

MUNICIPALITIES:
MOTOR VEHICLES:
REGULATION OF LIGHTING
EQUIPMENT:

Municipalities under a special charter without a special provision in such charter may not regulate lighting equipment on motor vehicles except that which is provided by the statutes.

July 25, 1939

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Mr. Roger Hibbard
City Attorney
Hannibal, Missouri

Dear Mr. Hibbard:

This is in reply to yours of recent date wherein you submit the following question:

"The Police Department of the City of Hannibal wishes an opinion on the power of the City Council to require the use of 'dimmers' or deflected headlight beams, on motor vehicles operating in the City, on streets lighted by the usual street lights. In view of Section 7778 R. S. 1929, and the restriction of Section 7780, R. S. 1929, could the City Council lawfully place this restriction on the use of lights on motor vehicles?"

In our research on your question we find that the city of Hannibal was organized under a special charter by an act of the General Assembly which was approved March 8, 1873, Laws of 1873 at page 238. Cities, towns and villages, whether operating under a special charter or a statute applicable to them, must look to their charter or the applicable statutes for their powers and duties. Section 7 of Article IX of the Constitution of Missouri sets out the provision for the organization and classification of municipal corporations. It provides as follows:

"The General Assembly shall provide, by general laws, for the

organization and classification of cities and towns. The number of such classes shall not exceed four; and the power of each class shall be defined by general laws, so that all such municipal corporations of the same class shall possess the same powers and be subject to the same restrictions. The General Assembly shall also make provisions, by general law, whereby any city, town or village, existing by virtue of any special or local law, may elect to become subject to, and be governed by, the general laws relating to such corporations."

Your question particularly applies to the authority of the city of Hannibal to pass an ordinance which would require "dimmers" or deflected headlight beams on motor vehicles operating in that city.

In searching through the charter of the city of Hannibal to ascertain whether or not the General Assembly granted such powers to that city by the charter, we find that Section 19 of Article IV provides that the city shall have power:

"Sec. 19. To make regulations to secure the general health of the city, and to provide the city with water."

We do not think that the city, under this section, would have authority to pass an ordinance providing for regulation of the lights of a motor vehicle which operates on its streets.

Section 35 of the same Article provides in part that the city shall have power to:

"Sec. 35. To prevent, prohibit and punish fast and immoderate riding or driving within the city; * * * * *"

We do not think this section is broad enough to cover the authority you seek in your letter.

Section 52 of said Article provides in part as follows:

"Sec. 52. To provide for, maintain, and (and) regulate the peace, good government, order and police of the city, and also to impose, collect and enforce fines, forfeitures and penalties for the breach of any city ordinance; * * * * *

We think that this section would not be broad enough to include the power of the city to pass an ordinance regulating the lights of a motor vehicle. These are the only sections of the charter of the city of Hannibal that we find which could be applicable to your question.

Since the Legislature might, by additional legislation, grant such authority to a municipality operating under a special charter, we look to the statutes to ascertain whether such authority has been granted. Section 7778 R. S. Missouri 1929, which relates to the lighting equipment of a motor vehicle which operates on the public streets or highways of this State, provides in part as follows:

"For the purpose of revealing its position and direction, a motor vehicle, while on the highway, whether in operation or at rest, during the period from one-half hour after sunset to one-half hour before sunrise, and at all times when fog or other atmospheric conditions render the operation of motor vehicles dangerous on the highway, shall carry lighted signal lamps as herein required; such lamps shall be so constructed, mounted and adjusted as to project the required kind of light so that it shall be plainly visible under normal atmospheric conditions

from a distance of at least five hundred feet in the direction projected. Motor vehicles and motortricycles shall display at least two white lights mounted at the front and directed forward, and one red light mounted at the back and directed to the rear. * * * *
No vehicle shall display or project to the front or sides any other than white light, or such shades as are commonly known and recognized as white, and no vehicle shall display at the back, or project toward the rear, any other than a red light, excepting that on motor vehicles and trailers which are required to carry number plates on the rear; the rear lamp shall be so constructed, mounted and adjusted as to project from its sides, top, bottom or front, sufficient white light upon such plate to make the number plainly visible from a distance of twenty-five (25) feet: Provided, however, nothing in this section shall be construed to prohibit the use of additional red rear lights carried for added safety or of such white lights of low intensity as may be required in the operation of mechanical rear signalling devices, but no motor vehicle shall have mounted at its back any lamp projecting towards the rear a light of sufficient intensity to conceal the number or to interfere with the vision of anyone following. * * *
* * * * * All motor vehicles, except motorcycles and motortricycles, shall carry, in addition to or in lieu of the front signal lamps, two lighted head lamps, and motorcycles and motortricycles shall carry at least

one lighted head lamp for the purpose of illuminating the road ahead when the vehicle is in motion; such lamps shall be mounted at the front of the motor vehicle so that the top of their door glass openings is not more than forty-two (42) inches above the ground, shall project only white light, or such shades as are commonly known and recognized as white, and shall be directed and equipped, and their door glasses and bulbs shall be adjusted, as herein required. Class 'A' door glasses shall have their entire inside surfaces etched or ground to such a degree that the lighted filament shall appear blurred and all light emitted shall be gradually and uniformly diffused in all directions. Class 'B' door glasses, commonly known as diffusing lenses, shall be symmetrically or uniformly moulded so that the lighted filament shall appear blurred and all light emitted shall be diffused with practical uniformity in all directions. Class 'C' door glasses, commonly known as diffusing and deflecting lenses, shall be so moulded that the lighted filament shall appear at least slightly blurred or deformed and all light emitted shall be diffused, the major portion thereof being diffused laterally only, but to an extent sufficient to blend the light so as to materially shorten its range, and spread it more widely over the road. Plain, clear door glasses, or moulded lenses, which merely deflect the major portion of the light without diffusing or blending it shall not be used, except on gas head lamps and then only when the same are adjusted as herein required for class 'C' door glasses. Head lamps shall be equipped with lamp bulbs

of such candle power as is necessary to reveal objects one hundred and fifty (150) feet ahead but not exceeding thirty-six (36) candle power each for class 'A' door glasses, thirty-two (32) candle power each for class 'B' door glasses and twenty-one (21) candle power each for class 'C' door glasses. The cone or shaft of concentrated light projected by the reflector of a head lamp shall be adjusted by proper direction of the lamp and adjustment of the bulb so that its uppermost part shall not rise above the level of the top of the door glass opening within a distance of seventy-five (75) feet ahead of the lamp and so that its center shall not be directed to the left of a line from the center of the lamp and parallel to the direction of the car. One or both of the lamps shall direct sufficient light downward and to the right to illuminate the right side of the highway for a distance of fifty (50) feet ahead of the lamp. Adjustment for direction and elevation herein required shall be made on level ground with the motor vehicle normally loaded as to passengers, cargo, fuel and equipment with the lamp doors wide open in the case of class 'A' or class 'B' door glasses and closed with door glasses in place in case of class 'C' door glasses. Such adjustments shall be firmly fixed and permanently maintained. Class 'B' or class 'C' door glasses and substitute for class 'A' door glasses shall not be used and no device or adjustment in connection with a light upon a motor vehicle to enable the same to comply with the requirements of this article shall be used upon a motor vehicle upon the

highways until the same have been tested and approved as provided herein. To obtain such test and approval the manufacturer or agent shall make application in writing therefor to the commissioner and shall remit a fee of \$50.00 payable to the state treasurer, and shall submit two pairs of such door glass or device for tests. The commissioner shall make, or cause to be made, such indoor and road tests as he may deem necessary, and shall, within thirty (30) days from the date of such application, report his findings to the applicant in writing. In the event he shall find the lenses or device comply with the requirements of this article he shall issue to the applicant a certificate so stating and designate therein the classification and maximum candle power of bulbs permitted for such lenses or device and a statement of the requirements as to adjustment, as set forth in this section. If he shall find that the lenses or device submitted do not comply with the requirements of this section, he shall so notify the applicant in writing by registered mail. All lenses or devices so examined shall remain in the office of the commissioner properly labeled and a complete record of the investigation and findings shall be filed in said office. In case of disapproval, applicant may appeal from the decision of the commissioner to the members of the state highway board or commission and secretary of state sitting as a board of review, by filing a written notice, addressed to the secretary of state, of his intention to appeal and setting forth the grounds thereof, and for such appeal the applicant shall remit a fee of \$50.00, payable to the

state treasurer. The board shall hear such appeal within thirty (30) days after receiving such notice and shall hear such evidence as the applicant or commissioner shall present and shall make or cause to be made such investigation and tests as the board deems necessary. In the case of a tie vote of the board on such appeal, the board shall call upon the state highway engineer or some other competent, disinterested person to hear the evidence, examine the lenses or device and cast the deciding vote. The board shall certify to the applicant its findings, which shall be final. Any registered motor vehicle owner resident of this state, or any organization of motor vehicle owners within this state may appeal from any decision of the commissioner either approving, disapproving or classifying any lenses or devices to the board on the same terms and conditions as provided herein, and provided such appeal is taken within thirty (30) days after the findings of the commissioner are published. No dealer shall sell a motor vehicle equipped with gas or electric lamps unless such lamps comply with the provisions of this article, and no persons shall sell any lenses of class 'B' and 'C', or substitute for class 'A' lenses unless he delivers with each pair a copy of the commissioner's certificate of approval of such lenses and complete instructions as to the attachment and adjustment of such lenses and bulbs, as required by this section. The commissioner shall publish a list of the lamps and devices approved by him and furnish a copy thereof, within thirty (30) days after the approval

thereof, to all registered dealers and to the sheriffs, prosecuting attorneys and county clerks of all counties and the chief of police in each city having a metropolitan police department and to automobile clubs who file written application therefor. Electric side lamps or substitutes therefor, having fronts and sides of plain clear glass or glass defined as class 'C' may be equipped with bulbs not stronger than four candle power each and shall project all concentrated light downward below the level of the lamp; if their fronts and sides are of glass defined as class 'A' or 'B' they may be equipped with bulbs not stronger than eight candle power each, said lamps mounted as far forward as the windshield and projecting unobstructed white light forward may be used as the front signal lights required herein. Moulded door glass or side glass for side lamps shall be inspected and classified as required of head lamp door glass herein. Dirigible search lights, or lights commonly known as spot lights, shall not be used on highways within the limits of municipalities, except in emergencies or when headlights are inadequate owing to rain or fog, and then only: Provided, the shaft of condensed light is directed downward below the level of the lamp, and at no time into the eyes of other persons, but such lights may be used at any time on public highways outside of the limits of municipalities: Provided, their light is directed as hereinbefore required. No search light, or spot light, shall be equipped with a bulb stronger than twenty-one

(21) candle power; such search lights and spot lights shall be so constructed and mounted that their light and direction can be fully and easily controlled from the driver's seat while the vehicle is in motion."

It will be noted by this section that the lawmakers have attempted to cover the entire field of legislation pertaining to the lighting equipment of motor vehicles.

The general rule is that a municipality may enact ordinances to carry out the provisions of a statute if such authority has been granted by the Legislature. Reading this section, however, we fail to find where the lawmakers have expressed an intention that the municipal authorities may pass such ordinances. Referring to Section 7780 R. S. Missouri 1929, it will be noted that the lawmakers have seen fit to provide that municipalities may, by ordinance, establish reasonable speed regulations for motor vehicles within the limits of such municipalities, and may, by ordinance, make additional rules of the road or traffic regulations to meet their needs and traffic conditions, and may, by ordinance, levy and collect license taxes from the owners of and dealers in motor vehicles and trailers, residing in such municipalities, and require the display of license plates. By reading these two sections together, and by taking into consideration that the lawmakers, at the time of the enactment of laws pertaining to motor vehicles, had both sections in mind at the same time, and since they only provided under said Section 7780 that municipalities may pass certain legislation, then by applying the rule of "The expression of one thing is the exclusion of all others," we would come to the conclusion that the lawmakers did not intend that municipalities should be authorized to pass any legislation pertaining to said Section 7778, which pertains to the lighting equipment of motor vehicles.

While there might be a question as to whether or not a municipality would be authorized to pass an ordinance in conformity to the provisions of said

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Section 7778, yet we are certain that since said Section 7778 does not provide for "dimmers" or deflected headlight beams on motor vehicles, then a city without a special provision in its charter or under the statute, would not be authorized to enter into that field of legislation.

In speaking of Section 7780 R. S. Missouri 1929, the Supreme Court, in Kenney v. Hoerr, 23 S. W. (2d) 96, at 98, said:

"It is true section 24, par. (b), of the same law, Laws Mo. 1921 (1st Ex. Sess.) pp. 76, 100, permits municipalities by ordinance to make additional rules of the road or traffic regulations to meet their needs, and to establish one-way streets and provide for the regulation of vehicles thereon. This being so, if an ordinance be enacted under sanction of the state law, it will be valid as an additional regulation. On the other hand, if the ordinance make a requirement contrary to the state law with respect to a matter on which the state law is intended to be controlling, the ordinance cannot stand."

While such legislation as you suggest might not be contrary to the state law with respect to lighting equipment, yet the city is required to go a step farther and show that it has authority, by charter or statute, to enact such legislation.

CONCLUSION.

From the foregoing it is the opinion of this department that the council of the city of Hannibal does not have authority to enact ordinances requiring the use of "dimmers" or deflected headlight beams on motor vehicles operating in that city.

Respectfully submitted

APPROVED:

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