

Section 1760, as amended by Chapter 138, Laws of 1937, provides:

"Registration 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: * * *

"Motor vehicles, weighing twenty-eight hundred and fifty (2850) pounds, or under, other than motor trucks, five dollars (\$5.00);

"Motor vehicles, weighing over twenty-eight hundred and fifty (2850) pounds, other than motor trucks, ten dollars (\$10.00); * * *

"Trailers and semi-trailers, over one thousand (1000) pounds and not over one (1) ton, two dollars (\$2.00);

"Trailers and semi-trailers, over one (1) ton and less than two (2) ton capacity fifteen dollars (\$15.00); over two (2) ton and less than three (3) ton capacity, twenty dollars (\$20.00); over three (3) ton and less than four (4) ton capacity, twenty-five dollars (\$25.00); over four (4) ton and less than five (5) ton capacity, thirty dollars (\$30.00); over five (5) ton capacity, two hundred dollars (\$200.00); provided that trailers owned by farmers and used in the transportation of his own livestock and his own farm produce with a five ton (5) capacity or more, shall be excluded from such provisions and the fee shall be five dollars (\$5.00). * * *

Opinion No. 85.

Motor Vehicles — Caravanned Cars — License Fees — Constitutional Law — Equal Protection of the Law.

HELD: 1. Caravanning cars are subject to regular license fees while being driven on the highways.

2. Towed cars are not trailers and are subject to regular license fees while being towed on the highways.

3. The \$2.00 license fee for trailers of one ton capacity is based upon capacity rather than weight of trailer.

4. That part of statute fixing the license fee at only \$5.00 on trailers of five tons or more capacity operated by farmers while trailers of lesser capacity operated by farmers for the same purpose are required to pay a larger license fee is unconstitutional as class legislation.

April 2, 1937.

Mr. Thomas C. Colton
County Attorney
Wibaux, Montana

Dear Mr. Colton:

You have submitted a request from the county treasurer for an opinion upon the following questions:

"1. Are caravanning cars, (each driven car towing another car) subject to license laws?"

This question has been answered in the affirmative in Opinion No. 168, Volume 16, Opinions of the Attorney General, p. 172. The amendment to Section 1760, R. C. M. 1935, would in no way affect the opinion there given.

"2. If so how are license fees to be computed on the driven car? How on the towed car? If the towed car is to be licensed as a trailer how shall its capacity be computed?"

Of course there would be no question so far as the driven car is concerned. It would pay the regular license fee provided by the statute. It will be noted that the Act was amended so that the fee for trailers is figured on capacity of the trailer rather than on the weight of the trailer. A trailer must therefore be defined as a towed vehicle designed for carrying a load according to tonnage or capacity and would not include passenger motor vehicles designed to carry passengers according to the number rather than weight. Since the towed cars cannot be classified as trailers they must be classified as regular motor vehicles and be required to pay the regular license fee.

It is therefore my opinion that both the driven and the towed automobiles must pay the regular license fee.

"3. Does the fee of \$2.00 apply to trailers of one ton weight or capacity?"

In view of the fact that all other trailers are licensed according to carrying capacity rather than weight of trailer, it is my opinion that the same test would be applied to trailers and semi-trailers over one thousand pounds and not over one ton, and that such must have been the intention of the Legislature. There is nothing in the law as amended to indicate that the Legislature intended trailers and semi-trailers to be figured on a different basis when the \$2.00 fee is paid.

You have called attention to the words of the statute above underscored. It is my opinion that this provision is unconstitutional as class legislation and is not giving all farmers equal protection of the laws. No valid reason can be stated why trailers with a five ton or more capacity should pay a smaller license fee than trailers with a smaller capacity. Evidently there was some mistake made in the drafting of the bill. The words of the statute, as it stands, however, are plain and unambiguous. They speak for themselves and there is nothing to construe. We cannot re-write the law. We must accept it as we find it. We cannot insert what has been omitted or omit what has been inserted. See Section 10519, R. C. M. 1935; *Chmielewska v. Butte & Superior Mining Co.*, 81 Mont. 36, 260 Pac. 616; *Maki v. Anaconda Copper Mining Co.*, 87 Mont. 314, 287 Pac. 170; *Clark v. Olson*, 96 Mont. 417, 31 Pac. (2) 1283.