MOTOR VEHICLES: Decision of Commissioner as to type of motor vehicle, classification, computation of fees, final and conclusive on all licenses issued pursuant to Section 8369, Laws of Missouri, 1943, Page 663 to 666 inclusive.

FILED
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March 3, 1944

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

Dear Sir:

We are in receipt of your request for an opinion from this department as of February 9, 1944, which opinion request reads as follows:

> "Attached is copy of letter received from Captain F. D. Hagan, Commanding Officer of Troop D, Springfield, wherein an opinion is requested.
>
> "Subject: Request for Attorney General's opinion
>
> "To : Commanding Officer
> Missouri State Highway Patrol
> Jefferson City, Missouri
>
> "1. After receiving the opinion from the Attorney General's Office, rendered by B. Richards Creech, I request another opinion be sought to clarify certain points of the Law under the following circumstances of Section 8369, of the Revised Statutes of Missouri as recently enacted. Particularly No. 4 relating to "local commercial motor vehicles" as set out on page 666 of the 1943 Sessions Act.

"2. John Doe lives in town and has three (3) trucks upon which he depends for his living. Two of these trucks he operates hauling live stock to the market, a distance of one hundred miles, and supplies for the farmers back to the farm. The third truck is operated hauling crushed lime, "farm supplies", from a crusher to the farmers in that territory, some distances as great as fifty miles. Can all or either of those trucks be classified as local commercial motor vehicles under the above Section?

"3. Secondly, let's assume that John Doe lives on a farm and operates the farm himself, and hires drivers for the operations outlined above. Would there be any difference in the application of the Exemption?

"4. Under No. 4, it states when controlled or operated by any person or persons principally engaged in farming when used exclusively in the transportation of agricultural products or live stock to or from a farm or farms, or in the transportation of supplies to or from a farm or farms.

"5. Under the Conclusion by B. Richards Creech, he states <u>any person or persons</u> owning a truck which is principally used in the transportation of agricultural products or live stock to and from a farm or farms, or in the transportation of supplies to or from a farm or farms, is a "local commercial motor vehicle" within the meaning of Section 8369, Laws of Missouri, 1943, page 666.

"6. This opinion does not limit the operations to a person or persons <u>principally engaged</u> in farming. I am interested to know to what extent a person or persons can become interested in trucking farm products and supplies, and still be considered <u>principally engaged</u> in farming.

F. D. Hagan, Captain
Commanding Trood "D"."

We herewith copy the pertinent part of Section 8369, Laws of Missouri, 1943, page 664-666:

> "(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 the desired load in pounds; (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 the remainder of the calendar year on the basis of the license fees now provided by Section 8369 and Section 8370, Revised Statutes of Missouri,

1939; the license fees provided by this Act shall become effective on and after January 1, 1944.

"For motor vehicles other than commercial motor vehicles and motorcycles and motortricycles:

* * * * *

"For commercial motor vehicles having a gross weight of:

Under 1,500 pounds	$10.00
1,500 pounds to 10,000 pounds	15.00
10,000 pounds to 12,000 pounds	20.00
12,000 pounds to 18,000 pounds	30.00
18,000 pounds to 20,000 pounds	40.00
20,000 pounds to 22,000 pounds	50.00
22,000 pounds to 28,000 pounds	65.00
28,000 pounds to 32,000 pounds	100.00
32,000 pounds to 38,000 pounds	125.00
38,000 pounds to 42,000 pounds	150.00
42,000 pounds to 44,000 pounds	175.00
Over 44,000 pounds	200.00

"For each trailer or semi-trailer there shall be paid a fee of three dollars ($3.00). The fees for tractors used in any combination with trailers or semi-trailers or both trailers and semi-trailers shall be computed on the total gross weight of the vehicles in the combination with load.

"The annual license fee required by this article is intended to cover only the motor vehicle for which it is issued; the Commissioner may, however, on application, when a licensed motor vehicle has been destroyed or replaced by another motor vehicle of the same licensed weight or less, transfer said annual license; in cases where the substituted vehicle is of larger gross weight, the applicant must pay an additional sum equivalent to the difference between the annual license fee for the original motor vehicle and the annual license fee for the substituted motor vehicle.

"Eighty-five (85) per cent of such registration fees shall be credited against any fees charged by the Public Service Commission of this State for the transportation of persons or property.

"License taxes may be levied on motor vehicles by municipalities of this state provided that the fees charged by municipalipalities for said license shall not exceed the amount authorized therefor by said municipalities during the year 1933.

"For each local commercial motor vehicle there shall be paid a fee equal to one-third of the fee specified above for other commercial motor vehicles, PROVIDED, HOWEVER, no vehicle fee shall be less than $10.00.

"The term 'local commercial motor vehicle' includes every 'commercial motor vehicle' as defined in Section 8367, Revised Statutes of Missouri, 1939, while operating within this state and used for the transportation of persons or property:

"1. Wholly within any municipality or urban community,

"2. Wholly within any municipality or urban community and a zone extending 25 air miles from the boundaries of any municipality or urban community, or contiguous municipality or urban community, or

"3. In making hauls not exceeding 25 miles in length, or

"4. When controlled or operated by any person or persons principally engaged in farming when used exclusively in the transportation of agricultural products or live stock to or from a farm or farms, or in the transportation of supplies to or from a farm or farms.

"Each commercial vehicle shall prominently display in a conspicuous place on said vehicle the name of the owner thereof, the address from which such motor vehicle is operated and the weight for which said motor vehicle is licensed; PROVIDED FURTHER, that local commercial vehicles, in addition to the above information, shall prominently display on such vehicles in a conspicuous place the word 'Local'."

Further, we wish to call attention to Section 8370, which reads as follows:

"(a) In determining fees based on the horsepower of vehicles propelled by internal combustion engines, said horsepower shall be computed and recorded upon the following formula established by the National Automobile Chamber of Commerce:

"Square the bore of the cylinder in inches, multiplied by the number of cylinders, divided by two and one-half.

"(b) The horsepower of all motor vehicles propelled by steam may be accepted as rated by the namufacturers thereof, or may be determined in accordance with rules and regulations promulgated by the commissioner.

"(c) The horsepower of all motor vehicles, except commercial motor vehicles, propelled by electric power, shall be rated as being between 12 and 24 horsepower.

"(d) In the computation of fees on commercial motor vehicles, in the case of freight or merchandise motor vehicles, the manufacturer's rated live load capacity shall govern and in case of passenger vehicles the capacity shall be ascertained by multiplying the number of the adult seating capacity by one hundred and fifty pounds.

> "(e) The decision of the commissioner as to the type of motor vehicles and their classification for the purpose of registration and the computation of fees therefore shall be final and conclusive."

It will be noted from the reading of Section 8369, as that section appears in the Laws of 1943, that said section is nearly identical with section 8369 as it was written and appeared in the Revised Statutes of 1939, up to the portion of the Section commencing "* * * * *Commercial motor vehicles having a gross weight of * * * *", the only change in the section up to the quoted portion of the section, supra., being in subdivision C, which is not material to this opinion and therefore not particularly pointed out.

Therefore, we must conclude at the outset that the Legislature, through the reenactment of Section 8370, in the Laws of 1943, without doubt intended that provisions of 8370 should apply to Section 8369, as the same was enacted in the Laws of 1943.

We wish to call attention to Section E., Section 8370, which paragraph reads as follows:

> "(e) The decision of the commissioner as to the type of motor vehicles and <u>their classification</u> for the purpose of registration and the computation of fees therefore shall be final and conclusive." (Underscoring ours.)

It will be noted from the reading of this paragraph E., that the wording thereof is specific and unambiguous and gives the commissioner the sole determination of the matters and things specified in said paragraph. We further wish to point out that no place in the Laws of 1943 or in the Revised Statutes of Missouri for the year 1939, or subsequent laws, has the Legislature seen fit to in any wise curb the power given to the commissioner under paragraph E, and it will be further noted that no appeal or certiorari to any Court has been granted. We further wish to point out that there is no provision contained in

Article 1, Chapter 45, Revised Statutes of Missouri, 1939, of which Article Section 8369 and 8370 are a part, setting up a penalty for a violation of Section 8369 or 8370. In fact, as is heretofore pointed out, the decision of the commissioner is final and conclusive.

It will be observed from reading the Revised Statutes of 1939, as well as the Laws of 1943, that there is not contained a section or sections allowing any Court to overthrow the decision of the commissioner when he has once made a determination under paragraph E of Section 8370. Neither is there contained any section providing what might constitute a violation of the provisions of 8369 or what Court would hear said violation, nor is there a penalty provided for or a section providing for the cancellation of the license. In other words, it is our view that the State Patrol as well as sheriffs and other law-enforcing officers of the State are absolutely powerless to do anything in regard to the licensing of motor vehicles under Section 8369 and 8370. However, we might call attention to paragraph H. of Section 8401, Revised Statutes of Missouri, 1939, which reads as follows:

> "(h) False Statements: No person shall wilfully or knowingly make a false statement in any application for the registration of a motor vehicle or trailer, or as a dealer, chauffeur or registered operator, or in an application for or assignment of a certificate of ownership. All blanks or forms issued by the commissioner for the purpose of making application for registration of certificate of ownership shall conspicuously bear on the face thereof the following words: 'Any false statement in this application is a violation of the law and may be punished by fine or imprisonment or both.'"

It is our view that this later section would apply, should an applicant willfully or knowingly make a false statement in his application for the motor vehicle or trailer in applying for a license under Section 8369, R. S. Mo., 1939.

CONCLUSION

It is the opinion of this department that the decision of the commissioner of motor vehicles, as to the type of motor vehicle, their classification for the purpose of registration, and the computation of fees therefore, shall be final and conclusive on all licenses issued by the commissioner of motor vehicles pursuant to the provisions of Section 8369, Laws of Missouri for the year 1943, pages 663, 664, 665, and 666.

Respectfully submitted,

B. RICHARDS CREECH,
Assistant Attorney General

APPROVED:

ROY McKITTRICK
Attorney General

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