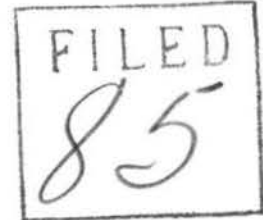


MOTOR : : Construing H. B. 240 passed by 62nd General
VEHICLES : : Assembly. Commissioner of Motor Vehicles
: : shall register motor vehicles by gross
: : weight, which includes vehicle and load.
: : Fees for registration to be collected and
: : accounted for by Commissioner and credit
: : for 85% of such fees to be allowed by Public
: : Service Comm. in applying for permit to haul
: : persons or property for hire.
October 28, 1943

Honorable V. H. Steward
Commissioner of Motor Vehicles
Jefferson City, Missouri



Dear Mr. Steward:

Your request for a construction of House Bill No. 240, omitting caption and signature, reads as follows:

"This department kindly requests an opinion from your Office in regard to the registration of commercial motor vehicles and trailer equipment, as applies to the matter of license fees and the manner in which such units shall be licensed, as provided for in House Bill No. 240 passed by the 62nd General Assembly of Missouri."

Briefly stated, House Bill No. 240 is:

"AN ACT

"To repeal Section 8369, 8370, 8405 and 8406, Article 1, Chapter 45, Revised Statutes of Missouri, 1939, relating to the regulations and license fees of motor vehicles, and enacting in lieu thereof four new sections relating to the same subject matter to be known as Sections 8369, 8370, 8405 and 8406, with an emergency clause, which reads as follows:

"Section 2: The General Assembly hereby declares this Act is necessary for the preservation of the public peace, health, safety, and general welfare, and an emergency exists within the meaning of the Constitution, and this Act shall become effective upon passage and approval."

Formal approval of this Act was given on May 23, 1943, at which time, under the Constitution the same became effective.

Directing our attention to three sections upon which, from personal conversation with members of your staff, a construction is deemed advisable, we find at new Section 8369, this language:

"(c) Registration fees made payable to the State Treasurer shall be remitted to the Commissioner with the application for registration for the remainder of the calendar year on the basis of the license fees now provided by Section 8369 and Section 8370, Revised Statutes of Missouri, 1939; the license fees provided by this Act shall become effective on and after January 1, 1944.

"For motor vehicles other than commercial motor vehicles and motorcycles and motortricycles.

| | |
|---|---------|
| Less than 12 horsepower | \$ 5.00 |
| 12 horsepower and less than 24 horsepower | 8.50 |
| 24 horsepower and less than 36 horsepower | 11.00 |
| 36 horsepower and less than 48 horsepower | 20.00 |
| 48 horsepower and less than 60 horsepower | 25.00 |
| 60 horsepower and less than 72 horsepower | 31.50 |
| 72 horsepower and more | 37.50 |
| Motorcycles | 6.00 |
| Motortricycles | 7.50 |

"For commercial motor vehicles having a gross weight of:

| | |
|--------------------------------|-------|
| Under 1,500 pounds | 10.00 |
| 1,500 pounds to 10,000 pounds | 15.00 |
| 10,000 pounds to 12,000 pounds | 20.00 |
| 12,000 pounds to 18,000 pounds | 30.00 |
| 18,000 pounds to 20,000 pounds | 40.00 |
| 20,000 pounds to 22,000 pounds | 50.00 |

| | |
|--------------------------------|----------|
| 22,000 pounds to 28,000 pounds | \$ 65.00 |
| 28,000 pounds to 32,000 pounds | 100.00 |
| 32,000 pounds to 38,000 pounds | 125.00 |
| 38,000 pounds to 42,000 pounds | 150.00 |
| 42,000 pounds to 44,000 pounds | 175.00 |
| Over 44,000 pounds | 200.00 |

The enactment of 1943, made the important move which changed subdivisions (c) in this respect: Registration fees for commercial motor vehicles under the new act provides that fees for such vehicles should be on the basis of "gross weight" of vehicle rather than "tonnage capacity", and further that

"For each trailer or semi-trailer there shall be paid a fee of three dollars (\$3.00). The fees for tractors used in any combination with trailers or semi-trailers or both trailers and semi-trailers shall be computed on the total gross weight of the vehicles in the combination with load.

"The annual license fee required by this article is intended to cover only the motor vehicle for which it is issued; the Commissioner may, however, on application, when a licensed motor vehicle has been destroyed or replaced by another motor vehicle of the same licensed weight or less, transfer said annual license: in cases where the substituted vehicle is of larger gross weight, the applicant must pay an additional sum equivalent to the difference between the annual license fee for the original motor vehicle and the annual license fee for the substituted motor vehicle."

From our reading of the above we conclude that the \$3.00 fee for each trailer or semi-trailer and the fees for the tractors used in any combination with trailers or semi-trailers- the basis of computation shall be on "total gross weight of vehicles in combination with load" is a mandatory duty.

However, the latter paragraph of this section imposes but a discretionary authority for it provides "the Commissioner may, however, on application, when a licensed motor vehicle has been destroyed by another motor vehicle of same licensed weight, or less, transfer said annual license."

It is the obvious intent of the Legislature to leave to the discretion of the Commissioner certain transfers; and in the fees prescribed in the instance of the first paragraph he has no discretion and his duties are therefore confined necessarily to the express language of the statute.

Turning our attention now to a portion of the same Section 8369 as approved May 22, 1943, we find this language with respect to fees for commercial motor vehicles:

"Eighty-five (85) per cent of such registration fees shall be credited against any fees charged by the Public Service Commission of this State for the transportation of persons or property. "

The question now arises as to whether the applicant shall remit such fees to the Commissioner of Motor Vehicles or to the Public Service Commission where the permission to operate involves transportation of persons or property.

It would seem the clear intent of the Legislature to have an owner seeking registration of a motor vehicle to "cause to be filed, in the office of the Commissioner, an application,--" together with other requirements contained in paragraph (a and b) and continuing to paragraph (c). "Registration fees made payable to the State Treasurer shall be remitted to the Commissioner with the application for registration," ----- and with the further provision that the "license fees provided by this Act (referring to Secs. 8369-8370, R. S. 1939) shall become effective on and after January 1, 1944.

Under this situation, as we view it, the Commissioner of Motor Vehicles is under a mandatory duty to receive applications of the owner, account for these funds, and to receive credit for having collected same.

The further fact, that prior to the issuance of a permit for public convenience and necessity by the Public Service Commission,-- an applicant must

present his receipt of the Commissioner in order to receive credit (up to 85%) of fees so paid the Commissioner, coupled with the knowledge that the ultimate destination of these funds is for construction, maintenance, and operation of the State Highway System, to be administered by the Highway Department, is added proof of the legislative intent. We believe the terms of the Act are clear on this point and are unambiguous and that no further construction on our part is necessary.

Confining our attention to the last eight paragraphs of Section 8369 we find this language:

"License taxes may be levied on motor vehicles by municipalities of this state provided that the fees charged by municipalities for said license shall not exceed the amount authorized therefor by said municipalities during the year 1933.

"For each local commercial motor vehicle there shall be paid a fee equal to one-third of the fee specified above for other commercial motor vehicles, provided, however, no vehicle fee shall be less than \$10.00.

"The term 'local commercial motor vehicle' includes every 'commercial motor vehicle' as defined in Section 8367, Revised Statutes of Missouri, 1939, while operating within this state and used for the transportation of persons or property:

1. Wholly within any municipality or urban community, or
2. Wholly within any municipality or urban community and a zone extending 25 air miles from the boundaries of any municipality or urban community, or contiguous municipality or urban community, or

3. In making hauls not exceeding 25 miles in length, or
4. When controlled or operated by any person or persons principally engaged in farming when used exclusively in the transportation of agricultural products or live stock to or from a farm or farms, or in the transportation of supplies to or from a farm or farms.

Each commercial vehicle shall prominently display in a conspicuous place on said vehicle the name of the owner thereof, the address from which such motor vehicle is operated and the weight for which said motor vehicle is licensed; provided further, that local commercial vehicles, in addition to the above information, shall prominently display on such vehicles in a conspicuous place the word "Local".

It is the prerogative of the Legislature to classify property for the purpose of taxation. Placing trucks engaged in commercial freighting on regular time or route schedules in one class and all other trucks using the public highways in another amounts to a legislative finding that there was sufficient difference in the use made of the public highways to justify the difference in the classifications and the courts cannot say that there is no basis of fact for the finding. (Raymond V. Holm, 165 Minn. 215, 206 NW 166-1925)

It is correct to say that highways are open to all upon equal terms, where used for purely private purposes but the statutes don't apply to question of classification for purposes of tax for privilege of using them. (Eavey Co. v. Department of Treas. of Ind. 216 Ind. 255--24 N E 12--268-1939.

The control and regulation of motor vehicles and questions bearing on the interpretation of statutes and regulations as they apply thereto has been discussed in numerous decisions in this state and we cite the following:

State ex rel, Public Serv. Comm. v. Blair, 146 SW 2,865-- 347 Mo. 220

State v. Sanderson 128 SW 2, 277 L.C. 279
State ex rel, Ill., Greyhound V. Public Serv.
Comm. 108 SW 2, 116--341 Mo. 190, 115, A.L.R. 1097
City of St. Louis V. Temples 149 SW 2, 888.

In State ex rel, Public Service Commission v. Blair, 146 SW 2, 865 lc. 873, in the opinion of Judge Clark we find:

*** Of course, we realize that Missouri cannot grant permission for operations outside the State in the sense that such permission will be binding on another State, but Missouri can refuse to charge a tax for the use of our own highways although the carrier operates within a limited sphere outside the State, provided the carrier otherwise comes within the exemption proviso. Any other construction would discriminate against the many border cities and in favor of the interior cities of our State. The natural trade territory of many of our border cities extends across the State line and the practical necessities of commerce demand a unified system for the transportation of both passengers and freight in such territory. Nor do we think that to construe the term 'suburban territory' so as to include territory outside the State would be unconstitutional, although it would exempt some interstate operators and tax others. The Act has nothing to do with the residence of the owners of transportation systems; it treats resident and non resident owners exactly alike. It does make a distinction based upon the location of the major portion of the system. We think such distinction is reasonable. If the major part of the system is located in a municipality in this State, such municipality may provide reasonable measures for the dimensions, weight and safety equipment of the vehicles, the qualifications of the operators and the financial responsibility of the owners. If the system is located outside the State, but uses our roads or streets for commercial purposes, it comes within the jurisdiction of our Public Service Commission and subject to the

regulations and tax provided for all who do business in the same way.***"

See also State v. Sanderson, 128 SW (2) 277 1c. 279:

"We think there can be no serious question but that the highways belong to the state, and their use for purposes of gain may be regulated and restricted as the legislature deems proper, and that the legislature was within its right in passing laws regulating common carriers and contract haulers as was done in this instance. State v. Dixon, 335 Mo. 478, 73 SW 2d. 385, 387; Park Transportation Co. v. Mo. State Highway Comm., 332 Mo. 592, 60 S.W. 2d 388, 390. "***"

and in State ex rel Ill, Greyhound v. Public Service Commission, 108 SW 2d. 116, 1c. 119:

"*** The highways belong to the state. It may make provision appropriate for securing the safety and convenience of the public in the use of them. Kane v. New Jersey, 242 U.S. 160, 37 S. Ct. 30, 61 L.Ed.222. It may impose fees with a view both to raising funds to defray the cost of supervision and maintenance and to obtaining compensation for the use of the road facilities provided, Hendrick v. Maryland, 235 U. S. 610, 35 S. Ct. 140, 59 L. Ed. 385. See, also, Pierce Oil Corporation v. Hopkins, 264 U. S. 137, 44 S. Ct. 251, 68 L. Ed. 593. With the increase in number and size of the vehicles used upon a highway, both the danger and the wear and tear grow. To exclude unnecessary vehicles -- particularly the large ones commonly used by carriers for hire -- promotes both safety and economy. State regulation of that character is valid even as applied to interstate commerce, in the absence of legislation by Congress which deals specifically with the subject.' Buck v. Kuykendall, 267 U. S. 307, Loc. Cit. 314, 45 S. Ct. 324, 325, 69 L. Ed. 623, 38 A. L. R. 286.

The case was tried in the court below before the Federal Motor Carrier Act of 1935 (15 U. S. C. A. Sec. 77 (c); 49 U. S. C. A. Secs. 301-327) became effective, therefore, we will not undertake to decide if that act has in any way modified the Missouri Bus and Truck Act of 1931.***"

Looking now to Sec. 8370 and that portion which reads:

"*** Fees of 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."

"Gross weight" is defined by various authorities as follows:

Funk and Wagnall Standard Dictionary, 1937 unabridged edition.

"Gross Weight"-- the full weight of goods, no allowance being made for tare, tret, or waste; opposed to net weight.

Websters International Dictionary:

"Gross Weight" All parts taken together .
Citing Hawley V. James
16 Wendell N.Y.-61

Bouviere Law Dictionary

"Gross Weight" -- Entire weight.

The decisions in our own as well as other states are in agreement that a statute imposing on Motor vehicles carriers a highway maintenance tax fixed on the carrying capacity of the vehicle, the Commissioner of Motor Vehicles in computing the tax may use this method, i. e., maximum load, rather than the factory rated capacity since the maximum load has a direct relationship to the wear and tear on the highways.

A fee graduated according to the weight of the vehicles is constitutional and valid.

Prouty v. Coyne 55 F (2) 289
Louis V. Boynton 53 F. (2) 471
State v. Ry. Comm. 220 NW 390

The sizes and weights of motor vehicles includes sizes and weights of the motor vehicles and their loads.

Mauer v. Hamilton 309 U. S. 598
84 L. Ed. 969
60 S.C. 726

C O N C L U S I O N

From the above and foregoing we conclude that under the provisions of House Bill No. 240, which was approved May 22, 1943.

1. That registration fees of trucks, trailers, semi-trailers, etc., under the new section shall be computed on the "Gross Weight" rather than the "tonnage capacity" of a motor vehicle.
2. "Gross Weight," means the gross weight of the vehicle or any combination of vehicles and the maximum load to be carried at any one time during the licensed period.
3. That under section (c) of Sec. 8369 R. S. as enacted in 1943, the Commissioner of Motor Vehicles has a mandatory duty to collect fees as stipulated in the above section, but he has a discretionary duty with respect to licensed motor vehicles destroyed and replaced by another in allowing a transfer of annual license.
4. That the Commissioner of Motor Vehicles shall collect and account for registration fees as

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required under part (c) Sec. 8369 R. S. enacted 1943, and that the Public Service Commission shall credit 85% of such registration fees so paid the Commissioner of Motor Vehicles, against any fees charged by the Public Service Commission for the transportation of persons or property.

Respectfully submitted,

L. I. MORRIS
Assistant Attorney General

APPROVED:

ROY MCKITTRICK
Attorney General of Missouri

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