

INTERSTATE COMMERCE:
MOTOR VEHICLES:
RECIPROCITY:

- (1) Motor carrier operating in described fashion is engaged in "interstate commerce."
- (2) Reciprocity for commercial motor vehicle registration between states of Missouri and Delaware.



October 4, 1954

Honorable Hugh H. Waggoner
Superintendent
Missouri State Highway Patrol
Jefferson City, Missouri

Dear Sir:

Reference is made to your request for an official opinion of this department reading as follows:

"The Frisco Transportation Company, a Delaware Corporation, operates trucks bearing Oklahoma license plates between Missouri and Oklahoma. On part of their operation, they pick up freight and merchandise at Springfield, Missouri and transport it to Joplin, Missouri. This freight and merchandise is shipped into Springfield from other states on the Saint Louis - San Francisco Railroad, which is a Missouri corporation. The freight moved from Springfield to Joplin is usually only part of the load on the truck and the remainder of the load is delivered to points in Oklahoma.

"The State of Oklahoma does not grant reciprocity on license plates to Missouri residents whose trucks are engaged in intra-state transportation in Oklahoma and, therefore, Missouri does not grant reciprocity to Oklahoma residents under similar circumstances.

"It is respectfully requested that you advise us whether or not in your opinion the transportation of freight from Springfield, Missouri to Joplin, Missouri is an intra-state operation even though

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the freight is being moved in interstate commerce by means of the Saint Louis - San Francisco Railroad and the Frisco Transportation Company."

From the facts disclosed in your letter of inquiry it is apparent that the merchandise being transported is moving continuously from the consignor to the consignee. The mere fact that two or more connecting lines or methods of transportation are employed in such movement does not destroy the interstate commerce character thereof. There are numerous cases so holding. We direct your attention to the Daniel Ball case, reported 77 U.S. 557, 19 L. Ed. 999, from which we quote:

"* * * In this case it is admitted that the steamer was engaged in shipping and transporting, down Grand River, goods destined and marked for other States than Michigan, and in receiving and transporting up the river goods brought within the State from without its limits; but inasmuch as her agency in the transportation was entirely within the limits of the State, and she did not run in connection with, or in continuation of, any line of vessels or railway leading to other States, it is contended that she was engaged entirely in domestic commerce. But this conclusion does not follow. So far as she was employed in transporting goods destined for other States, or goods brought from without the limits of Michigan and destined to places within that State, she was engaged in commerce between the States, and however limited that commerce may have been, she was, so far as it went, subject to the legislation of Congress. She was employed as an instrument of that commerce; for whenever a commodity has begun to move as an article of trade from one State to another, commerce in that commodity has begun to move as an article of trade from one State to another, commerce in that commodity between the States has commenced. The fact that several different and independent agencies are employed in transporting the commodity, some acting entirely in one State, and some acting through

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two or more States, does in no respect affect the character of the transaction. * * "

We believe the conclusion inescapable that the carriage provided by the Frisco Transportation Company as described in your letter of inquiry is an integral part of transportation in "interstate commerce."

However, we note further from your inquiry that your primary concern seems to be that of registration requirements of the motor vehicles so engaged. We therefore have extended our research into the law applicable and make the following observations which we consider pertinent to the registration of such motor vehicles.

We direct your attention to the provisions of Section 301.270, RSMo 1949, which is the Missouri Motor Vehicle Registration Reciprocity Statute. It reads as follows:

"A nonresident owner, except as otherwise herein provided, owning any motor vehicle which has been duly registered for the current year in the state, country or other place of which the owner is a resident and which at all times when operated in the state has displayed upon it the number plate or plates issued for such vehicle in the place of residence of such owner may operate or permit the operation of such vehicle within this state without registering such vehicle or paying any fee to this state, provided that the provisions of this section shall be operative as to a vehicle owned by a nonresident of this state only to the extent that under the laws of the state, country or other place of residence of such nonresident owner like exemptions are granted to vehicles registered under the laws of and owned by residents of this state."

It will be observed that the statute is by its terms applicable to owners referred to as being "non-resident" or "resident." It is true that the term "resident" is not ordinarily nor technically synonymous with the term "domiciled." The first connotes a more or less temporary physical presence at some geographical location, not necessarily coupled with an intent to remain permanently. Such a "residence" may be acquired in

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connection with the discharge of official duties, engaging in business or for purely personal reasons. The latter term ordinarily refers to a permanent place of abode with respect to which a person at all times has an intent to return although such return may be in the future. However, in the statute quoted it is our thought that the words "non-resident", "resident" and "residence" are used in the sense of being synonymous with the word "domicile." Such similarity of meaning has been employed by the appellate courts in the construction of other statutes in which similar language is employed. Such terminology is so construed in actions relating to divorce, (*Sasals v. Sassie*, 249 P. 2d 380, 41 Wash. 2d 363); taxation (*McIntosh v. Maricopa County* 241 P 2d 801, 73 Ariz. 366, 31 A.L.R. 2d 770); right of franchise (*Mitchell v. Delaware State Tax Commission*, 42 Atl. 2d 19, 3 Terry 589) and probate matters (*In re Eisenberg's Estate*, 31 NYS 2d 380, 177 Misc. 655). A complete discussion of such construction appears in State ex rel. *Sathere v. Moodie*, 258 NW 558, 65 N.D. 340.

We have dwelt at some length upon the construction to be given Section 301.270, RSMo 1949, for the reason that in your letter of inquiry you have stated that the Frisco Transportation Company is a Delaware Corporation. It therefore is ordinarily to be treated as having its domicile in the state of its incorporation. It is also true that by compliance with the laws of another state and by engaging in the conduct of its business therein a corporation may become for many purposes a "resident" of a state other than that of its incorporation.

However, we think, that as stated above, the word "residence" as used in the statute quoted, is synonymous with "domicile" as any other construction placed upon such statute could render it ambiguous and lead to absurdities. A single illustration will disclose how such result might be reached. Assume that a corporation chartered by the State of Delaware was lawfully engaged in the transportation by motor vehicle of commodities in ten other states. Further assume that such corporation thereby became a "resident" of each of such other ten states. It is readily apparent that no guide would, in such circumstances, be supplied by the statute under consideration in determining the reciprocity which should be granted the motor vehicles of such corporation should its operations be extended into the State of Missouri.

In the case of *Western Express Company vs. Wallace*, 144 Ohio State 612, the Court held that a corporation, insofar as the motor vehicle reciprocity laws are concerned, can be a resident only of the state in which it is incorporated. However, the courts have considered that a corporation may become

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a resident of more than one state for some purposes. In the case of Morse vs. Lash Motor Company (Conn.), 139 Atl. 637, l. c. 638, the Court stated:

"For the purpose pertaining to registration of motor vehicles a person may be a resident of more than one state."

That case involved an individual rather than a corporation, and the conclusion was based upon a Connecticut statute which defined a non-resident as a person having no regular place of abode or business in the state for a longer period than fifteen days in each year. However, as above pointed out, it appears that to apply the doctrine of multiple residence to a corporation engaged in business in Missouri would afford no standard for determination by law enforcement officials of whether or not a vehicle should be registered in this state. Certainly, the choice of place of registration of a vehicle employed in numerous states should not be a matter solely for the owner.

The Frisco Transportation Company is qualified to do business in Missouri, and it appears to us that under the multiple residence doctrine, if it becomes a resident of Oklahoma by qualifying and doing business there, it would likewise become a resident of Missouri and would not, in any event, be entitled to the benefits of our reciprocity statute. Such a conclusion was reached in the case of Gondek vs. Gudahay Packing Company, 233 Mass. 105, 123 N. E. 398.

Moreover, the Missouri Motor Vehicle Registration fee is a tax imposed for the privilege of operating vehicles on the highways of the state. State ex rel. McClung vs. Becker, 288 Mo. 607, 233 S. W. 54. The reciprocity provision is in effect an exemption from such tax in favor of non-residents. The State of Missouri has a right to impose a tax for the use of its highways on residents and non-residents alike. The fact that a vehicle is engaged in interstate commerce is no bar to the right of the State of Missouri to impose a tax upon its owner for the privilege of using the highways of this state. 25 A. L.R. 37, 52 A.L.R. 533. Therefore, the reciprocity privilege being in effect an exemption from tax, it should be strictly construed. Strict construction would result in the determination of the place of residence of a corporation in accordance with the strict legal principles set out above for the determination of such question, and such strict principles necessarily make Delaware the residence of the corporation in question.

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In view of the foregoing, the laws of Delaware would determine, provided that the vehicle was properly registered there, the reciprocal privileges of the operator in Missouri. Delaware statutes do provide reciprocity in certain circumstances. Delaware Code Ann., par. 2112 (a) (d). However, the information that you have given indicates that the vehicle in question has not been registered in Delaware and, therefore, there could be no reciprocity provision extended to it under the Missouri law, and registration in Missouri would be required.

CONCLUSION

Therefore, it is the opinion of this office that a motor vehicle owned by a corporation organized under the laws of Delaware and registered and licensed in the State of Oklahoma, which operates on the highways of the State of Missouri, is entitled to reciprocity under the Missouri statute only if duly registered and licensed in the State of Delaware, and only to the extent that similar privileges are granted to Missouri owners by Delaware, and that if such vehicle is not registered and licensed in Delaware, it would not be entitled to operate in the State of Missouri without having been registered and licensed in Missouri.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Robert R. Welborn.

Very truly yours,

JOHN M. DALTON
Attorney General

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