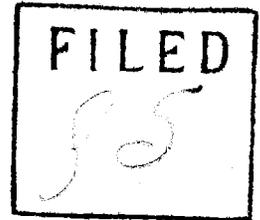


MOTOR VEHICLES: Minimum age required for drivers of common carriers under Section 5730, Laws of Missouri 1945, and Section 8447, R. S. Mo. 1939.

July 16, 1946



Mr. Minkle Statler, Supervisor
Drivers License Unit
Division of Collection
Department of Revenue
Jefferson City, Missouri

Dear Sir:

We hereby acknowledge receipt of a letter from Mr. J. J. McKee, former Motor Vehicle Commissioner, requesting an opinion from this department in regard to the licensing of public and common carriers. We have been informed that you desire this opinion forwarded to you. The letter requesting the opinion reads as follows:

"It has come to the attention of this Department that Senate Bill #40 of the 63rd General Assembly conflicts with Section 8447, Revised Statutes of Missouri 1939.

"It is our desire to have an opinion from your department as to how these conflicting laws should be enforced."

Our interpretation of your question for opinion is whether or not Senate Bill No. 40 of the 63rd General Assembly repeals Section 8447, R. S. No. 1939, in its entirety or in part. Senate Bill No. 40 of the 63rd General Assembly, which is now Section 5730, Laws of Missouri 1945, and will so be referred to in the rest of this opinion, reads as follows:

"Section 1. That an act of the Sixty-first General Assembly of the State of Missouri entitled, 'An Act to repeal Section 5730 R. S. No. 1939, relating to Public Service Commission and to enact in lieu thereof a section to be known as Section 5730 relating to the same subject,' approved August 4, 1941 and found on pages 521 and 522, Laws of Missouri, 1941, be and the same is

hereby amended by striking out the following word in the second line of subsection (b) of said section to wit 'twenty-one' and by inserting in lieu thereof the following 'eighteen' so that said section when amended shall read as follows:

"Section 5730. The commission, in the exercise of the authority by this act vested in it, to license, supervise and regulate all motor carriers or contract haulers shall promulgate and mail or deliver to each holder of a certificate of convenience and necessity, interstate permit or contract hauler's permit hereunder, such safety rules and regulations as it may deem necessary to govern and control the operation of motor carriers or contract haulers over and along the public highways of this state, and the equipment to be used. Any such safety rules promulgated, in addition to any others deemed necessary by the commission, shall include the following:

"(a) Every motor vehicle and all parts thereof shall be maintained in a safe and sanitary condition at all times.

"(b) Every driver employed by motor carriers or contract haulers shall be at least eighteen years of age, of good moral character, and shall be fully competent to operate the motor vehicle under his charge.

"(c) Accidents arising from or in connection with the operation of motor carriers or contract haulers shall be reported to the commission in such detail and in such manner as the commission may require.

"(d) The commission shall require and every motor carrier or contract hauler

shall have attached to each unit or vehicle such distinctive marking as may be adopted by the commission.

"(e) No passenger carrying vehicle coming within the provisions of this act shall be operated at a speed in excess of fifty-five (55) miles per hour. No property carrying vehicle coming within the provisions of this act shall be operated at a speed in excess of forty (40) miles per hour.

"Section 2. By reason of the pressing need for the benefits provided by the provisions of this Act prior to 90 days after the adjournment of the 63rd General Assembly, an emergency is hereby declared to exist within the meaning of the Constitution, and this act shall become effective and be in force and effect from and after its passage and approval by the Governor."

Section 8447, R. S. Mo. 1939, reads as follows:

"No person who is under the age of twenty-one (21) years shall drive any motor vehicle while in use as a school bus for the transportation of pupils to or from school, nor any motor vehicle while in use as a public or common carrier of persons or property, nor in either event until he has been licensed as a chauffeur or as a registered operator."

Section 5730, R. S. Mo. 1939, as amended by the Laws of Missouri, 1941, p. 521, par. 1, contains the same provision as Section 5730, Laws of Missouri 1945, except the minimum age requirement of subsection (b) was changed from twenty-one to eighteen years. Therefore, our question of legislative intent will be confined, in this opinion, to only this change.

Section 5721, R. S. Mo. 1939, was repealed by House Bill No. 137 of the 63rd General Assembly and a new section was en-

acted in lieu thereof, to be known as Section 5721, Laws of Missouri, 1945. Said new section provides:

"The provisions of this article shall not apply to any motor vehicle of a carrying capacity of not to exceed five persons, or one ton of freight, when operated under contract with the federal government for carrying the United States mail and when on the trip provided in said contract; nor to any motor vehicle owned, controlled or operated as a school bus; nor taxicab, as herein defined; nor to motor vehicles used in transporting farm machinery, produce, supplies, household goods, or other articles or commodities from farm to farm; nor to motor vehicles used exclusively in transporting farm and dairy products from the farm or dairy to a creamery, warehouse, or other original storage or market, and transporting stocker and feeder livestock from market to farm or from farm to farm nor to motor vehicles used exclusively in the distribution of newspapers from the publisher to subscribers or distributors. No provision of this article shall be so construed as to deprive any county or municipality within this state of the right of police control over the use of its public highways, or the state highway commission of the right of police control over the use of state highways. This article shall not apply to trucks used in work for the state or any civil subdivision thereof."

The above article referred to is Article 8 of Chapter 35, which includes Section 5730, Laws of Missouri, 1945. So our question is again narrowed so that the ultimate discussion will be whether or not Section 5730, Laws of Missouri, 1945, repeals by implication Section 8447, supra, and allows a minimum age requirement of eighteen years for drivers of public or common carriers.

It is noted that in the title of Senate Bill No. 40 of the 63rd General Assembly Section 5730, Laws of Missouri, 1941, page 521, par. 1, was expressly repealed, but there is no mention of Section 8447, supra. In order for the bill to act as a repeal of this section, it is necessary that said repeal be implied. The fact that one section was expressly repealed and the other not even mentioned would seem to indicate that the General Assembly had no intention of repealing the latter. But, in order for one statute to repeal another it is not necessary that a repealing clause be contained therein. In the case of *Young v. Greene County*, 119 S.W. (2d) 369, l. c. 374, the court states:

"* * * If two statutes deal with the same subject matter and are inconsistent with each other, so that both cannot be operative as to such subject matter, the later act will be regarded as a substitute for the earlier one and will operate as a repeal thereof, although it contains no express repealing clause. * * * * *"

And, further, it is not necessary that a later statute repeal the earlier statute in its entirety. In the case of *State v. Taylor*, 18 S.W. (2d) 474, the court states that two statutes should be construed so that each may stand and be given effect, if possible, and the later statute should be construed to repeal a former only insofar as the two acts may be found to be in conflict.

Implied repeal has long been held in disfavor by the courts of our state. In *Graves v. Little Tarkio Drainage Dist. No. 1*, 134 S.W. (2d) 70, l. c. 81, the court states:

"* * * 'Repeals by implication are not favored--in order for a later statute to operate as a repeal by implication of an earlier one, there must be such manifest and total repugnance that the two cannot stand; where two acts are seemingly repugnant, they must, if possible, be so construed that the latter may not operate as a repeal of the earlier one by implication; if they are not irreconcilably inconsistent,

both must stand. These principles
of construction are well settled.'
*****"

Although the above rule of construction be true, the court,
in *Wentz v. Price Candy Co.*, 175 S.W. (2d) 852, l. c. 857,
states:

"* * * The fundamental rule of stat-
utory construction is that courts
shall ascertain and give effect to
the intention of the legislature.
*****"

In determining this intent, we believe that we should
look at the surrounding circumstances at the time of the
passage of this bill. In the case of *Fischbach Brewing Co.
v. City of St. Louis*, 95 S.W. (2d) 335, l. c. 338, the court
states:

"In determining the meaning and in-
tent of a statute it is proper to con-
sider the time of its enactment, the
surrounding facts and circumstances,
the purpose for which the law was en-
acted, the cause or necessity which
induced its enactment, the prior con-
dition of the law, the mischief sought
to be remedied, contemporaneous and
prior historical events which may have
influenced the enactment; in other
words, the judicial interpreters of
the law should put themselves as near
in the position of the makers of the
law as possible in order to more cor-
rectly ascertain their intent in its
enactment. *****"

At the time the bill was under consideration a large
part of our men between the ages of twenty-one and thirty
were serving their country in the various armed forces. Also,
many of our young men that were not in the armed forces were
working in newly created war industries. These large drains
on our manpower made it very difficult for employers to obtain
enough men to fill the jobs that they had open. We believe
that with this in mind the General Assembly attempted to allev-
iate the situation as it applied to the common carriers. In

order to do this they lowered the age of drivers from twenty-one to eighteen years. If their attempt is to be of any effect it will be necessary to construe Section 5730, Laws of Missouri, 1945, as repealing, or being an exception to, Section 8447, supra, at least in part. Another familiar rule of statutory construction is that the Legislature, in passing a law, did not intend to do a meaningless act. In the case of State ex rel. Frank W. McAllister, Attorney General, v. John W. Dunn, 277 Mo. 38, l. c. 45, the court states:

"* * * That the Legislature intended to accomplish something is not an unreasonable conclusion. That the statute should be construed to effect this, if on its face it is open to two reasonable constructions, is settled law. * * *"

Further, as we have noted before, Section 5730, Laws of Missouri, 1945, is limited by Section 5721, supra. In other words, Section 5730, Laws of Missouri, 1945, applies only in part to public or common carriers, while Section 8447, supra, applies to all public or common carriers. This brings before us another fundamental rule of statutory construction, namely, that a later special statute operates as the qualification to an earlier general statute embodying the whole of the subject matter. In State v. Mangiaracina, et al., 125 S.W. (2d) 58, l. c. 60, the court states:

"* * * "Where there is one statute dealing with a subject in general and comprehensive terms and another dealing with a part of the same subject in a more minute and definite way, the two should be read together and harmonized, if possible, with a view to giving effect to a consistent legislative policy; but to the extent of any necessary repugnancy between them the special will prevail over the general statute. Where the special statute is later, it will be regarded as an exception to, or qualification of, the prior general one * * *." * * * * *"

We believe it is very clear that these statutes as they affect common carriers are totally inconsistent. Each statute

Mr. Hinkle Statler

(8)

affects common carriers, but, as we have pointed out, Section 5730, Laws of Missouri, 1945, is limited in application by Section 5721, supra. Applying the above rules of statutory construction, and taking into consideration the surrounding circumstances as we have pointed them out, we are of the opinion that Section 5730, Laws of Missouri, 1945, is an exception to Section 8447, supra.

Conclusion

Therefore, it is the opinion of this department that the minimum age of drivers of public or common carriers is eighteen years, with the exception of drivers of school busses, who must be at least twenty-one years of age.

Respectfully submitted,

PERSHING WILSON
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

PW:CP