

DIRECTOR OF REVENUE: Director of Revenue may establish branch offices for administration of motor vehicle law, employ personnel and fix compensation. Employees to be paid out of state treasury. Motor vehicle owners, etc., shall pay only lawful fees for licenses. Gifts to employees for statutory services not favored by law. Attorney General cannot represent persons for recovery of excess license charges.

MOTOR VEHICLES:

ATTORNEY GENERAL:

February 28, 1951



Honorable W. D. Cruce
State Representative
Capitol Building
Jefferson City, Missouri

Dear Sir:

Referring to your letters dated February 9 and February 10, 1951, respectively, we will take up the matters mentioned in certain paragraphs of same which appear to us to be in their logical sequence. The first paragraph of your letter dated February 10 reads:

"I have very carefully checked the statutes and I am unable to find any place where the Director of Revenue is given authority to pay deputy collectors a 7¢ fee for each license plate sold. The only statute I can find which ever gave that authority is Section 8368, Laws of Missouri, 1945, Page 1194."

By reason of comparatively recent changes in our constitution and laws that may affect a conclusion on the questions presented, our discussion will take a somewhat wider range than would ordinarily be done in answering your inquiries. In this connection it may be helpful to take a look at past legislation relating to the administration of motor vehicle laws.

1. (a) By Section 8368, R. S. Mo. 1939, the Secretary of State had power to appoint a Commissioner of Motor Vehicles, who acted under the general supervision of the Secretary of State, who was authorized to fix the compensation of the Commissioner. The section further provided:

" * * * All other employees shall be appointed by the commissioner, with the approval of the secretary of state, to serve at his pleasure and for such compensation as shall be fixed by the secretary of state: Provided,

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no employee shall receive a greater salary than is paid clerks in any other state departments for similar work: Provided, however, there shall not be expended for clerical hire to exceed twelve hundred fifty dollars (\$1,250) for each ten thousand (10,000) motor vehicles registered, and twelve hundred fifty dollars (\$1,250) for each ten thousand (10,000) certificates of ownership issued in any calendar year. Before entering upon the discharge of their duties, the commissioner and employees in charge of branch offices shall each give bonds of a surety company authorized to do business in this state, * * * " (Emphasis ours.)

And:

" * * * The commissioner and all other employees shall be allowed all necessary traveling expenses while in the discharge of their duties. * * * "

And:

" * * * The commissioner shall establish, in each municipality in this state having a population of seventy-five thousand (75,000) or more, a branch office, in charge of an employee to be known as a deputy commissioner, * * * to receive applications for registration and certificates of ownership and to deliver certificates and number plates to applicants therefor. * * * The secretary of state may establish temporary or permanent branch offices in such other localities of the state as the business may warrant. Such deputy commissioners in charge of such branches as are not paid a salary for their services as deputy commissioners shall be paid for their services a sum equal to seven cents for each set of number plates issued, which amount shall be paid by the secretary of state out of funds appropriated for that purpose. * * * " (Emphasis ours.)

Under such section, the Commissioner had specific authority to locate and establish branch offices for administration of the then Motor Vehicle Law, and supplying the personnel necessary

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therefor, with their compensation to be fixed on either a salary basis or at a sum equal to seven cents per set of plate numbers issued.

Section 8402, in part, provided that:

"All fees for the registration of motor vehicles, trailers, chauffeurs, operators, certificates of title and motorcycles provided for herein shall be collected by the secretary of state and deposited in a bank where the branch office collecting same is located. * * * "

The latter section indicates that branch offices were authorized to collect all licenses and fees due under the Motor Vehicle Law. Section 8392c required purchasers of motor vehicles or trailers to have certificates of ownership for same issued by the Commissioner upon blanks to be furnished by him. Section 8369 required owners of motor vehicles, etc., to file in the office of the Commissioner, by mail or otherwise, applications for registration and providing fees for the issuance of certificates therefor.

Laws of Missouri, 1943, p. 663, repealed Section 8369, R. S. Mo. 1939, and enacted a new section. The section as reenacted, provided that certain owners of motor vehicles or trailers should cause to be filed, by mail or otherwise, in the office of the Commissioner, applications for registration thereof on blanks to be furnished by the Commissioner.

(b) Then along came the 1945 Constitution of Missouri, effective March 30, 1945, with Section 22, Article IV thereof reading in part as follows:

"The department of revenue shall be in charge of a director of revenue, and shall have divisions of collection, budget and comptroller, and other divisions as provided by law. The division of collection shall collect all taxes, licenses and fees payable to the state, except that county and township collectors shall collect the state tax on tangible property until otherwise provided by law. * * * "

Of course, licenses and fees due on account of the ownership or operation of motor vehicles in this state are to be collected by the Department of Revenue through its subsidiary, the Division

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of Collections. Section 30, Article IV of the Constitution, in connection with such fees and licenses, in part declares:

"For the purpose of constructing and maintaining an adequate system of connected state highways all state revenue derived from * * * license fees and taxes upon motor vehicles, trailers, * * * (excepting the sales tax on motor vehicles and trailers, * * *) less the cost, (1) of collection thereof, * * * shall be credited to a special fund and stand appropriated without legislative action for the following purposes, and no other: * * * *"
(Emphasis ours.)

Thereafter the General Assembly was and is authorized to appropriate moneys out of the Highway Department Fund received from such fees and licenses for the use of the Department of Revenue to pay the cost of collecting same.

In order to have the activities of state government dovetail into the 1945 Constitution, the 63rd General Assembly, by Laws 1945, p. 1428, with an emergency clause attached, the validity of which we assume, approved by the Governor April 26, 1946, centralized certain powers in a Department of Revenue to be headed by a Director of Revenue and vesting the Director of Revenue with a considerable discretion in the exercise of his powers and duties conferred on him. This legislation is now Chapter 32, RSMo. 1949.

Section 32.030, RSMo. 1949, after requiring the Director of Revenue to take and subscribe an oath of office, provides:

" * * * He shall also deposit with the secretary of state a bond, with sureties to be approved by the governor, in the amount of five hundred thousand dollars payable to the state of Missouri, conditioned on the faithful performance of the duties of his office and the satisfactory accounting of all moneys received by him. * * * " (Emphasis ours.)

Section 32.040, after reciting that the Director of Revenue and the Department of Revenue shall be furnished with suitable quarters in the City of Jefferson, further provides:

" * * * The director of revenue shall also establish and maintain permanent branch

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offices in the cities of St. Louis and Kansas City, and shall have power to select other additional places in the state for special full time or temporary offices."
(Emphasis ours.)

The foregoing section specifically directs the Director of Revenue to establish and maintain permanent branch offices in St. Louis and Kansas City, and also invests him with discretionary authority to set up and maintain additional branch offices in the state for special full time or temporary purposes in relation to the discharge of his duties as Director of Revenue, as imposed or required by law.

Among other powers and duties of the Director of Revenue as outlined in Section 32.050, paragraph 9 provides that the Director of Revenue:

"Be empowered to employ and remove such assistants, clerks and other employees in the department of revenue and each of the divisions of the department as the work of the department and divisions thereof may require within the limits of the appropriation and to fix their compensation;"
(Emphasis ours.)

Paragraph 10 of Section 32.050 provides that the Director of Revenue shall:

"Decide questions of policy of the department of revenue and each of the divisions thereof;"

Paragraph 14 of the same section states that the Director of Revenue shall:

"Receive all appropriations to the department of revenue for the use of the department of revenue and the several divisions thereof and shall be responsible for the disbursement and expenditure thereof."

In connection with the powers of the Director of Revenue, Section 136.020 reads, in part, as follows:

"The director of revenue with the approval of the governor, shall appoint a state collector of revenue, who shall head the division of collection, and who shall be

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under the supervision and direction of
the director of revenue. * * * "

Concerning the duties of the Collector of Revenue, Section
136.030, in part, provides:

"The state collector of revenue, subject
to the approval and under the direction
of the director of revenue, shall:

* * * * *

"(2) Make provisions for the collection
of the state income tax, inheritance tax,
motor vehicle drivers' license tax,
motor vehicle registration fees, motor
vehicle fuel tax, and sales tax; * * * "

By the provisions of Section 136.050, the State Collector of
Revenue at the supervision of the Director of Revenue, is given
the following authority:

"The state collector of revenue may
assign an employee or employees of the
division of collection to discharge the
duties of the division of collection
in any department, institution or agency
of the state, and such employee or
employees shall be afforded office space
and access to the records and property of
the department, institution or agency
used in the collection of any tax, license
or fee payable to the state when approved
by the director of revenue. The head of
such department, institution or agency
shall cooperate with and afford every
necessary facility to such employee or
employees in the discharge of his or their
duties." (Emphasis ours.)

The latter section was first enacted by Laws of Missouri, 1945,
p. 1428, and reenacted by Laws of Missouri, 1947, after Sections
32.040 and 32.050 were in effect.

(c) The 63rd General Assembly by Laws of Missouri, 1945,
p. 1194, repealed certain sections of R. S. Mo. 1939, including
Section 8368, together with Section 8369, Laws of Missouri, 1943,
p. 664, and reenacted certain sections in lieu thereof with new

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sections, abolishing the office of Commissioner of Motor Vehicles and imposing in the Director of Revenue all of the powers and duties in reference to administration of the Motor Vehicle Law. The bill carried an emergency clause, the effectiveness of which we assume, approved by the Governor April 30, 1946. It will be noted that the latter legislation was approved by the Governor subsequent to the approval of the bill creating the office and defining the duties of the State Director of Revenue.

As stated, Laws of Missouri, 1945, p. 1194, repealed Section 8368, R. S. Mo. 1939, and reenacted a new Section 8368, p. 1196. Because of the seeming importance of the repealed section in connection with the questions involved here, we set it out in full.

"It shall be the duty of the Director of Revenue to carry out the provisions of this article, except to the extent that powers and duties shall otherwise by this article be conferred upon another governmental agency. The Director of Revenue may establish temporary or permanent branch offices in such localities of the state and appoint such deputies as the business may warrant; Provided, however, that at least one such deputy shall be maintained in each county in the state. Such deputies in charge of such branches as are not paid a salary for their services as deputies shall be paid for their services a sum equal to seven cents for each set of number plates issued, which amount shall be paid by the Director of Revenue out of funds appropriated for that purpose. The director of revenue may destroy all applications for registration of motor vehicles and dealers after the same shall have been on file for four (4) years, but the application for registrations of chauffeurs, registered operators and certificates of ownership shall be preserved as permanent records." (Emphasis ours.)

The latter enactment provided that the Director of Revenue had authority to set up temporary branch offices for the transaction of Motor Vehicle business in charge of deputies, and that there be maintained a deputy in a branch office in each county in the state for the purpose of administering the Motor Vehicle Law. The deputies in charge of such offices who were not paid a salary, were to be compensated on a basis of seven cents per set of number plates issued through the office.

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(d) The above Section 8368 was repealed, Laws of Missouri, 1947, Vol. I, p. 380. It is now Section 301.040, RSMo. 1949, and reads:

"The director of revenue may notify each registered motor vehicle owner by mail, at the last known address, within an appropriate period prior to the beginning of the registration period to which he has been assigned, of the date for reregistration. Such notice shall include an application blank for registration and shall specify the amount of license due and the registration period covered by such license. Application blanks shall also be furnished the county clerk of each county and all branch offices of the department of revenue where they shall be made available to any person upon request." (Emphasis ours.)

The amended section provides that the Director of Revenue may notify each registered motor vehicle owner by mail of the date when such owner is to reregister, such reregistration being required by Section 301.030, establishing a monthly series basis of registration. Such notice shall include an application blank for such reregistration and the notice shall specify the amount due for such reregistration and the period covered by the license issued on such reregistration. Such application blanks shall also be furnished all branch offices of the Department of Revenue where they shall be made available to any person upon request.

This amended section recognizes the authority of the Director of Revenue to set up branch offices and that he may equip the same with personnel for the administration of the Motor Vehicle Law. With the notice in his possession, a motor vehicle owner would receive the same service at a branch office as he would at the main office of the Director of Revenue, since Section 301.160 provides that when the application for license is approved, and the money due therefor paid, the Director of Revenue shall deliver to the owner, by mail, or through authorized agents of the Director of Revenue, the receipt of the automobile department for such money and a set of license plates to be attached to the owner's motor vehicle.

In repealing Section 8368, 1945 Laws, the legislature eliminated the provision that a branch office for the administration of the Motor Vehicle Law be maintained in every county in the state, and abandoned the word "deputies." It also abolished the statutory

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command that, where a salary was not paid, the compensation of the deputy in charge of such branch office should be measured on the basis of the volume of business transacted through such branch office.

We also know that at the date of such repeal there was left unimpaired the provisions of Section 32.040, directing and authorizing the Director of Revenue to establish branch offices in the state and equip them with supplies and postage, for the administration of the affairs of the various divisions under his supervision, including the Division of Collections, which included the licenses and fees payable to the state on account of the Motor Vehicle Law, and Sections 301.040 and 301.160 recognizing the authority of such Director to establish such branch offices for the purpose of serving persons, firms and corporations, required to comply with the Motor Vehicle Law.

Upon such repeal, there was in full force and effect Section 32.050 empowering the Director of Revenue to employ such persons as are necessary to carry on the business of the divisions under his control and to fix the compensation for such employees, within the limits of the money appropriated by the legislature therefor. Section 301.050 does not state what yardstick the director shall use in determining the amount of such salaries.

Necessarily the business transacted through the respective branch offices would vary in amount and volume, so that it might be more equitable to fix the compensation of the employees in charge of the branch offices on a basis of the amount or volume of business transacted through the office rather than on a fixed flat monthly salary. Under the present law we think the Director of Revenue has authority to exercise his sound discretion in that respect, but in either event the compensation of the employee is to be paid out of the State Highway Department Fund.

Perhaps as a legislative construction or recognition of the right of the Director of Revenue to establish branch offices for the administration of the Motor Vehicle Law, and his right to supply same with personnel, the 65th General Assembly, Laws of Missouri, 1949, p. 10, Section 24, and p. 30, Section 3.040, appropriated money charged to the State Highway Department Fund for such purposes.

Section 301.190 provides for the issuance of certificates of ownership of motor vehicles before owners are entitled to registration, for which the Director of Revenue is to be paid a fee of \$1.00. Applications for certificates of title are to be made on blank forms furnished by the Director of Revenue and apparently may be filled out and signed anywhere.

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In order to register a motor vehicle not theretofore registered, Section 301.020 requires the owner to file, by mail or otherwise, in the office of the Director of Revenue, an application for registration on a blank to be furnished by the Director. In this connection, it is to be noted that Section 8369, R. S. Mo. 1939, in reference to registration of owners of motor vehicles, required the owner to "cause to be filed, by mail or otherwise, in the office of the Commissioner, an application for registration or blank to be furnished by the Commissioner for that purpose." So, as to details of making an application, the procedure under the latter section was substantially the same as it is under Section 301.020. We think the applicant could make out and sign the application wherever he desires.

The amount of fees for an original or reregistration of a motor vehicle is regulated by Sections 301.050 to 301.100 inclusive, the amount of the registration fees being based on the volume of horsepower of the engine of the particular motor vehicle to be registered.

Section 301.210 provides that upon the sale of a motor vehicle a new certificate of ownership therefor will be issued by the Director of Revenue for a fee of \$1.00. When a certificate of ownership, registration certificate, number plate or badge is lost, mutilated or destroyed, under Section 301.300 the Director of Revenue will issue a duplicate thereof upon the payment of a fee of \$1.00. Section 302.040 requires applicants to pay the Director of Revenue a fee of twenty-five cents for the issuance of a driver's license.

Section 301.050 requires all registration fees due under the Motor Vehicle Law be paid to the Director of Revenue and shall accompany the application for registration. The latter section should be read in connection with Section 301.040, requiring application for registration blanks to be furnished branch offices where the same may be procured upon request by motor vehicle owners. Section 301.090 requires that all fees for registration of motor vehicles, trailers, etc., issuance of certificates of title, be collected and deposited by the Director of Revenue with the State Treasurer to the credit of the State Highway Department Fund. The two latter sections are in compliance with the 1945 constitutional provisions heretofore set out.

We think the legislature, in enacting the present Motor Vehicle Law, intended there should be a proper, efficient and prompt administration of same, considering the obviously large volume of business in connection with same over the entire state of Missouri.

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From all of the foregoing, it is clear to us that the General Assembly intended to grant, and did grant, the Director of Revenue authority to establish branch offices with equipment and supplies furnished them, for the additional administration of the Motor Vehicle Law in all respects and details.

If and when the legislature appropriates money therefor, we think the Director of Revenue has the power to employ persons for the performance of the duties required by such branch offices and to fix the compensation of such employees on a fair and equitable basis, such compensation to be paid out of the State Treasury and within the limits of the appropriation above mentioned.

2. (a) The first sentence of the third paragraph of your letter dated February 10, 1951, reads:

"I am unable to find any place in the statutes which authorizes the payment of a 5¢ fee on drivers' licenses."

We assume you mean by the quoted statement that you have been informed that employees of the Director of Revenue in charge of administration of the Motor Vehicle Law have charged applicants for driver's licenses five cents in addition to the statutory charge of twenty-five cents therefor.

Section 302.050, RSMo. 1949, in part, provides:

"To all applicants, submitting a satisfactory application under the requirements set forth in sections 302.010 to 302.270, the director of revenue shall issue a motor vehicle driver's license upon the payment of a fee of twenty-five cents therefor, for two years. * * * " (Emphasis ours.)

In reference to applications for driver's licenses and the contents of same, Section 302.040 provides:

"1. Applications for a motor vehicle driver's license shall be made upon a form approved and furnished by the director of revenue. * * * The application shall be verified by the applicant before a person authorized to administer oaths, and officers and employees of the department are hereby authorized to administer such oaths without charge. * * * " (Emphasis ours.)

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Section 302.030 is as follows:

"All fees collected by the director of revenue under the terms of sections 302.010 to 302.270 shall be deposited as provided in section 301.090, RSMo. 1949."

Section 301.090 mentioned in the last quoted section has been heretofore referred to.

The Director of Revenue is entitled to be paid twenty-five cents for the issuance of a driver's license, and the collection of any additional amount for the issuance of such license by the Director of Revenue is an unlawful exaction. Should the applicant sign the required affidavit before some officer other than an employee of the Director of Revenue, then the applicant would be required to pay such officer the statutory charge for taking such oath. In the latter case, the applicant would be required to pay the necessary carrying charges for transmitting the application through the United States mail to the office of the Director of Revenue at Jefferson City, Missouri.

(b) Your letter dated February 9, 1951, reads as follows:

"It has come to my attention that there is a wide-spread practice in Missouri of added charges being made by deputies of the Department of Revenue in various branch offices when citizens purchase their automobile licenses from them.

"I would like your official opinion as to the legality of this practice. I would appreciate it if it could be rendered as soon as possible because if such a practice is legal I would like to introduce legislation prohibiting it."

We interpret your quoted letter as meaning that you have information that certain employees of the Director of Revenue in charge of the administration of the Motor Vehicle Law have charged applicants for motor vehicle licenses sums in addition to the statutory charge due the state for the issuance of such licenses.

If we have correctly interpreted the meaning of your letter, it is a short road to the answer. It is a rule of law in this state, old as the hills, that a public officer is entitled to compensation for his official services only when he can put his

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finger on a statute authorizing its payment.

The statutes, as we have pointed out, set out the specific amount, or a mode of its ascertainment, due the state when the owners of motor vehicles are complying with the Motor Vehicle Law. When such owners make such statutory payments they have discharged their full obligation to the state and every person in it. The employees of the Director of Revenue must look to him and him alone for their compensation, regardless of the sufficiency of the amount. In this connection we call attention to State ex rel. Buder v. Hackmann, 265 S. W. 532, 305 Mo. 342, the Supreme Court of this state saying, l.c. Mo. 351:

"The argument of hardship and that an officer should not be compelled to incur a financial loss, in performing the duties incident to his office, cannot be considered by the courts in passing upon the rights of relator as fixed by the statute. Failure to provide a salary or fee for a duty imposed upon an officer by law does not excuse his performance of such duty. (State ex rel. v. Brown, 146 Mo. l.c. 406.) * * * But such fact is for consideration by the Legislature, and not by the courts."

The case of Yuma County v. Wisener, 46 P. 2d 115, 99 A.L.R. 642, involved facts somewhat similar to the matters under consideration. In the latter case the clerk of the superior court of Yuma County, Arizona, was authorized to issue marriage licenses. When non-residents were granted licenses they were charged a sum in addition to the statutory fee upon representation of the clerk that the additional amount was properly due under the law. The case involved the validity of such additional exactions by the clerk. At A.L.R. 646, the Supreme Court of Arizona, discussing the legality of the clerk's action, said:

"Any officer who gives a citizen to understand in any manner that the law requires a fee for the performance of a duty in excess of the legal one, and who retains such excess, when paid, for his own use, is certainly guilty of the most reprehensible conduct, which comes perilously near to being a criminal offense, if it is not actually such."

Any money collected from a motor vehicle owner in this state by an employee of the State Director of Revenue in addition to

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the statutory fees and license charges, under the circumstances as we have interpreted your letter, is unwarranted in law and "comes perilously near to being a criminal offense, if it is not actually such."

(c) In defining what is meant by public policy, the Supreme Court of the United States in *Trist v. Child*, 88 S. Ct. 441, 450, said:

"The foundation of a republic is the virtue of its citizens. They are at once sovereigns and subjects. As the foundation is undermined, the structure is weakened. When it is destroyed, the fabric must fall. Such is the voice of universal history. The theory of our government is, that all public stations are trusts, and that, those clothed with them are to be animated in the discharge of their duties solely by considerations of right, justice, and the public good. They are never to descend to a lower plane. But there is a correlative duty resting upon the citizen. In his intercourse with those in authority, whether executive or legislative, touching the performance of their functions, he is bound to exhibit truth, frankness, and integrity. Any departure from the line of rectitude in such cases, is not only bad in morals, but involves a public wrong. No people can have any higher public interest, except the preservation of their liberties, than integrity in the administration of their government in all its departments."

Situations such as you mention in your letter may be sought to be excused on the theory that additional sums received were gifts from motor vehicle owners. Even that practice is unethical and violative of public policy. The opulent, and those less fortunately circumstanced, are entitled to equal public service under the law, uninfluenced by gratuities or other favors.

(d) There is no doubt that an employee collecting and retaining such illegal exactions is liable for its return at the suit of the owner of the motor vehicle or applicant for driver's license. The Attorney General of this state does not have authority, in his official capacity, to institute or maintain such an action.

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The Supreme Court of this state decided that question in State ex rel. v. Chicago and Alton Railroad Company, 265 Mo. 646, where the Attorney General of Missouri, properly representing the state as a claimant, sought also to recover for individuals, firms and corporations, sums demanded by and paid the railway company on account of freight charges in excess of the lawful rates therefor. The right of the Attorney General to sue for claimants, other than the State of Missouri, was questioned and on that point the court said:

"We realize that there is an equitable rule which permits persons similarly situated to sue in the name of a class, but that rule has no application to a thousand individual claims independent upon different proof. The rule is largely dissipated by our code which requires all cases (legal or equitable) to be brought by the party interested."

In the present situation the state is not a claimant. The statutes and the common law specify or indicate the character of actions the Attorney General may institute, and do not include suits for money due individuals on account of moneys illegally collected from them by a public officer, and in which moneys the general public does not have a pecuniary interest.

CONCLUSION

Upon a consideration of this whole matter as we have outlined and detailed it, it is the opinion of the Attorney General of Missouri:

(a) That the General Assembly has empowered the Director of Revenue to establish, maintain and furnish the supplies and personnel for branch offices in this state for the supplementary administration of the Motor Vehicle Law in all of its details.

(b) That the Director of Revenue is given authority by the legislature, if and when the General Assembly has appropriated funds for that purpose, to employ persons to administer the Motor Vehicle Law and, in the exercise of a sound discretion, he may fix the compensation of such employees therefor, upon a basis or measured by a standard just and equitable to the state and employee, but within the limits of such appropriation.

That compensation payable to such employees for their services in administering the Motor Vehicle Law is to be paid only

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out of the treasury of the State of Missouri.

(c) That any money collected by an employee of the Director of Revenue from the owner of a motor vehicle, trailer, etc., or applicant for driver's license, in excess of the amount required by the statutes of Missouri to be paid by any of them as a compliance with the provisions of the Motor Vehicle Law, is unlawful.

(d) That the employee making such unlawful collection is liable for the return of such money, and suit may be instituted and maintained therefor by the owner of a motor vehicle or trailer, or applicant for driver's license, having paid same.

Respectfully submitted,

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Assistant Attorney General

APPROVED BY:

J. E. TAYLOR
Attorney General of Missouri

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