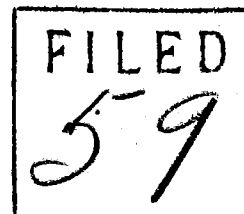


MOTOR VEHICLES: Commissioner may refuse to license motor vehicles so constructed that they would cause excess and unnecessary noises when operated upon the highways of the state of Missouri.

September 12, 1945



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Mr. E. J. McKee, Commissioner
Motor Vehicle Department
Office of Secretary of State
Jefferson City, Missouri

Dear Sir:

This department is in receipt of your letter of August 7, 1945, requesting an opinion from this department, which reads as follows:

"Enclosed please find three pictures of a motor vehicle propelled by airplane propeller which we have refused to license to operate on our State Highways because of danger, because of nuisance of noise, and because of unsafe braking capacity. This vehicle is capable of a speed of 75 to 80 miles per hour, making the noise of a P-38 Airplane. The propeller will pick up all dust, gravel and even good sized rocks in its wake and hurl in all directions. This vehicle has one set of hydraulic brakes, seal beam headlights, stop lights, and complies with law in some respects. Should the owner install four wheel brakes and a protection about the propeller, it still would make the roar of an airplane and throw the gravel and rocks.

"It is the desire of this office to have an official opinion from your Department on this matter of licensing these kinds of vehicles to operate on our highways."

Section 8369, R. S. Mo. 1939, subparagraph (a), provides 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."

It becomes necessary, under the requirements of the above section, for a person seeking to register a vehicle as described in your letter, and the accompanying photographs, to furnish the Commissioner of Motor Vehicles such additional information as he requires.

Section 8403, R. S. Mo. 1939, provides as follows:

"On approval of application for license to operate motor vehicles and when the fee for same is paid to the commissioner of motor vehicles he shall forthwith forward or deliver to the owner through the mails or by his authorized agents the automobile department receipt, also two plates to be attached to the motor vehicle which when attached to the motor

vehicle specified in the application shall be prima facie evidence that the fees have been paid for such license and the commissioner of motor vehicles shall not issue any further receipt for the fee paid. The commissioner of motor vehicles shall transmit all fees received to the state treasurer by making out a triplicate receipt showing the date, the number issued to said applicant, the name of applicant, kind of car, the engine number, and the amount of fee paid. Said receipt shall contain the names of one hundred or less motor vehicle owners when such number have been received by the commissioner of motor vehicles. Upon the payment of the money specified in said receipt to the treasurer he shall sign the receipt in triplicate, returning the duplicate to the secretary of state, sending the triplicate to the state auditor and retaining in his office the original and no further receipt shall be issued by said treasurer to the individual owners of motor vehicles, the plates as specified above being the receipt of the owner of the motor vehicle for all fees paid."

Under Section 8403, supra, we see that it is the duty of the Commissioner of Motor Vehicles to approve applications for licenses to operate motor vehicles, indicating that the application must conform to certain requirements of the Commissioner before the application will be approved.

Section 8387, R. S. Mo. 1939, subparagraphs (b) and (c), provides as follows:

"(b) Muffler cutouts: Muffler cutouts shall not be used and no vehicle shall be driven in such manner or condition that excessive and unnecessary noises shall be made by its machinery, motor, signaling device, or other parts, or by

any improperly loaded cargo. The motors of all motor vehicles shall be fitted with properly attached mufflers of such capacity or construction as to quiet the maximum possible exhaust noise as completely as is done in modern gas engine passenger motor vehicles. Any cutout or opening in the exhaust pipe between the motor and the muffler on any motor vehicle shall be completely closed and disconnected from its operating lever, and shall be so arranged that it cannot automatically open, or be opened or operated while such vehicle is in motion.

"(c) Brakes: All motor vehicles, except motorcycles, shall be provided at all times with two sets of adequate brakes, kept in good working order, and motorcycles shall be provided with one set of adequate brakes kept in good working order."

It is apparent that even though the vehicle, as described in your letter, might, by additional improvements, be made to comply with subparagraph (c) above, and that it could be provided with two sets of adequate brakes, yet the vehicle described in your letter does not comply with the requirements of subparagraph (b) of Section 8387, supra; and it is impossible for us to see how the vehicle could be used and driven in any manner without causing excessive and unnecessary noises by its machinery, motor or other parts. The fact being ascertained by the Commissioner, in the application for registration, that the vehicle in question could not be operated in a lawful manner upon the highways of the state of Missouri, he would be in the proper observance of his duties in not approving the application for a license to operate said vehicle.

CONCLUSION

Therefore, it is the opinion of this department that the Commissioner of Motor Vehicles may refuse to approve an application for license to operate a motor vehicle upon the highways

Mr. E. J. McKee

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of the state of Missouri, when such vehicle is so constructed that its use upon the highways of the state of Missouri would be impossible without causing excessive and unnecessary noises by its machinery, motor or other parts.

Respectfully submitted,

A. V. OWSLEY
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

AVO:CP