

MOTOR VEHICLES:
HIGHWAY DEPARTMENT:
STATE HIGHWAY DEPARTMENT:
AGRICULTURAL IMPLEMENTS:
ROAD MACHINERY:
ROAD MATERIALS:
PERMIT FOR OPERATION OF MOTOR
VEHICLES TEMPORARILY TRANS-
PORTING:

A hauler regularly transporting motor vehicles carrying agricultural implements or road making machinery or road materials must obtain permit if dimensions exceed statutory authorization. No permit required for such hauler not regularly engaged in such transporting.

July 11, 1962

OPINION NO. 262

Honorable Robert L. Hyder
Chief Counsel
State Highway Commission
Jefferson City, Missouri



Dear Mr. Hyder:

This is in answer to your letter of recent date in which you ask for a formal opinion as to the necessity for a permit for the operation of motor vehicles transporting agricultural implements or road machinery or road materials, where the dimensions of such vehicles, including loads, exceed the dimensions authorized by Section 304.170, RSMo 1959.

Section 304.170 provides as follows:

1. No vehicle operated upon the highways of this state shall have a width, including load, in excess of ninety-six inches, except clearance lights, rear view mirrors or other accessories required by federal, state or city law or regulation.
2. No vehicle operated upon the highways of this state shall have a height, including load, in excess of twelve and one-half feet.
3. No single motor vehicle operated upon the highways of this state shall have a length, including load, in excess of thirty-five feet.
4. No bus or trackless trolley coach operated upon the highways of this state shall have a length in excess of forty feet.

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5. No combination of vehicles operated upon the highways of this state shall have an overall length, unladen or with load, in excess of fifty feet.

6. These restrictions shall not apply to agricultural implements operating occasionally on the highways for short distances, or to vehicles temporarily transporting agricultural implements or road making machinery, or road materials, or towing for repair purposes vehicles that have become disabled upon the highways."

Section 304.200, the authority for the issuance of permits by the State Highway Department for vehicles exceeding the dimensions set out in Section 304.170, provides in part as follows:

"1. The chief engineer of the state highway department, whenever in his opinion the public safety or public interest so justifies, may issue special permits for vehicles exceeding the limitations on width, length, height and weight herein specified. Such permits shall be issued only for a single trip or for a definite period, not beyond the date of expiration of the vehicle registration and shall designate the highways and bridges which may be used under the authority of such permit."

From the plain, clear unequivocal language found in Section 304.170 (6) there is no restriction upon the vehicles therein enumerated and such vehicles do not require a permit when such vehicles exceed the dimensions set out in Section 304.170, since such restrictions simply do not apply to the vehicles set out in Section 304.170 (6). However, the real problem in this connection arises in determining what vehicles do come within the exception set out in Section 304.170 (6).

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In the case of Park Transportation Company v. Missouri State Highway Commission et al, 60 SW2d 388, the Supreme Court of Missouri en banc decided a case in which a suit was brought by a "contract hauler" against the State Highway Commission asking for an injunction against such Commission bottomed upon the allegation that the State Highway Commission had promulgated a rule which was unauthorized under the provisions of Section 304.170 (6). The allegation was that the State Highway Commission had notified the Company that it would not issue a permit for such Company to haul overlength or overwidth loads of road building machinery or materials except from a point where the road building machinery or material had been transported by rail to a place as close as possible to the actual point of road construction. The contract hauler further alleged that such hauler was in the business of hauling road material by truck on public highways over irregular routes in the State and occasionally overlength loads were required to be transported. The Supreme Court affirmed the trial court's denial of the issuance of an injunction in this law suit and held that the contract hauler in this case did not show that such hauler came within the exemptions of Section 304.170 (6), and further held that the phrase "temporarily transporting" referred to the use made of the highway and not temporary necessity of a hauler in being required to make a trip with a load in excess of the length authorized by law.

The Court said, l.c. 392:

" * * * The expression 'temporarily transporting' as used in the statute is a definition, a term of legal signification, to be interpreted as a matter of law. The duty is imposed by the statute upon a fact-finding agency to determine when the facts of a given situation meet the legal definition and authorize the transportation. Appellant seems to hold the view that its own temporary necessity is the same thing as temporarily transporting, notwithstanding they are distinctly dif-

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ferent. It is quite apparent that the latter expression refers to the use made of the highways, and implies that the use in any particular instance is of short duration and frequency as compared with the ordinary use of the highways by motortrucks, with a corresponding limitation of interference with other traffic and of wear and strain on the highways. * * * "

It appears that the Supreme Court in so holding made a determination that to come within the exemption of Section 304.170 (6), a hauler must not be regularly engaged in the business of transporting agricultural implements or road making machinery or road materials, but to come with the exemption, a hauler must be one who makes only an infrequent trip transporting such machinery or materials and who is not regularly engaged in such business.

If a hauler is regularly engaged in transporting agricultural machinery, road building machinery, or materials, he must obtain a special permit under provisions of Section 304.200, if he wishes to transport loads exceeding the dimensions authorized by Section 304.170.

The opinion of the Attorney General issued under date of July 31, 1947, to Colonel Hugh H. Waggoner, the conclusion of which held that persons operating motor vehicles on the highways of this state, the dimensions of which in width, height or length, exceed those prescribed by statute must obtain a special permit from the chief engineer of the State Highway Department, even though such operation is for the purpose of temporarily transporting agricultural implements, or road making machinery or road materials is hereby withdrawn.

CONCLUSION

It is the opinion of this office that a hauler regularly transporting upon the highways of this State in motor vehicles, agricultural implements or road making machinery or road materials, must obtain permits from the chief engineer of the State Highway Department before being authorized to

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transport over the highways of this State, a motor vehicle including load, which exceeds the dimensions set out in Section 304.170. It is further the opinion of this office that a permit is not required to authorize a hauler not regularly engaged in the business of transporting agricultural implements or road making machinery or road materials to make an infrequent trip transporting such machinery or materials in a vehicle, including load which exceeds the dimensions authorized by Section 304.170.

This opinion, which I hereby approve, was prepared by my assistant, C. B. Burns, Jr.

Very truly yours,

THOMAS F. EAGLETON
Attorney General

CBB: jh