

Opinion No. 126

Motor Vehicles—Station Wagons—Trucks—Registration Fees.

Held: Station Wagons are not to be registered as motor trucks unless such vehicles are used primarily for the transportation of commodities, merchandise, produce, freight or animals. If the owner of a station wagon seeks to register such vehicle as a motor truck he should be required to make an affidavit that the vehicle shall be primarily used for the transportation of commodities, merchandise, produce, freight, or animals.

September 5th, 1950.

Mr. Edward A. Gill
Deputy Registrar of Motor Vehicles
Deer Lodge, Montana

Dear Mr. Gill:

You have requested my opinion upon the following question:

"Can the Registrar of Motor Vehicles require that "station wagons" or "suburbans" be registered and licensed as "motor

vehicles" rather than as "motor trucks" under Section 53-122 (1760), R.C.M., 1947?"

You have informed me that the current practice has been to license these vehicles as trucks inasmuch as this is to the financial advantage of the applicant, but to the detriment of the County and State.

Section 53-122, Revised Codes of Montana, 1947, provides as follows 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:

"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);

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

It can be seen from the above quoted section that if a station wagon weighs over twenty-eight hundred and fifty pounds it is to the advantage of the owner thereof to register it as a truck since the registration fee would then only be \$5.00 as against \$10.00 if the vehicle were registered as a passenger car. The question thus becomes one of whether a station wagon can be denominated a truck under the laws relating to the registration of motor vehicles.

Section 53-104, Revised Codes of Montana, 1947, provides as follows:

"The word 'motor vehicle' as used in this act or any of the sections of this act shall be deemed to include trailers, semi-trailers, automobiles, auto trucks, motorcycles, cycle motors, and all other vehicles propelled by their own power, used upon the public highways of the State, excepting steam or gas tractors."

Section 53-133, Revised Codes of Montana, 1947, provides as follows in part:

"The words and phrases used in this act shall be construed as follows, unless the context may otherwise require:

a. The words "motor vehicle" shall include all vehicles which are self-propelled, except road rollers, traction engines and railroad cars, farm tractors, and motor cars run upon stationary rails or tracks. . . .

c. The term "motor truck" shall include all motor vehicles designed or used for the transportation of commodities, merchandise, produce, freight or animals. . . ."

I agree with you that the definition of "motor truck" contained in the above quoted section must of necessity include by implication the qualifying term "principally" or "primarily" after the words "designed" and "used." It is foreseeable that any passenger automobile could to a certain extent be used for the transportation of commodities, merchandise, produce, freight or animals. However it would be unreasonable to hold that a passenger automobile capable, to a limited degree, of transporting commodities and merchandise could be classified as a "motor truck". The Montana Supreme Court has uniformly ruled that the statutes should be given a reasonable construction if possible. *Wilkinson v. La Combe*, 59 Mont. 518, 197 Pac. 836; *State ex rel. County Commissioners v. District Court*, 62 Mont. 275, 204 Pac. 600; *State ex rel. Special Road District No. 8 v. Millis*, 81 Mont. 86, 261 Pac. 885.

The question of whether a vehicle should be listed as a truck or along with other motor vehicles has been passed on by a prior Attorney General. In Opinion No. 147, Volume 15, Report and Official Opinions of Attorney General, the then Attorney General held that if a vehicle is primarily adapted for the carrying of freight or merchandise it should be listed as a truck, and a vehicle which is primarily adapted for the carrying of passengers should not be classified as a truck although it may be used for the purpose of carrying freight or merchandise.

It is a matter of common knowledge that the great majority of station wagons are used as passenger motor vehicles and not as trucks for the hauling of merchandise and commodities. In Branham's 1950 Automobile reference book the following makers classify Station wagons as pleasure vehicles: Buick, Chevrolet, Chrysler, Crosley, DeSoto, Dodge, Ford, Hudson, Mercury, Oldsmobile, Packard, Plymouth and Pontiac. Only Willys classifies the station wagon in both sections, pleasure cars or trucks. You also state that in the specification sheets which the manufacturers have submitted to your office station wagons are uniformly and without exception listed under the heading and classification of passenger cars and not as trucks.

While most station wagons are neither designed nor used primarily for the transportation of commodities, merchandise, produce, freight or animals, it is foreseeable that a small percentage of the owners of station wagons will actually use their vehicles for one or more of the above enumerated purposes. Such owner will be entitled to register his vehicle as a motor truck. However, if any owner desires to register his station wagon as a motor truck, I believe that it would be advisable to require him to make an affidavit to the effect that the vehicle is to be used primarily for the transportation of commodities, merchandise, produce, freight or animals. If the owner shall execute such an affidavit it shall be the duty of the County Treasurer to issue him truck license plates.

. It is therefore my opinion that station wagons are not to be registered as motor trucks unless such vehicles are used primarily for the transportation of commodities, merchandise, produce, freight or animals. If the owner of a station wagon seeks to register such vehicle as a motor truck he should be required to make an affidavit that the vehicle shall be primarily used for the transportation of commodities, merchandise, produce, freight or animals.

Very truly yours,
ARNOLD H. OLSEN,
Attorney General.