

COMMERCIAL VEHICLES: The state collector of revenue has the power to
CAMPERS: classify as commercial motor vehicles, "campers" which are regularly used to haul freight, merchandise, or more than eight passengers, as well as motor vehicles that were intended and contemplated by the manufacturer to regularly carry freight, merchandise or more than eight passengers.

OPINION NO. 237

October 26, 1965

Mr. John A. Paden, Supervisor
Motor Vehicle Registration
Department of Revenue
P. O. Box 100
Jefferson City, Missouri 65102



Dear Mr. Paden:

This is in answer to your request of May 18, 1965, for an official opinion of this office which reads as follows:

"Number One:

"Under the provisions of Paragraph Five of Section 301.070 which reads 'The decision of the Director, as to the type of motor vehicles and their classification for the purpose of registration and the computation of fees, therefore shall be final and conclusive'. Is this taken to mean that the Director has the authority to classify a camper as a passenger vehicle or a commercial vehicle?"

"Number Two:

"Under Section 301.010, Paragraph One, which defines a commercial motor vehicle as 'a motor vehicle designed or regularly used for carrying freight or merchandise or more than eight passengers'; does this Section, in itself, make the camper a commercial motor vehicle?"

Generally speaking, a camper is a motor vehicle, having living accommodations including facilities for cooking, sleeping and enjoying life in as near a civilized fashion as possible while on the road, contained in a cabin of some sort which constitutes a portion of the body of the motor vehicle. The cabin may be a permanent part of the body, or it may detach. Campers are not commercial motor vehicles per se, however, the director has the authority to classify certain campers as commercial motor vehicles, based on the statutory definition of commercial motor vehicles, as discussed below.

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As we understand the situation, a wide variety of motor vehicles are being outfitted as campers. Some vehicles are designed by the manufacturers solely for the purpose of being used as campers. Others are marketed by the manufacturers as pick-up trucks with a camping unit attached. This camping unit would be in the nature of a metal cabin which can be fitted onto the bed of the pick-up at the whim of the owner. Other individuals buy the pick-up and cabin from separate sources, or they fit a cabin of their own construction onto a pick-up truck. Still other owners convert motor vehicles, obviously designed for commercial purposes such as milk trucks, bread trucks or busses, into campers. Because of the many forms a camper may take, only a broad definition will encompass them all.

The legislature may properly delegate to an official or a board charged with the administration of the particular subject the power to classify motor vehicles for a proper determination of the amount of license fee or tax each shall pay. Smith v. State, 100 A. 778, 130 Md. 482.

Section 301.070, RSMo 1959, confers on the state collector of revenue the power to classify motor vehicles. But the collector is without authority to provide for a classification of vehicles different from a statutory classification. Campbell v. Cornist, 22 P. 2d 63, 163 Okla. 213. He is to determine into which class a particular motor vehicle falls by reference to the statutory definition of that particular class as set out in Section 301.010.

Section 301.010 defines a commercial motor vehicle as a "motor vehicle designed or regularly used for carrying freight or merchandise or more than eight passengers." (Emphasis added.)

The statute is in the disjunctive so that either the design or the use of the vehicle may bring it within this definition.

The design portion of the statutory definition pertains only to the vehicle rather than the business to which it is put.

Since any motor vehicle that is regularly used for carrying freight or merchandise or more than eight passengers is by statute a commercial motor vehicle, we need concern ourselves only with the design of a motor vehicle designed or used as a camper.

State v. Lasswell, Mo. App., 311 S.W. 2d 356, a 1958 opinion of the Springfield Court of Appeals specifically deals with the question of design, in determining whether or not a pick-up, used merely as a means of transportation, was a commercial motor vehicle. The court stated, 1.c. 358[5], [6]:

"[5] * * * In consideration of this question, we must be controlled by the statutory definition of 'commercial motor vehicle' in Section 301.010(1)

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to-wit, 'a motor vehicle designed or regularly used for carrying freight and merchandise'; and, since the state frankly concedes that there was no evidence that defendant's Ford pickup had been 'regularly used for carrying freight and merchandise,' our inquiry is restricted further to the narrow question as to whether the jury reasonably might have found that such pickup was 'a motor vehicle designed * * * for carrying freight and merchandise.' (All emphasis herein are ours.)

"[6] 'Designed' has been defined as 'appropriate, fit, prepared, or suitable' and also as 'adapted, designated, or intended.' 26A C.J.S. 863; Smith v. Commonwealth, 190 Va. 10, 55 SE2d 427, 429. See also Black's Law Dictionary (4th Ed.), pp. 533-534. When applied to property, 'designed' ordinarily refers to the purpose for which it has been constructed [26A C.J.S. 863], and the purpose contemplated and intended by the manufacturer, not the purchaser, usually becomes the controlling factor. Consult United States v. Sommerhauser, D.C. Kan., 58 F.2d 812, 813; Jacobs v. Danciger, 328 Mo. 458, 467, 41 SW2d 389, 391 (5), 77 A.L.R. 1237; State v. Etchman, 184 Mo. 193, 201, 83 SW 978, 980. 'Freight is defined as the transportation of goods' [ex parte Lockhart, 350 Mo. (banc) 1220, 1228, 171 SW2d 660, 663]; and, 'merchandise' is a broad and comprehensive term, embracing all tangible articles of commerce--whatever is usually bought or sold in trade. State v. Jeffords, Mo., 64 SW2d 241, 242; 57 C.J.S., Merchandise, p. 1055.

"Merchandise may mean cambric, needles, or crow-bars, sugar or vinegar, Coates No. 200 cotton thread or two-inch cable rope, or * * * any one of the hundreds of articles classed as merchandise' [Whitewater Mercantile Co. v. Devore, 130 Mo. App. 339, 347, 109 SW 808, 809], and the term 'merchandise' also may encompass agricultural or horticultural products. State v. Long, 203 Mo. App. 427, 429, 220 SW 690, 691. So, it may be said that a 'commercial motor vehicle' within the contemplation of the statutory definition here controlling, to-wit, 'a motor vehicle designed * * * for carrying freight and merchandise' [Section 301.010(1)], is a motor vehicle suitable and adapted for the purpose, intended

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by the manufacturer, of the transportation of goods and tangible articles of commerce, whatever they may be."

Based on the Lasswell case, a former opinion of this office held that pick-up trucks were commercial motor vehicles. Attorney General's Opinion No. 97, dated December 24, 1959.

In view of the Lasswell case, it can clearly be seen that a pick-up truck fitted with a camper either by the manufacturer or by the individual owner is a commercial motor vehicle, provided the cabin can be removed and the truck retains the potential to be used in a commercial capacity.

The above quoted portions of the Lasswell case apply not only to pick-up trucks, but to any motor vehicle contemplated and intended by the manufacturer to be used in a commercial capacity; that is, designed to regularly carry freight and merchandise, or more than eight passengers.

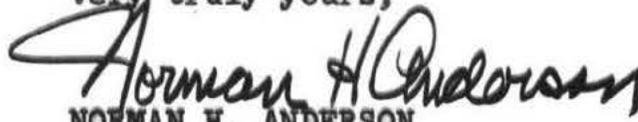
The collector has the power to classify motor vehicles for the purpose of registration in relation to classifying any vehicle as a commercial motor vehicle. The collector may do so on the basis of use or design. The use of a motor vehicle is a question of fact that can be readily determined. The design of a motor vehicle shall be determined by the collector based upon the contemplation and intention of the manufacturer to use such motor vehicle for carrying freight, merchandise, or more than eight passengers. The decision of the collector shall be binding. (Section 301.070, RSMo 1959).

CONCLUSION

It is, therefore, the opinion of this office that the state collector of revenue has the power to classify as commercial motor vehicles, "campers", which are regularly used to haul freight, merchandise, or more than eight passengers, as well as motor vehicles that were intended and contemplated by the manufacturer to regularly carry freight, merchandise or more than eight passengers.

The foregoing opinion, which I hereby approved, was prepared by my Assistant, J. Gordon Siddens.

Very truly yours,


NORMAN H. ANDERSON
Attorney General