

tion of the highways and the traveling public, as in Sec. 2 of Chapter 185, Laws of 1935, provided, or are made pursuant to some other specific statutory enactment.

2. The Highway Patrol Board may adopt valid rules and regulations governing (a) the issuance of driver's licenses and (b) the collection and remittance of fees paid therefor.

3. The Highway Patrol Board may adopt a resolution declaring that the driver's license provided for in the Act shall be effective only for the calendar year and must be renewed annually upon expiration.

March 27, 1935.

State Highway Commission
The Capitol

This will acknowledge receipt of your letter of March 20, requesting our opinion upon the following questions relating to Chapter 185, Laws of Montana, 1935.

1. May the Montana Highway Patrol Board establish rules and regulations governing the use of the highways of the State, such rules and regulations to be based upon any highway laws or any authority given the Highway Commission in laws already passed?

2. Section 10 provides that the driver's license shall be secured from the Registrar of Motor Vehicles or the County Treasurer. Is the Highway Patrol Board authorized to establish administrative regulations governing the issuance of driver's license, and governing the collection and remittance of fees paid for driver's license to the Registrar of Motor Vehicles and County Treasurer?

3. May the Highway Patrol Board adopt a resolution declaring that the driver's license provided for in the Act shall be effective only for the calendar year and must be renewed annually upon expiration?

Opinion No. 69.

Highway Patrol—Rules and Regulations—Driver's Licenses.

HELD: 1. The Highway Patrol Board may validly promulgate only those rules and regulations which are reasonably necessary for the protec-

Section 2 of Chapter 185, *supra*, provides: "Within sixty (60) days after the passage and approval of this Act, the Montana Highway Patrol shall organize by fixing a permanent place of business, providing for clerical help, selecting a Highway Patrol

Supervisor, fixing reasonable rules and regulations for protecting the highways and the traveling public, and providing for the maintenance of the Patrol and providing a method in conformity with the provisions of this Act for the employment and supervision of the Patrol."

1. It is elementary that all public officers, boards, and corporations have only such powers as are conferred upon them by statute, either expressly or by necessary implication. (*Chicago, Milwaukee & St. Paul Ry. Co. v. Board of Railroad Commissioners*, 76 Mont. 305, 247 Pac. 162; *Throop on Public Officers*, Section 556.) It follows, then, that the Highway Patrol Board may validly promulgate only those rules and regulations which are reasonably necessary for the protection of the highways and the traveling public, as in Section 2, supra, provided, or are made pursuant to some other specific statutory enactment. Such rules and regulations, then, would not be vulnerable to the objection that they amount to the exercise of legislative power by the board. (*U. S. v. Williams*, 6 Mont. 379, 12 Pac. 851; *State v. State Board of Examiners*, 74 Mont. 1, 238 Pac. 316; *State v. Johnson*, 75 Mont. 240, 243 Pac. 1073; *Chicago, Milwaukee & St. Paul Ry. Co. v. Board of Railroad Commissioners*, supra; *State v. Asal*, 79 Mont. 385, 256 Pac. 1071; *N. P. Railway Co. v. Bennett*, 83 Mont. 483, 272 Pac. 987; *Barbour v. St. Board of Education et al*, 92 Mont. 321, 13 Pac. (2d) 225; *Freeman v. Board of Adjustment*, 97 Mont. 342, 34 Pac. (2d) 534; 12 C. J. 845.)

2. By the same reasoning and supported by the authorities cited above, we believe that the Highway Patrol Board may adopt valid rules and regulations governing (a) the issuance of driver's licenses and (b) the collection and remittance of fees paid therefor.

It is true that Section 10 of the Act merely requires owners and operators of motor vehicles to obtain a State license and does not impose any condition or qualification other than the fees to be paid for such license. But, surely the State would not be "protecting the highways and the travel-

ing public" if it issued a license authorizing a four-year-old child, or a lunatic, or a blind person to operate a motor vehicle upon its public highways.

Again, Section 11 contemplates that all expenses incurred by the Highway Patrol Board be paid out of the State Highway Patrol Revolving Fund, a large part of which will be made up of the income received as fees paid for driver's licenses. Sections 2 and 14 of the Act contemplate that all the provisions of the Act will become effective sixty (60) days after its passage and approval. Hence, we think that the Board will be justified in adopting a rule requiring the Registrar of Motor Vehicles and all County Treasurers to remit, within a reasonable length of time, all fees collected by them under Section 10, to the State Treasurer as provided by Section 11. (*State v. McNamer*, 62 Mont. 490, 205 Pac. 951.)

3. The Act contemplates that the very existence of the Highway Patrol will be dependent in large measure upon the collection of license fees. Section 10 of the Act does not fix the duration of the license granted, but we think it is possible that the court may give such a construction to this section as would permit the addition of the words "per annum" thereto. Practically all license fees exacted by the State are by the year, and in 59 C. J. 974, the following rule of statutory construction is stated: "However, since it is the duty of the court to give effect, if possible, to the legislative intent, it may supply obvious omissions to carry out the legislative intent, and a *casus omissus* should not be acknowledged if by any reasonable construction the statute may be read to avoid it. Where the ordinary interpretation of a statute leads to consequences so dangerous and absurd that they could never have been intended, the court may adopt a construction from analogous provisions and thus supply an omission."

Even if we are mistaken in this view, we believe that the court would recognize that the legislature did not intend such licenses to be valid for an indefinite period and would recognize the right of the board to adopt a valid rule or regulation fixing the

period for which licenses shall be valid.

In *Roche v. Jones*, 87 Va. 484, 12 S. E. 965, it was held that "the power to license a particular occupation involves, necessarily, the defining and determining of the extent and duration of the grant or license." (See also 1 *Dillon on Municipal Corporations*, Sections 357 and 358; 37 C. J. 246.) To hold otherwise would be to nullify the entire Act for all practical purposes.

Accordingly, it is our opinion that the three questions propounded by you should all be answered in the affirmative.