

Registrar of Motor Vehicles—Automobiles—Motor Vehicles—Registration.

A person applying for registration of his motor vehicle in 1930, is not required as a prerequisite to his right to obtain registration to procure a license for 1929, even though the motor vehicle was operated in this State during the year 1929. Such person may be prosecuted for operating his car in 1929 without a license.

S. C. Small, Esq.,
Deputy Registrar of Motor Vehicles,
Deer Lodge, Montana.

April 19, 1930.

My dear Mr. Small:

You have requested my opinion whether the owner of a motor vehicle who has operated the same in this State during the year of 1929 without registering and securing 1929 license plates can be required to pay the 1929 registration fee before registering and securing 1930 license plates.

I find no provision of law requiring the payment of the 1929 fees before 1930 license plates may be issued. Paragraph 1 of Section 1759, R.C.M. 1921, as amended by Chapter 113, Laws of 1925, and Chapter 181, Laws of 1929, provides as follows:

“Every owner of a motor vehicle, trailer or semitrailer, operated or driven upon the public highway of this State shall, for each motor vehicle, trailer, or semitrailer owned, except as herein otherwise expressly provided, cause to be filed by mail, or otherwise, in the office of the registrar of motor vehicles, a verified application for registration on a blank to be furnished by the registrar of motor vehicles for that purpose, and containing the information therein called for. Each application must be accompanied by the registration fee hereinafter named. Registration must be renewed and fees paid annually and application for registration must be filed with the registrar of motor vehicles not later than January first of each year. All original registrations or re-registrations shall be made with the registrar of motor vehicles and certificates of title issued by him.”

And paragraph 3 of said act further provides:

“No person shall operate a motor vehicle, trailer or semitrailer 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, one on the front and one on the rear of such vehicle, each securely fastened so as to prevent the same from swinging and unobstructed from plain view, except that trailers and semi-

trailers shall have but one number plate conspicuously displayed on the rear. No person shall display on such vehicle at the same time any number assigned to it under any motor vehicle law, except as in this Act otherwise provided."

Section 3, of Chapter 181, supra, then provides the penalty for violation of these provisions, as follows:

"1. The violation of any of the provisions of this Act, except subsection 5 of section 2, shall constitute a misdemeanor, and shall be punishable by a fine of not exceeding twenty-five dollars. Nothing herein contained shall prevent the prosecution of a person for an offense committed under any other law.

"2. It is hereby made mandatory upon all peace and police officers of the state, of the counties of the state, and of towns, cities and villages to carry out the provisions of this Act and arrest the drivers or owners of any vehicle being used or driven in violation of any of the provisions of this Act, or any dealer violating any of the provisions of the same."

Section 11724, R.C.M. 1921, also provides:

"An indictment for any misdemeanor must be found, or an information filed or complaint made, within one year after its commission."

The above is the only penalty provided for operating a motor vehicle without registering the same and securing a license, and where an application for registration, or other proof sufficient to warrant a conviction, shows that the applicant has operated a motor vehicle in violation of the law, he should be prosecuted unless such prosecution is barred under the provisions of Section 11724, supra.

In this regard, it is to be noted that the owner of a motor vehicle is not required to register the same and secure license plates unless the motor vehicle is being operated on the public highways of the state. Therefore, the mere fact that an application shows that the vehicle had not been registered for 1929 would not be sufficient to warrant a prosecution without proof that the same had been operated upon the public highways.

You have also requested my opinion as to whether some \$60,000 collected as registration fees due for years when the applicant had failed to register his automobile before a new license could be issued should be returned to the applicants.

Our law does not provide that the registration fee cannot be paid after January first of each year. Strictly following the letter of the law, anyone operating an automobile after January first upon the public highways without registering the same and securing the new license plates is guilty of a misdemeanor. However, the feasibility of the custom of allowing a reasonable time for registration after January first of each year before prosecuting for violations of the act can hardly be questioned, and I fail to see where an owner who has paid

his registration fee after the year has expired is in any different position than an owner who has paid any time after January first, for while neither party can be forced to pay the same, if they do pay, it is an admission that the same was legally due and they would not be entitled to any refund. In neither case would such payment operate as a bar to prosecution for operating the motor vehicle without registration, and in no event should such payment be accepted with the understanding that it would be accepted in lieu of a prosecution for a violation of the law.

Very truly yours,
L. A. FOOT,
Attorney General.