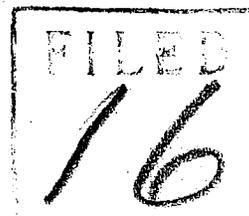


BRIDGES: In enactment of Sec. 229.160, RSMo 1949, requiring
PUBLIC HIGHWAYS: movers of threshing machines, sawmills, steam engines,
INJURIES TO: or gasoline tractors to lay down planks of not less
than dimensions given, on floor of a bridge before
moving any such machines thereover, and that failure to take said pre-
cautions, when resulting in injury to bridge, making mover liable in
double amount of injuries, it was legislative intent that by expressly
naming said machines all other types of machines were impliedly ex-
cluded. Diesel powered tractors and heavy machinery not within
purview of section.

March 9, 1960

Honorable Don Chapman, Jr.
Prosecuting Attorney
Livingston County
Chillicothe, Missouri



Dear Mr. Chapman:

This is to acknowledge receipt of your request for a legal
opinion which reads as follows:

"Do diesel powered tractors and heavy machinery
come within the purview of 229.160, Missouri
Revised Statute? The County Court of Livingston
County has requested that I obtain an official
opinion from you."

Section 229.160, is referred to by you in the opinion request
and said section reads as follows:

"All persons owning, controlling or managing
threshing machines, sawmills and steam engines
or gasoline tractors are required, in moving
the same over public highways to lay down
planks not less than one foot wide and three
inches in thickness on the floors of all bridges
situate on the public highways, while crossing
the same with such threshing machines, sawmills,
steam engines or gasoline tractors, and in the
event any person owning any such machinery shall
cross or attempt to cross any bridge upon any
public highway with such machinery who shall
neglect or fail to lay down said planks as a
protection to said bridge and who shall, by
reason of such neglect cause injury to any such
bridge, he shall be liable for double the
amount of such injury to be recovered in the
name of the county or any subdivision thereof,
to the use and benefit of the road and bridge
fund."

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We understand said inquiry to ask if one who moves a diesel-powered tractor and heavy machinery over a bridge on a public highway is first required to lay heavy planks on the floor of the bridge for the wheels to run on while crossing the bridge. In the event a person moves said tractor or heavy machinery across the bridge without taking the statutory precautions, and by reason of his neglect, the bridge is injured, will such person be liable for double the amount of injuries to the bridge, under provisions of said section? In other words, is a diesel-powered tractor and heavy machinery included within the specific class of objects mentioned in the section?

Your question calls for a construction of Section 229.160. In attempting to arrive at the proper conclusion it will be necessary to keep the statutory rules of construction in mind, particularly that primary rule of construction which requires one to ascertain and give effect to the intention of the lawmakers from the words used in the statute under consideration, if possible, and to put upon the statutory language honestly and faithfully its plain and rational meaning to promote its object.

The manifest purpose of the lawmakers in enacting this statute was to protect the bridges on public highways against injury from heavy machinery being moved across such bridges, and to require all persons moving said machinery to take certain precautions required by the statute to avoid injury to the bridges. Persons who neglected to take such precaution before moving their machinery which resulted in injury to a bridge would be civilly liable for double the amount of injury to the bridge.

It is noted that Section 229.160, supra, is very limited in scope, in that it refers only to the kind of machinery specifically named, which is; threshing machines, sawmills, steam engines, and gasoline tractors. In attempting to determine whether or not the statute was intended to include other kinds or classes of machinery than those mentioned, such as diesel-powered tractors and heavy machinery, we must consider the statutory rule of construction of "expressio unius est exclusio alterius" which means that the express mention of one thing, person, or place implies the exclusion of another.

In the case of *City of Hannibal v. Minor*, 224 S.W.2d 598, the court discussed said rule and applied it to the facts in issue in the case. The defendant had been convicted in the Hannibal Court of Common Pleas of violating a city ordinance requiring the payment of a license fee for operating an automobile repair shop. At l.c. 605, the court said:

"[6-7] A careful reading of the statute itself, Section 7451, supra, shows that the Legislature

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gave to the municipalities named therein authority to tax a large number of occupations and callings and 'specially named' them separately. Among those named was 'auto wrecking shops.' When we consider that the Legislature specially named 'machine shops' and 'auto wrecking shops' but did not mention 'automobile repair shops,' the intention to exclude the last mentioned becomes clear. There is a fundamental principle of construction which has been recognized and applied from time immemorial by our courts to such questions as we have here. It is embodied in the maxim: 'Expressio unius est exclusio alterius' which means that the express mention of one thing, person or place implies the exclusion of another. The application of this principle to the question before us merely serves to emphasize the fact that the City in this case was without authority to include in its ordinance 'automobile repair shops.'

"On the entire record, it is our view that the defendant was improperly convicted because the ordinance which constituted the foundation of the prosecution was invalid and void insofar as it named an 'automobile repair shop' as a subject of taxation, there being no authority in state law to authorize such tax. The judgment of the Hannibal Court of Common Pleas is, therefore, reversed and the defendant discharged."

Applying the principles of the statutory rule of construction laid down by the court in the above mentioned case, it clearly appears to be the legislative intent that by specifically naming threshing machines, sawmills, steam engines and gasoline tractors, and by excluding all other kinds of machinery, the implication is that the latter kinds or classes of machinery were to be excluded from the operation of the statute by the lawmakers.

CONCLUSION

Therefore, it is the opinion of this office, that in the enactment of Section 229.160, RSMo 1949, requiring persons moving threshing machines, sawmills, steam engines or gasoline tractors over a

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bridge on any public highway, to lay down planks of not less than the dimensions mentioned, on the bridge floor, before any such machines are moved thereover, and that a failure to take said precautions when resulting in injuries to the bridge, shall make the mover liable for double the amount of said injuries, it was the legislative intent that by expressly naming threshing machines sawmills, steam engines and gasoline tractors, all other kinds and types of machines were impliedly excluded therefrom, consequently, diesel-powered tractors and heavy machinery do not come within the purview of this section.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Mr. Paul N. Chitwood.

Yours very truly,

John M. Dalton
Attorney General

PNC:am