

MOTOR VEHICLES: The driver of a truck or bus may not be charged with a crime for violation of either
TRUCKS: Sec. 304.017 or Sec. 304.044.2 when following a vehicle other than another truck or bus.

OPINION NO. 393 (1961) 29 (1962)

March 6, 1962

Honorable William W. Hoertel
Prosecuting Attorney
Phelps County
Rolla, Missouri



Dear Sir:

We are in receipt of your request for an opinion of this office, the relevant portion of which reads as follows:

"This is a formal request for an opinion concerning Sections 304.017, and 304.044, Revised Statutes of Missouri, 1959. It seems that I have run across what appears to be a situation of immunity for a trucker. In Section 304.017, the statute reads that 'a driver of a vehicle other than those designated in Section 304.044, R.S. Mo. shall not follow another vehicle more closely than is reasonably safe and prudent * * *'. (Emphasis mine.) When we look at Section 304.044, (2), it states, 'the driver of any truck or bus, when traveling upon a public highway of this state, outside of a business or residential district, shall not follow within 300 feet of another such vehicle; * * *'. (Emphasis mine.)

"My question, therefore, is this: assuming a motor vehicle in the form of an automobile is driving along a public highway outside of the city limits of any given town or city. Further assuming that the truck is following this automobile, and that the truck is following so close that when the automobile

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gives signal and turns from the road, the automobile is struck in the rear by the truck.

"Under that set of facts, my question is whether or not the truck driver can be charged with a misdemeanor under either Section 304.017 or 304.044, or whether or not, by accident, the legislature has provided an immunity to the truck driver for this type criminal charge."

Sections 304.017 and 304.044.2, RSMo 1959, to which you make reference, are as follows:

§304.017.

"The driver of a vehicle other than those designated in section 304.044 shall not follow another vehicle more closely than is reasonably safe and prudent, having due regard for the speed of such vehicle and the traffic upon and the condition of the roadway. Vehicles being driven upon any roadway outside of a business or residence district in a caravan or motorcade, whether or not towing other vehicles, shall be so operated, except in a funeral procession or in a duly authorized parade, so as to allow sufficient space between each such vehicle or combination of vehicles as to enable any other vehicle to overtake or pass such vehicles in safety. This section shall in no manner affect section 304.044 relating to distance between trucks traveling on the highway."

§304.044.2.

"The driver of any truck or bus, when traveling upon a public highway of this state outside of a business or residential district, shall not follow within three hundred feet of another such vehicle; provided, the provisions of this section shall not be construed to prevent the overtaking and passing, by any such truck or bus, of another similar vehicle."

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Violation of either of the quoted sections is made a misdemeanor (§304.026, 304.044.3, RSMo 1959).

From a reading of Section 304.017, it is evident that the drivers of trucks and buses (the subjects of §304.044) are exempted from the requirement of a "reasonably safe and prudent" following distance as provided therein. This is the construction given that section by our Supreme Court in *Thebeau v. Thebeau, Mo.*, 324 SW2d 674, where the Court said (l.c. 678):

"We have no doubt that the main purpose of section 304.044 was, as the Maryland court held, to provide sufficient space between trucks and busses to permit lighter vehicles to pass, but we are not persuaded that this was its only purpose. We think it obvious that as a traffic safety regulation it was also intended for the protection of forward trucks and those trucks following, as well as the drivers and passengers therein. It should be noted that, unlike the Maryland and other similar statutes in the cases we have mentioned, our section 304.017 (providing that the driver of a vehicle shall not follow another vehicle more closely than is reasonably safe and prudent) by its express terms is inapplicable to the drivers designated in section 304.044. Note the language with which section 304.017 opens and closes: 'The driver of a vehicle other than those designated in section 304.044, RSMo, shall not follow,' etc. 'This section shall in no manner affect section 304.044, RSMo, relating to distance between trucks traveling on the highway.' (Italics, the present writer's.) Therefore, if the safe and prudent following distance rule is applicable to drivers designated in section 304.044, it is by virtue of a common law duty, and not under section 304.017."

Turning now to Section 304.044.2, it is there provided that no truck or bus shall follow within three hundred feet of "another such vehicle." The statute contains a proviso permitting a truck or bus to pass "another similar vehicle."

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It appears, therefore, that the driver of a truck or bus is limited by the three hundred feet following distance only when he is following another truck or bus. The following distance requirement of Section 304.044.2 does not have application, then, to the situation where a truck or bus is following an automobile.

Since the driver of a truck or bus following a vehicle other than another truck or bus is exempted from the following distance requirements of both Section 304.017 and Section 304.044.2, he may not be charged with a crime for the violation of either of these statutes under the facts which you set out.

CONCLUSION

It is, therefore, our conclusion that the driver of a truck or bus may not be charged with a crime for the violation of either Section 304.017 or Section 304.044.2 when following a vehicle other than another truck or bus.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, James J. Murphy.

Yours very truly,

THOMAS F. EAGLETON
Attorney General

JJM:ml