

Opinion No. 33.**Motor Vehicles—Registration and Licensing of—Penalty for Operating Without License Plates.**

HELD: 1. A person operating a motor vehicle without proper license plates outside incorporated cities can be charged with a violation of either Section 1741.7 or Section 1757.

2. The penalty for the violation of Section 1741.7 is found in Section 1741.8 and the penalty for violating Section 1757 is found in Section 1762.

3. Non-resident owners operating a motor vehicle without proper license plates or any person using plates on one vehicle that were issued to another, or repainting old license plates, are punished as provided by Section 1760.10.

March 21, 1939.

Mr. Fred C. Gabriel
County Attorney
Malta, Montana

Dear Sir:

You have called attention to an apparent conflict between Section 1741.8, Revised Codes of Montana, 1935, as amended by Chapter 82, Laws 1937, and Section 1760.10, Revised Codes of Montana, 1935, relating to the penalty imposed for the operation of a motor vehicle without having and conspicuously displaying proper number plates. You have requested an opinion as to which section should be followed.

Chapter 152, Vol. 1, Political Code, relates to the registration of motor vehicles. There is considerable conflict between the provisions of Chapter 152, because all of the sections comprising that chapter have been subjected to extensive amendments and the Legislature has not always been careful to correlate its amendments and revisions with the existing law.

Section 1757, Revised Codes of Montana, 1935, provides that every motor vehicle driven upon the streets or highways of the state shall display a number plate, and Section 1759.5, Revised Codes of Montana, 1935, as amended

by Chapter 154, Laws of 1937, declares that "no person shall operate a motor vehicle upon the public highways of this state without a license and unless such vehicle shall have been properly registered and shall have the proper number plates conspicuously displayed." This section was enacted as subdivision 6, Section 1, Chapter 158, Laws of 1933, an Act "Relating to Registration and Re-registration of Motor Vehicles, providing for Application for Registration, and Time for Making such Application, Assessment and Payment of Taxes on Motor Vehicles prior to Registration, Issuance and Assignment of Number Plates and Exhibition Thereof. Distribution of Taxes and License Fees Collected, Application for Dealer's License, Replacement of Number Plates, Exemption of Non-resident Owners. Prescribing the Duties of Registrar of Motor Vehicles and County Assessors and County Treasurers * * *." Section 1757 was enacted in its present form by Section 2 of said Chapter 158. This chapter also contained amendments to Sections 1759, 1759.1, 1759.2, 1759.3, 1759.4, 1759.6 and 1759.7. The penalty for the violation of all those sections is found in Section 1755.1, Revised Codes of Montana, 1935, making violation a misdemeanor and providing for a fine of not exceeding twenty-five dollars. Note that Section 1755.1 specifically omits mention of Section 1759.5 so that it is evident that the legislative intent is to provide some other penalty for the violation of 1759.5.

Section 1760.10 was enacted as Section 11, Chapter 121, Laws of 1929, entitled, "An Act Providing for the Registration and Licensing of Motor Vehicles of Non-resident Owners, and Providing for Registration Cards and Identification Thereof." Chapter 121, Laws of 1929, was amended by Chapter 126, Laws of 1933, but what is now Section 1760.10 was left unchanged.

Then, when Section 1760.10 declares, "Any person operating a motor vehicle in violation of the intent and purpose of this act shall be guilty of a misdemeanor * * *," it refers to the provisions of Chapter 121, Laws of 1929, as amended by Chapter 126, Laws of 1933, now incorporated into the Revised Codes of Montana as Sections 1760.1-1760.10, and therefore relates

only to "Licensing and Registration of Non-resident Owners," so that the provisions of Section 1760.10 are not applicable to violators of any other sections of the Code with the one exception provided by Chapter 154, Laws of 1937, which amended Section 1759.5 by adding the following:

"It is further provided that it shall be unlawful to use license plates issued to one vehicle on any other vehicle, trailers or semi-trailers, or repainting old license plates to resemble current license plates and any person violating this provision shall be deemed guilty of a misdemeanor and shall be subject to the penalty as set out in Section 1760.10 of the Revised Codes of Montana of 1935."

The intent is not to make Section 1760.10 applicable to violators of all the provisions of Section 1759.5, but merely to violators of the amendment quoted.

Section 1741.7 Revised Codes of Montana 1935, as amended by Chapter 182, Laws of 1937, in part provides:

"For the purpose of this act the following acts committed relative to the use of the highways and the operation of motor vehicle in the State of Montana outside of incorporated towns and cities shall constitute a crime punishable by law as hereinafter provided:

"1. Driving a motor vehicle without all proper licenses or permits as now required or hereinafter provided."

Section 1741.7 was passed in 1935 as a part of Chapter 185, Laws of 1935, creating the Highway Patrol and applies to those who operate a motor vehicle outside incorporated towns and cities. (*State v. Schnell*, 107 Mont. 579.) The punishment for violating Section 1741.7 is found in Section 1741.8, as amended by Section 6 of Chapter 182, Laws of 1937.

Where a non-resident failed to secure license plates or where any person used number plates on a motor vehicle other than that for which such plates were purchased, the provisions of Section 1760.10 would be applicable. A special statute supersedes a general one relating to the same subject mat-

ter and must be read as an exception to a statute covering the same and other subjects in general terms. (In re: Wilson's Estate, 102 Mont. 178.)

But Section 1741.7 only applies to the operation of motor vehicles outside incorporated towns and cities. As has already been noted, Section 1757 requires the display of number plates. This section was originally enacted as Section 3, Chapter 75, Laws of 1917. Section 1762, Revised Codes of Montana, 1935, enacted as Section 11 of said Chapter 75, Laws of 1917, provides a penalty for the violation of any of the provisions "of this act." Inasmuch as Section 1757 was one of the provisions of that act referred to, the penalties set forth by Section 1762 can be inflicted upon the violators of Section 1757.

It is my opinion that a resident arrested for operating a motor vehicle without proper license plates outside incorporated cities and towns can be charged with violating either Section 1741.7 or Section 1757 and, if convicted, punished as provided by Section 1741.8 or Section 1762 respectively.

If the charge is operating a motor vehicle without proper license plates within the limits of an incorporated city or town, the defendant could only be charged with a violation of Section 1757 and punished as set forth in Section 1762. If the charge is covered by the 1937 amendment to Section 1759.5, or the vehicle so operated is from a foreign state, the penalty prescribed by Section 1760.10 is to be imposed.