

**Opinion No. 79.****Motor Vehicles—Automobiles—Trucks,  
registration of.**

Held: The fee for registration of a truck—which is conditioned by the law on the capacity of the vehicle—shall be determined by referring to the manufacturer's rated capacity and then to the provision of the statute applicable to the capacity thus determined.

June 25, 1943.

Mr. John E. Henry  
Registrar of Motor Vehicles  
Deer Lodge, Montana

Dear Mr. Henry:

You have requested an opinion from this office on the following questions:

“What registration fee should be collected for a truck having a manufacturer's rated capacity of one and one-half to three tons? What registration fee should be collected for a truck having a manufacturer's rated capacity of one and one-half to five tons?”

Section 1760, Revised Codes of Montana, 1935, as last amended by Chapter 154, Laws of 1943, provides in part:

“Registration or license fees shall be paid upon registration or re-registration of motor vehicles, trailers, semi-trailers and dealers in motor vehicles or automobile accessories in accordance with this act, as follows:

“Tractors and/or trucks of one (1) ton capacity or under, five dollars (\$5.00);

"Tractors and/or trucks over one (1) ton capacity and up to and including one and one-half (1½) tons capacity, ten dollars (\$10.00);

"Tractors and/or trucks over one and one-half (1½) tons and up to and including two (2) tons capacity, twenty-two dollars and fifty cents (\$22.50);

"Tractors and/or trucks over two (2) tons and less than three (3) tons capacity, thirty-seven dollars and fifty cents (\$37.50);

"Tractors and/or trucks of three (3) tons and less than five (5) tons capacity, sixty dollars (\$60.00);

"Tractors and/or trucks of five (5) tons capacity and over, two hundred dollars (\$200.00); . . ."

The Supreme Court of the State of Oklahoma was called upon, in 1933, to interpret an Oklahoma motor vehicle registration statute which provided the basis for determination of amount of license fees on trucks should be the "pounds carrying capacity." While the wording of the Oklahoma statute was somewhat more definite and explicit than is the wording of our Montana enactment, quoted above, the Montana statute can mean only that the capacity which the vehicle can carry forward is the determining factor. Hence, I believe the Oklahoma court's language is pertinent here:

"In 9 Corpus Juris, page 1275, the word 'capacity' is said to be a word having many meanings, but defined generally as size, space, or compass, strength, power or force. An examination of many of the decisions wherein the word is defined discloses that its meaning is dependent entirely on its relationship to the subject-matter under consideration when it is used. The word, as used by the Legislature in the term under consideration, evidently means the strength to sustain weight together with the power to transport the sustained weight from one place to another.

"We, therefore, hold that the word 'capacity' as used in the statute pertaining to the classification of motor trucks for registration and licensing purposes according to their 'pounds carrying capacity,' was intended to and does mean the strength to sustain weight together with the power to transport the sustained weight from one place to another. . .

"If the actual pounds carrying capacity is the factor in determining the rate to be charged for the registration and licensing of motortrucks, the Legislature has imposed a burden that will require the employment of many men, the performance of much labor, and the evolution of a system for ascertaining the actual pounds carrying capacity of each motortruck in the state. It has authorized no public official to determine the actual carrying capacity of a motortruck. It has provided no scheme or system by which such a determination may be made. It has not provided an agency to make such a determination.

"If the actual carrying capacity of a motortruck is the determining factor, is that capacity to be determined while it is being operated in low gear, or otherwise? Is it to be determined when the motortruck is being operated on a paved road, or elsewhere? Is it to be determined when the motortruck is being operated on a level road or on a hill, on a hard road or in the sand, when high-powered gasoline or low grade gasoline is being used, when superior motor oil or inferior motor oil is being used, when the motor is in good mechanical condition, or otherwise? The Legislature has made no provisions with reference thereto." (Campbell et al. v. Cornish et al., 22 Pac. (2d) 63, 67, 68.)

On the basis of such reasoning, as well as other considerations before it but not pertinent here, the Oklahoma Court ruled the manufacturer's rated capacity should be the determining factor in arriving at the capacity of a truck.

The language of the Supreme Court of the State of Kentucky, where that court interpreted the words "those having a capacity of....." in a motor vehicle statute, is also persuasive here:

"We . . . find that the manufacturer's rating are substantially correct, but that trucks are often overloaded, and when overloaded they have carrying capacity in excess of the manufacturer's ratings. Though this be true, we must have a standard of some kind to govern the action of the county clerks. Without such standard the question of capacity will vary with the personnel of the owner, the character of the business in which it is employed, and the kind of street

or road over which it is operated. An increase of ratings based on the fact that some owners overload their trucks is manifest injustice to those who do not follow that practice." (State Tax Commission et al. v. Safety Transfer & Storage Company et al., 18 S. W. (2d) 991.)

If the word "capacity" means anything other than the manufacturer's rated capacity, then incalculable confusion and administrative difficulty will be encountered in determining the actual carrying capacity of each truck in this state. No state or county department has been designated by the legislative assembly to undertake and continually execute such a task.

You have, on the other hand, informed me your department and many county treasurers use as a guide and reference, Branham's Reference Book, wherein manufacturers' specifications for the various models of motor vehicles—including trucks—are set forth, together with the ton rated capacity of all models produced. According to your information, this book is a standard reference volume used by motor vehicle departments throughout the nation. Use of it or a similar volume which contains the essential information will avoid confusion which would naturally attend any attempt to determine individually for each truck the weight to be carried thereon by an applicant for a license or the weight actually carried thereon.

Hence, it is my opinion the fee for registration of a truck—which is conditioned by the law on the capacity of the vehicle—shall be determined by referring to the manufacturer's rated capacity and then to the provision of the statute applicable to the capacity thus determined. Thus, the owner of a truck with a manufacturer's rated capacity of one and one-half to three tons would pay a registration or license fee of sixty dollars, since the vehicle falls within the provision for trucks of three tons and less than five tons capacity; and an owner of a truck with a manufacturer's rated capacity of one and one-half to five tons would pay a registration or license fee of two hundred dollars, since the vehicle falls within the provision for trucks of five tons capacity or more.

Sincerely yours,  
R. V. BOTTOMLY  
Attorney General