

ARRESTS:
LICENSES:
MOTOR VEHICLES:
HIGHWAY PATROL:
MOTOR VEHICLE LICENSES:
RECIPROCITY COMMISSION:

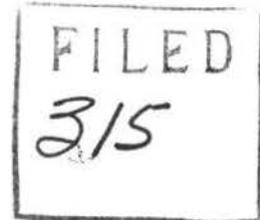
1. A statement that additional arrests will be made if there is further movement on the highway of an improperly registered commercial motor vehicle, or that further arrests subsequent to the first arrest for movement on the

highway of an improperly registered commercial motor vehicle will be made by members of the Missouri State Highway Patrol, as proposed by the Missouri Highway Reciprocity Commission, is not illegal or improper under Missouri law. 2. Such action by an officer of the Missouri State Highway Patrol would not render him liable to civil damages for loss of revenue or damage to the vehicle and cargo during the period of time that the vehicle is parked pending proper registration and payment of proper fees. 3. Any delay in movement of the goods contained in the improperly registered commercial motor vehicle pending proper registration and payment of the proper fees would not give rise to a successful charge of unduly burdening interstate commerce.

OPINION NO. 315

November 25, 1974

Colonel Samuel S. Smith
Superintendent
Missouri State Highway Patrol
1510 East Elm
Jefferson City, Missouri 65101



Dear Colonel Smith:

This is in response to your request for an official opinion from this office involving the Missouri State Highway Patrol's authority to arrest drivers of commercial motor vehicles for operating improperly registered vehicles.

We have been provided with the following background information: Officers of the Missouri State Highway Patrol frequently arrest drivers of commercial motor vehicles for the misdemeanor of operating improperly registered vehicles. Some of these violations involve intrastate hauls without full-fee Missouri license plates; others concern out-of-state vehicles, based in states party to one of the several prorate compacts to which Missouri currently belongs, that are without proper prorata registration as a part of a fleet or without valid trip permits issued under the provisions of Section 301.265, RSMo 1969. Subsequent to conviction or the posting of bond, these drivers continue upon their

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way without further arrests and frequently without making any effort to properly register their commercial motor vehicle in this state.

The Missouri Highway Reciprocity Commission has adopted a proposal for stricter enforcement of truck licensing laws. As part of this proposal, the Commission has instructed the Missouri State Highway Patrol to rearrest such drivers for further movement on the highways of the improperly registered vehicle until such time as full-fee Missouri registration is applied for and all fees are paid.

You have indicated that implementation of this proposal would create possible enforcement problems for the Missouri State Highway Patrol and have asked for our opinion as to the following questions:

"1. Can an officer of the Missouri State Highway Patrol legally seize a commercial motor vehicle because of improper registration and hold it until such time as proper Missouri registration is applied for and all fees are paid?

"2. Would the threat of additional arrests for further movement on the highway of an improperly registered commercial motor vehicle, until such time as proper Missouri registration is applied for and all fees paid, in effect amount to seizure and holding of the vehicle?

"3. Could an officer of the Missouri State Highway Patrol incur civil liability for damages by detention of a vehicle under either of the circumstances outlined in Questions 1 and 2 - specifically in regard to loss of revenue or failure to provide protection for the vehicle and cargo?

"4. Could lengthy delays of interstate shipments, occasioned by one of the enforcement methods outlined in Questions 1 and 2, place an officer of the Missouri State Highway Patrol in jeopardy for impeding interstate commerce?"

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In view of the background material quoted above, it will not be necessary to address ourselves to the first question. It seems clear that the Highway Patrol has not been instructed by the Missouri Highway Reciprocity Commission to seize and hold improperly registered commercial motor vehicles until such time as proper Missouri registration is applied for and all fees are paid.

In response to your second inquiry, the real question is not whether additional arrests for further highway movement of an improperly registered commercial motor vehicle amounts to seizure and holding of the vehicle, but rather whether a statement that such arrests will be made is legal and proper. Section 43.160, RSMo 1969, provides in pertinent part that:

"It shall be the duty of the patrol to police the highways constructed and maintained by the commission; to regulate the movement of traffic thereon; to enforce thereon the laws of this state relating to the operation and use of vehicles on the highways; . . . It shall be the duty of the patrol to cooperate with such state official as may be designated by law in the collection of all state revenue derived from highway users as an incident to their use or right to use the highways of the state, including all license fees and taxes upon motor vehicles, trailers, and motor vehicle fuels, . . ."

In conjunction with this duty, any member of the Missouri State Highway Patrol may arrest any person he sees violating or whom he has reasonable grounds to believe has violated any law of this state relating to the operation of motor vehicles. Section 43.195, RSMo 1969. Section 301.320, RSMo 1969, prohibits the operation of a motor vehicle or trailer in this state on which there is displayed on the front or rear thereof any other plate, tag, or placard bearing any number except the plate furnished by the Director of Revenue or the placard authorized in the licensing statutes. Subsection 3 of Section 301.265, RSMo Supp. 1973, in pertinent part, provides as follows:

". . . If any vehicle which is not registered in such manner as to legally authorize its operation on Missouri highways comes into this state without a valid trip permit, the owner or operator . . . must

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register such vehicle and pay the registration fees prescribed by sections 301.055 to 301.067 for the balance of the registration year before the operation of such vehicle shall be lawful."

Accordingly, the operation of an improperly registered commercial motor vehicle is unlawful in this state. The arrest of a driver of such a vehicle by a member of the Highway Patrol would be within the scope of his official duties. This reasoning would apply for the tenth arrest as well as the first arrest. This being so, a statement to the driver that further arrests will be made should he choose to move an improperly registered commercial motor vehicle upon the highways of this state without securing proper registration would not be illegal or improper. Appellate court decisions in this state have consistently held that an officer attempting to exercise a police power granted by the state would not be wrong in any respect by stating that a guilty party, or one who would become guilty if he did the act in question, will be arrested. See Butler v. City of Moberly, 110 S.W. 682, 683 (K.C.Mo.App. 1908) and Kramer v. City of Jefferson, 124 S.W.2d 525, 527 (K.C.Mo.App. 1939).

Your third question deals with the issue of civil liability of an officer of the Missouri State Highway Patrol should damages arise through loss of revenue or failure to provide protection for the vehicle and cargo during that period of time the vehicle is parked pending proper registration. The answer to this question depends upon the actions of the officer. If the commercial motor vehicle is improperly registered, or the officer has reasonable grounds to believe that such vehicle is improperly registered, an arrest of the driver or the statement that a driver will be arrested would be within the scope of his official duties. As a general rule, public officers, when acting in good faith within the scope of their authority, are not liable in private actions. See 67 C.J.S. Officers §125, p. 417.

This general rule does not apply to any injuries caused by a negligent performance of official duties by a public officer. However, the Missouri Supreme Court in State ex rel. City of St. Louis v. Priest, 152 S.W.2d 109, 112 (Mo. 1941), has said that negligence on the part of an officer consists only in a failure to use that degree of care which an ordinary, reasonable and prudent man would exercise under the same or similar circumstances and conditions. If an injured party has himself contributed to the damages complained of in any degree by his own fault or neglect, a public officer cannot be held responsible. Applying these

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principles, it seems clear that the driver or owner of a commercial motor vehicle is in no position to claim damages against a member of the Missouri State Highway Patrol because he has heeded the warning of that member and not driven his motor vehicle upon the highways in this state until such time as the proper registration and licensing has been applied for and all fees paid.

Your last question asks whether an officer of the Missouri State Highway Patrol would be placed in jeopardy for impeding interstate commerce should lengthy delays in interstate shipments occur during the period in which the driver or owner of the improperly registered commercial motor vehicle is securing the proper registration and paying the proper fees to the state of Missouri. The answer to this question depends upon whether or not a state can lawfully exact a registration fee from commercial motor vehicles bearing interstate cargo. The fees for licensing and registration in this state are of course revenue measures and are collected from individuals for the privilege of using the highways of the state. See State ex rel. McClung v. Becker, 233 S.W. 54, 55 (Mo. Banc 1921), and Transport Rentals, Inc. v. Carpenter, 325 S.W.2d 745, 747 (Mo. 1959). The question of whether or not the collection of such fees constitutes an undue burden upon interstate commerce has been answered in the negative by the United States Supreme Court. Absent federal legislation upon this subject, states may, within the limits of reasonableness, regulate the use of their highways by common carriers engaged in interstate commerce, provided such use is not prohibited altogether and provided there is no discrimination against commerce. See Hendrick v. Maryland, 235 U.S. 610 (1915); Kane v. New Jersey, 242 U.S. 160 (1916); and Capitol Greyhound Lines v. Brice, 339 U.S. 542, 17 A.L.R.2d 407 (1950).

This being so, it is difficult to imagine a successful charge of unduly burdening interstate commerce being directed at an officer of the Missouri State Highway Patrol by an individual who has been told that he will be arrested for operating a commercial motor vehicle in this state when such vehicle is not properly licensed under the laws of this state.

CONCLUSION

It is, therefore, the opinion of this office that:

1. A statement that additional arrests will be made if there is further movement on the highway of an improperly registered commercial motor vehicle, or that further arrests subsequent to the first arrest for movement on the highway of an improperly registered commercial motor vehicle will be made by

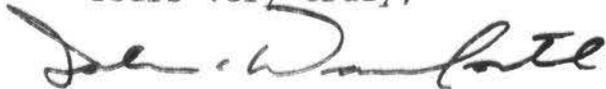
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members of the Missouri State Highway Patrol, as proposed by the Missouri Highway Reciprocity Commission, is not illegal or improper under Missouri law.

2. Such action by an officer of the Missouri State Highway Patrol would not render him liable to civil damages for loss of revenue or damage to the vehicle and cargo during the period of time that the vehicle is parked pending proper registration and payment of proper fees.

3. Any delay in movement of the goods contained in the improperly registered commercial motor vehicle pending proper registration and payment of the proper fees would not give rise to a successful charge of unduly burdening interstate commerce.

Yours very truly,

A handwritten signature in black ink, appearing to read "John C. Danforth", written in a cursive style.

JOHN C. DANFORTH
Attorney General