation by their individual action, although all of them concur; in a general partnership, however, each member is an agent for the partnership with respect to all matters within the scope of the partnership business. (5) The members of a general partnership are individually liable for the debts of the firm, jointly and

> severally; whereas, subject to statutory and special qualifications hereafter explained in Sec. 580, the members of a corporation are not so liable.
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> "An association cannot be either a corporation or a partnership at the election of the parties, but must be one or the other, for the law does not contemplate that partners may incorporate with intent to obtain the advantages of a corporate form and then become at will a partnership or a corporation as the purposes of their joint enterprise may require.
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> "Where the constitution expressly enumerates the purposes for which a partnership is to be regarded as a corporation, under the rule stated in Constitutional Law Sec. 21, a partnership is not a corporation for other purposes."

As stated in your request the new company, or partnership, is now making application for new certificates of title to said motor vehicles which indicates a change of ownership of said motor vehicles.

Section 8382, supra, provides that upon the transfer of ownership new license plates must be purchased. Certainly, it is conceded by all under these facts that the ownership has been transferred, the former owner, a corporation, no longer has any interest as a corporation to said motor vehicles, certificates of title are being secured by the new organization. Therefore, it is the opinion of this Department that the new partnership under the law is required to purchase new license plates for said motor vehicles.

Respectfully submitted

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APPROVED:

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