

PUBLIC SERVICE COMMISSION:
MOTOR VEHICLES:

It is therefore the opinion of this office that: (a) After an operator of a freight-carrying motor vehicle claiming the exemption from Public Service Commission regulation provided by Section 390.030 (8), RSMo, is apprehended with a gross weight in excess of six thousand pounds, he may remove the excess weight and proceed without being in violation of Section 301.070, RSMo, for such continued travel. Although he is liable to prosecution for having operated an improperly licensed vehicle, the exemption of the vehicle under Section 390.030 is not lost by reason of an isolated instance of operating a freight-carrying motor vehicle with a gross weight of more than six thousand pounds. (b) The licensing and registration of a commercial motor vehicle may be changed from time to time to coincide with the use to which it is intended to be put. An owner having no further use for a license authorizing a gross weight of twelve thousand pounds may relinquish it and secure a license authorizing a gross weight not in excess of six thousand pounds.

OPINION NO. 1

May 14, 1968

Colonel E. I. Hockaday
Superintendent
Missouri State Highway Patrol
Jefferson City, Missouri 65101



Dear Colonel Hockaday:

This is in response to your request for an opinion of this office concerning the following issues:

"(2) After an operator claiming the exemption mentioned in Section 390.030 has been apprehended with a gross load in excess of 6,000 pounds he removes the excess load. Can he thereafter proceed without being in violation of Section 301.070 and continue to claim the exemption provided in Section 390.030?"

"(3) After an operator claiming the exemption mentioned in Section 390.030 has been apprehended with a gross load in excess of 6,000 pounds he secures a 12,000 pound license for his vehicle. However, in order to continue to claim the exemptions provided under Section 390.030, paragraph 8, he discards the 12,000 pound license on the following day and again secures another 6,000 pound license for his vehicle. May this operator continue to claim the aforementioned exemption even though all of the operation is conducted within a given license year for commercial motor vehicles?"

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The significance of the "exemption" referred to in your inquiries is that, where it applies, the carrier is not subject to regulation by the Public Service Commission. Section 390.041, provides in part that the Public Service Commission "* * * is hereby vested with power and authority: * * * To license, supervise and regulate every motor carrier in this state; * * * " Exceptions to this rule are, however, enumerated in the next preceding paragraph, Section 390.030, which states in part:

"The provisions of sections 390.011 to 390.176 shall not apply to:

"(8) Freight-carrying motor vehicles duly registered and licensed in conformity with the provisions of chapter 301, RSMo, for a gross weight of six thousand pounds or less; * * * " (Except as otherwise noted, all statutory references herein are to the Revised Statutes of Missouri, 1959)

If a vehicle meets the qualifications of the foregoing exception, it is obvious that it does not fall within the regulatory authority of the Public Service Commission. The determinative issue, then, is whether a vehicle found on one occasion to have a gross weight in excess of six thousand pounds thereby loses the benefit of the exemption. More specifically, the issue can be stated as being whether the vehicle in question is "* * * licensed in conformity with the provisions of chapter 301, RSMo, for a gross weight of six thousand pounds or less; * * * " notwithstanding that it is found on one occasion to weigh more.

Turning to chapter 301, the key statute appears to be Section 301.070 which provides for the computation of licensing fees. Subsection 4 provides:

"Fees of commercial motor vehicles, other than passenger-carrying commercial motor vehicles, shall be based on the gross weight of the vehicle or any combination of vehicles and the maximum load to be carried at any one time during the license period."

The "maximum load to be carried" referred to above is a forward looking term which connotes, to a greater or lesser degree, an estimate on the part of the applicant (See Section 301.020 (3)), subject to the final determination by the Director of Revenue contemplated by subsection 5 of Section 301.070, which reads as follows:

"The decision of the director as to the type of motor vehicles and their classifications for the purpose of registration and the computation of fees therefor shall be final and conclusive."

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Inasmuch as your question (2), supra, apparently contemplates a single instance of a violation of the 6000 pound limitation, it would not seem that such an instance should be held to abrogate the qualification of the vehicle for the Section 390.030 exemption.

Although this point has not been specifically ruled by any appellate court of this state, adequate guidance is provided by judicial opinions in analogous cases for the formulation of this opinion. For example in State ex rel. Public Service Commission v. Logan (1967) 411 S. W. 2d 86, the Public Service Commission sought to collect certain statutory penalties from the defendant upon the grounds that he had transported household goods in intrastate commerce for hire without first having received a certificate of authority from the Public Service Commission authorizing such operations. For purposes of the opinion, the allegations of the petition were taken as true and the Court said, 411 S. W. 2d 86, 88:

"One who makes a single isolated movement of property from one point to another in this state on the public highway for hire does not for that reason alone 'engage in the business of a common carrier in intrastate commerce.' He must hold himself out to the general public to engage in the transportation by motor vehicle of property for hire. * * * "

Similarly, in City of Nevada v. Bastow (1959) 328 S. W. 2d 45, the Kansas City Court of Appeals considered whether the defendant's truck was liable to a municipal tax where defendant invoked Section 301.340 and claimed such truck was used exclusively outside of the City of Nevada. In ruling this point against defendant, the court regarded as significant the fact that " * * * In the operation of defendant's affairs the truck was regularly, not just occasionally, parked within Nevada when it was empty. * * * " 328 S. W. 2d 45, 48 (Emphasis supplied.) It may be inferred from this statement that an occasional parking of the truck in the city would not have constituted a use within the city.

Furthermore, our Supreme Court has recently had occasion to scrutinize the exemptions accorded by Section 390.030 and concluded that they are to be applied to vehicles and not to the nature of the cargo hauled. State ex rel. Lee American Freight System, Inc. v. Public Service Commission, (1966) 411 S. W. 2d 190, 194-195. Hence, it would seem to follow that a vehicle licensed for a gross weight of six thousand pounds or less would not necessarily lose such exemption by virtue of the incidental fact that on one occasion it was loaded so as to exceed such weight.

This is not to say that the carrier and operator of the vehicle would be immune from prosecution for operating an improperly licensed vehicle. Moreover, if the vehicle in question is regularly used for

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carrying cargo which causes the gross weight to exceed the six thousand pound limitation, the Director of Revenue is fully authorized by Section 301.070 - 5 to decide that the vehicle does not qualify for the less than six thousand classification and to require computation of fees on the basis of a higher gross weight. If such authority were so exercised, the vehicle would no longer qualify for the exemption contemplated by Section 390.030 (8).

With respect to question (3) you assume that a carrier, found to be violating the six thousand pound maximum secures a twelve thousand pound license. Thereafter, and during the same license year, he relinquishes the twelve thousand pound license and secures another six thousand pound license in order to take advantage of the Section 390.030 (8) exemption from Public Service Commission regulation.

Assuming that at the time he reverts to the lesser license " * * * the maximum load to be carried at any one time during the license period." plus the weight of the vehicle does not exceed six thousand pounds, Section 301.070, the carrier would not be prevented from doing so in order to take advantage of the Section 390.030 (8) exemption. Although Section 301.030-3, RSMo Cum. Supp. 1967, requires registration of commercial vehicles on an annual basis, it also permits the issuance of license during the year. Consequently, it is appropriate for an owner of a commercial vehicle to change the registration and licensing of the vehicle at any time when his contemplated use thereof changes. This would include a revision of the licensing to authorize an increased as well as a decreased gross weight.

CONCLUSION

It is therefore the opinion of this office that:

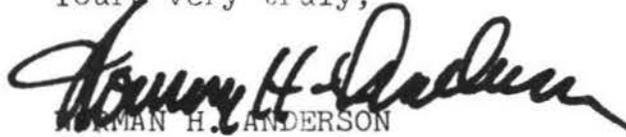
(a) After an operator of a freight-carrying motor vehicle claiming the exemption from Public Service Commission regulation provided by Section 390.030 (8), RSMo, is apprehended with a gross weight in excess of six thousand pounds, he may remove the excess weight and proceed without being in violation of Section 301.070, RSMo, for such continued travel. Although he is liable to prosecution for having operated an improperly licensed vehicle, the exemption of the vehicle under Section 390.030 is not lost by reason of an isolated instance of operating a freight-carrying motor vehicle with a gross weight of more than six thousand pounds.

(b) The licensing and registration of a commercial motor vehicle may be changed from time to time to coincide with the use to which it is intended to be put. An owner having no further use for a license authorizing a gross weight of twelve thousand pounds may relinquish it and secure a license authorizing a gross weight not in excess of six thousand pounds.

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The foregoing opinion, which I hereby approve, was prepared by my Assistant, Albert J. Stephan, Jr.

Yours very truly,

A handwritten signature in black ink, appearing to read "Norman H. Anderson". The signature is written in a cursive style with a large, prominent initial "N".

NORMAN H. ANDERSON
Attorney General