

**Opinion No. 168.****Motor Vehicles — Licenses — Motor Caravans—Caravans—Motor Carriers.**

HELD: Motor caravans are subject to the motor vehicle laws and licenses and to the motor carrier law of the State of Montana when they operate upon the highways of the State.

September 10, 1935.

Mr. Austin B. Middleton  
Registrar of Motor Vehicles  
Deer Lodge, Montana

You have requested my opinion on the following ten questions concerning the Motor Vehicle Law:

1. Does Chapter 126 of the Laws of 1933 require the registration of every motor vehicle coming into the State from the outside?

Section 7, Chapter 126, Laws of 1933, expressly provides: "Before any foreign licensed motor vehicle shall be operated on the highways of this state for compensation or profit, or the owner thereof is using the vehicle while engaged in gainful occupation or business enterprise, in the State of Montana, including highway work, the same shall be registered and licensed in this state in the same manner as is required in the case of domestic owned vehicles of similar character not heretofore registered or licensed. \* \* \*"

The only exception is in regard to the payment of the license fee where the foreign licensed motor vehicle is not operated for compensation or profit, or the owner is not using the vehicle while engaged in gainful occupation or business enterprise. Where a motor vehicle comes within such exceptions, it may be operated for thirty days without the payment of the license fee with right of extension for an additional thirty days without charge. See Section 3 (id.). But in all cases a license must be obtained at the first county seat after entering the state. Section 1 (id.).

2. Do the motor vehicle registration laws of the state require the payment of the registration fee upon cars moved through or into the State (over the highways) for the purpose of sale or resale where such movement is made for hire by some person, firm, or corporation, or the employees thereof?

Since such motor vehicles are operated on the highways of this state for compensation or profit, they come within the express provision of Section 7, Chapter 126, Laws of 1933, which requires the payment of the registration fee for such motor vehicles even though they be registered in another state.

3. May a non-resident person, firm, or corporation legally receive a Montana Dealers License and move cars into or through the state for purpose of resale under plates issued under such license?

In my opinion, such a non-resident person, firm or corporation cannot qualify for a dealer's license, and, therefore, cannot legally obtain such license. Section 1763, Revised Codes, defines a dealer as follows: "The term 'dealer' shall include every person who is engaged in the business of buying, selling, or exchanging motor vehicles in this state, whether at an established place of business or otherwise, but shall not include agents or salesmen of manufacturers or distributors selling motor vehicles to or establishing selling or distributing agencies therefor with dealers registered in this state, or salesmen, mechanics, or demonstrators regularly employed by registered dealers in this state. \* \* \*"

To qualify as a dealer under the above definition, one must be engaged in the State of Montana in the business of buying, selling, or exchanging motor vehicles. Non-residents moving cars through or into this state for purpose of resale are not, in my opinion, engaged in the business of buying, selling or exchanging motor vehicles in the State. The above definition also clearly excludes anyone engaged in the business of delivering cars to a dealer in Montana from obtaining or using a Montana dealer's license.

4. May a Montana resident owning a dealer's license loan plates issued thereunder to a person not a dealer for use on cars being caravanned into or through the State?

The loaning of dealer's license plates to a caravanner and a person not a dealer, or to anyone, is not an incident to the usual and ordinary business of buying, selling, or exchanging of motor vehicles and is, therefore, a perversion of their use. There is no more authority for such loan of dealer's plates, than there is for the loan of such plates to the personal friends of such dealers, which, of course, is not permissible. Subdivision 5 of Section 1, Chapter 158, Laws of 1933, amending Section 1759, Revised Codes, provides: "\* \* \* Nothing contained in this paragraph shall be construed to authorize a dealer in motor vehicles to operate or use any motor vehicle otherwise than in the usual, ordinary conduct of his business, unless registered in accordance with the first paragraph of this section, and upon it being made to appear to the satisfaction of the registrar that any such dealer has used his dealer's license otherwise than in the usual, ordinary conduct of his business, the registrar may revoke such dealer's license."

5. May a Montana resident owning a dealer's license loan plates issued thereunder to any person, firm, or corporation for any purpose, excepting to a member of the firm, and then only for demonstrating purposes?

In view of the language of Subdivision 5, supra, it is my opinion that dealer's license plates were intended to be used only for demonstration purposes, or for purposes naturally incident thereto in connection with the buying, selling, or exchanging of motor vehicles. The moving of cars by Montana dealers into the State and to their place of business might be considered incident to the usual ordinary conduct of their business and, therefore, proper. When used for such purposes the plates are not loaned to anyone, but are being used directly by the dealer for a legitimate purpose.

6. Can motor vehicles be moved

into or through the state by temporary employees of a licensed Montana dealer under that dealer's license?

For reasons given in answer to questions 4 and 5, supra, this question must be answered in the negative. We do not think that a Montana dealer may employ persons either temporarily or permanently to caravan cars for others under such dealer's license plates. Such an arrangement is not incident to, nor a part of, his business of buying, selling, or exchanging motor vehicles in this State.

7. If registration fees are required of cars being caravanned into or through the state for sale or resale, shall the registration fee on the car which is being towed be that required of a motor vehicle "operated or driven" or that of a trailer?

A motor vehicle which is being towed or pulled by another vehicle, and which is not propelled under its own power, is not, in my opinion, "operated or driven" upon the public highways within the requirements of Subdivision 1, Section 1, Chapter 158, Laws of 1933, amending Section 1759, Revised Codes, and, therefore, need not be equipped with the ordinary license plates.

I do not find that the words "trailer" or "semi-trailer" have been defined by the statute. Webster defines a "trailer" as a car pulled by another car. A "trailer" is defined in 63 C. J. 763 as follows: "A separate vehicle, which is not driven or propelled by its own power, but which is drawn by some independent power," citing *Leaman v. State*, 17 Ohio App. 323, 326.

A "semi-trailer" is defined in 57 C. J. 123: "A separate vehicle which is not driven or propelled by its own power, but, which, to be useful, must be attached to and become a part of another vehicle, and then loses its identity as a separate vehicle. \* \* \*" See notes 36 and 37 for illustrations.

In my opinion a motor car thus towed or pulled by another is a trailer. The license fee for trailers and semi-trailers over one ton is \$5.00 and \$2.00 where the weight is over one thousand pounds and not over one ton. (Section 1760, as amended by Chapter 38, Section 1, Laws of 1933-34.)

8. If registration fees are required of cars being caravanned into or through the State, may the license plates issued for the same be transferred to any other car or cars in the event there should be an additional trip through the state with different cars, or shall they be required to secure additional plates for such cars?

Except for dealer's license plates, which may be transferred from one motor vehicle to another as used in the business of buying, selling, and exchanging motor vehicles, I find no statutory authority permitting the transfer of license plates from one caravanned motor vehicle to another. Section 1758, as amended by Section 1, Subdivision 1, Chapter 158, Laws of 1933, expressly provides that the verified application for registration shall contain:

"\* \* \*

(3) Description of motor vehicle, including make, year, model engine and serial number, manufacturer's model or letter, weight, type of body and, if truck, the number of tons.

"\* \* \*

(5) Such other information as the Registrar of Motor Vehicles may require."

It is observed from the foregoing that the registration and license are obtained and the license plates are to be used for a particular vehicle and no other. Each motor vehicle used on the highway must be registered. The license must be obtained and the license plates (which are the evidence of such registration and license) must be used for the vehicle for which application is made. It is not the owner, but the motor vehicle which is registered, licensed and marked with the license plates. The same is true of trailers.

9. Does paragraph 6 of Section 1759, as amended by Chapter 158, Laws of 1933, require number plates on the front and rear of both the towing car and the towed car?

In view of our opinion above, that the towing car must have the regular license of a car which is "operated or driven" upon the highways of the State, and that the towed car is a trailer, it is my opinion that under

the provisions of paragraph 6, Section 1, Chapter 158, Laws of 1933, the towing car must have license plates on the front and rear, while the towed car need have only a license plate on the rear.

10. If the vehicles are being moved into or through the State and a person, firm, or corporation so moving them is not the owner and is moving them for a consideration, should that person, firm, or corporation be required to comply with the provisions of Chapter 184 of the Laws of 1931 and pay the fees required by that act on cars towing another car?

Section 1, paragraph (h), Chapter 184, Laws of 1931, provides "The term 'motor carrier,' when used in this act, means every person or corporation, their lessees, trustees, or receivers appointed by any court whatsoever, operating motor vehicles upon any public highway in the State of Montana for the transportation of persons and/or property for hire, on a commercial basis either as a common carrier or under private contract, agreement, charter, or undertaking; \* \* \*"

Section 16 (a) (id.) provides further: "In addition to all of the licenses, fees, or taxes imposed upon motor vehicles in this State, and in consideration of the use of the public highways of this State, every motor carrier, as defined in this Act, shall, at the time of the issuance of a certificate and annually thereafter, on or between the first day of July and the fifteenth day of July, of each calendar year, pay to the Board of Railroad Commissioners of the State of Montana the sum of Ten Dollars (\$10.00), for every motor vehicle operated by the carrier over or upon the public highways of this State. \* \* \*"

Section 2 (b) of the Act reads: "It shall be unlawful for any corporation or person, its or their officers, agents, employees, or servants, to operate any motor vehicle for the transportation of persons and/or property for hire on any public highway in this State except in accordance with the provisions of this Act."

The word "transport" has been defined as meaning: "\* \* \* to carry, to carry across, beyond; to carry across,

through; to carry over or across; to convey; to convey over, across; to remove; to transfer; also to carry, bear, or convey from one place or country to another; to carry from one place to another; to carry or bear from one place to another; to carry or convey from one place or station to another; to carry or convey from one place to another; to carry or convey from one point to another; to convey from one point to another without reference to the distance between the points; to remove from one place to another \* \* \* ." 63 C. J. 797, Section 3.

"Transporting" has been defined as follows: "As commonly understood, one is 'transporting' an article when he is conveying it from one place to another. 'Transporting' includes 'towing.' \* \* \* " 63 C. J. 799, Section 6.

In the case of *Newton Creek Towing Company v. Law et al.* State Tax Commission, 199 N. Y. S. 866, it was held that one engaged in towing vessels on the Hudson River was engaged in "transportation" within the meaning of the tax law providing for an additional franchise tax on transportation and, therefore, subject to the additional franchise tax.

It is, therefore, my opinion that the motor vehicles described in your question come within Chapter 184, Laws of 1931, and that a license fee of \$10.00 is required for each such vehicle operated upon the public highways of this State.