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MOTOR VEHICLE—MUST PROCURE LICENSE ALTHOUGH OPERATED ONLY FOR CONSTRUCTION OR REPAIR PURPOSES WITHIN CLOSED SECTION OF PUBLIC HIGHWAY—NEW HIGHWAY INCLUDED—TRUCKS TOWED OVER HIGHWAYS ARE MOTOR VEHICLES—PUBLIC HIGHWAY DEFINED—MOTOR VEHICLE DEFINED.

*SYLLABUS:*

1. *Public roads or highways temporarily closed to vehicular traffic for the purpose of repair or improvement do not lose their identity as public roads or highways as defined in section 6291, General Code. Motor vehicles used in the construction or repair within the confines of the closed portion of a public highway are required to be licensed under the motor vehicle license law.*

2. *Roads or highways being constructed over new rights of way are public roads or highways within the meaning of the term "public roads and highways" as defined in section 6291, General Code. Motor vehicles used in the construction of a new highway are required to be licensed.*

3. *Trucks towed or drawn over the public highways are motor vehicles within the motor vehicle license law and are required to be licensed as commercial cars.*

COLUMBUS, OHIO, May 16, 1933.

HON. GEORGE S. MYERS, *Secretary of State, Columbus, Ohio.*

DEAR SIR:—I am in receipt of your recent request for my opinion, which reads as follows:

"Is the owner of a truck required to obtain registration for the same in accordance with Sections 6291 and 6292, et seq. of the General Code, when such truck is used exclusively in the construction, reconstruction or repair of a public highway which has been closed to vehicular traffic, and provided that such use is restricted within the confines of the closed portion of the highway?"

Does the fact that part of a newly constructed road is built over ground that has never been used as a public highway enter in this determination?

Does the fact that a truck may be towed or drawn over the public highways by another motor vehicle, which is properly registered and licensed, exempt the trucks so towed or drawn from being registered and carrying license plates, or are such trucks motor vehicles subject to the registration tax?"

Section 6291 of the General Code levies an annual license tax upon the operation of motor vehicles on the public roads or highways, for the purpose of paying the expense of administering the law relative to the registration and operation of such vehicles and maintaining and repairing the highways and roads.

The fundamental principle of statutory construction is stated in Lewis Sutherland's *Statutory Construction*, Vol. 2, page 958, as follows:

"Statutes are seldom written in such precise and categorical terms as to point out inclusively and exclusively all their intended applications. General and more or less flexible language is used. It is construed with reference to the subject of the act, its purpose; and popular words are read and understood according to the common acceptation."

Clearly, the intent of the legislature in levying this excise tax on the privilege of operating motor vehicles on the public highways was primarily to provide funds for the maintenance and construction of public roads and highways and so classified motor vehicles so that each class would bear its proportionate share of the cost of such roads and highways in proportion to the injury to the highway through the operation of such vehicle. The interpretation of all legislation must be made in the light of the intent and purpose of such legislation and the intent of the legislature must be given effect in construing the statutes.

The term "motor vehicle" is defined in section 6290, General Code, paragraph 2, as follows:

"'Motor vehicle' means any vehicle propelled or drawn by power other than muscular power, except road roller, traction engines, steam shovels, gasoline shovels, electric shovels, well drilling machinery, ditch digging machinery and farm machinery."

Paragraph 6 of Section 6290 defines "commercial cars" as follows:

"'Commercial car' means any motor vehicle having motor power designed and used for carrying merchandise or freight, or for carrying more than seven persons, or used as a commercial tractor."

Paragraph 17 of section 6290 states that:

"'Public roads and highways' for vehicles includes all public thoroughfares, bridges and culverts."

A public road or highway does not by being temporarily closed to traffic lose its character as a public highway. It is not an abandonment of the road. Vehicular traffic is temporarily suspended in order that certain repairs or improvements can be made to the highway. Reasonable interpretation is always given to statutory provisions. What an unreasonable interpretation it would be to hold that a public highway which had been established for years would lose all its characteristics as a public highway by the fact that a detour sign was erected and a trestle placed across the road and the highway temporarily closed to the use of the public. The public is deprived of the use of a road temporarily for the practical reason that the repairs or improvements can not be made while traffic is maintained.

The legislature by paragraph 2 of section 6290, General Code, in defining the term "motor vehicle" makes certain exceptions and it is presumed that the naming of these exceptions was the excluding of all others. The legislature not having excluded trucks used in the construction or repair of a public highway, it is presumed that the intent of the legislature was to include such trucks within the meaning of the act prescribing the license tax.

The power to temporarily close a highway to vehicular traffic is merely an incident to the right of the public authority to make reasonable regulations in the interest of the general public. It is a matter of common knowledge that new highways cannot be constructed or certain repairs made while traffic is maintained.

I am, therefore, of the opinion that the closing of a portion of a public highway temporarily to vehicular traffic for the purpose of repair or construction does not change the character of the highway and such highway remains a public road or highway within the meaning of section 6291, General Code, and such motor vehicle operated in the construction or repair of such highway within the confines of the closed portion of the highway is a motor vehicle being operated on a public road or highway and is, therefore, subject to the license tax.

No formal procedure is prescribed for the dedication of a public highway. The state through its power of eminent domain can appropriate private property for the purpose of constructing a public highway. Before a highway can be constructed it is necessary that the state acquire the right of way for such highway either by an easement deed, or by instituting appropriation proceedings.

It is assumed that the new road to which you refer in your inquiry is a highway being established by the state or one of its political subdivisions and not a road which is being dedicated as a public highway by a private citizen.

It was held, as disclosed by the first branch of the syllabus of an opinion of my predecessor, relative to a refund of motor fuel tax, reported in the Attorney General's Opinions for 1930, Vol. 2, page 837, that:

"Contractors are not entitled to refund of the tax paid for motor vehicle fuel which is used in construction work upon a highway regardless of whether the work is being done upon a new or old road, if the motor vehicle using such fuel was intended to be operated in whole or in part on the highway."

Section 5526, General Code, has been amended since the ruling in the above opinion. 114 O. L. 482, effective September 1, 1931. This section now defines public highways to include highways under construction.

It is stated in the above opinion at page 839, that:

"If apportionment were permitted it would not only result in tremendous difficulty in administering the provisions of the Gasoline Tax Law, but it would open a fertile field for fraud."

After the right of way for the road or highway, which is a perpetual easement, has been acquired, construction of the highway begins. It is impossible to say just when the right of way becomes a public highway. Clearly, it is not necessary that the right of way be formally dedicated and open to the public traffic before it becomes a public highway within the ordinary meaning of the term "public highway." It is a matter of common knowledge that the trucks are driven over this right of way in the construction of the highway. One part of the highway may be completed and the trucks driven over this portion of the highway in order to complete the remainder of the construction, although the highway has not been opened to the public.

A new highway under construction, being built on an entirely new right of way, is therefore a public road or highway within the meaning of the term

"public roads and highways," as used in section 6291, General Code.

Had the legislature intended to exclude trucks used in the construction of a new highway from the operation of the law, it would have expressly excluded such vehicles from the operation of the law, along with the other exceptions.

Roads and highways being privately constructed within a newly developed allotment or subdivision do not become public roads or highways until the roads or highways have been dedicated to the public use.

As to your inquiry whether or not trucks towed or drawn over the public highways by motor vehicles properly licensed are required to be licensed, reference must be made to the specific terms used in the statutes and, therefore, a truck being drawn is a motor vehicle within the meaning of the term "motor vehicle" as defined in paragraph 2, section 6290, General Code, *supra*.

A truck which is drawn on the highway is a commercial car within the meaning of the definition of the term "commercial car" found in paragraph 6 of section 6290, General Code, *supra*. A truck although not being propelled by its own motive power is being operated on the highway. It is designed to have its own motive power and is designed to carry merchandise or freight, or to carry more than seven passengers.

It was the intent of the legislature in enacting the motor vehicle license tax to levy a tax on the operation of motor vehicles operated on the public highways. A truck which is being towed does not come within the definition of a trailer as defined in paragraph 7 of section 6290, General Code. This section defines the term "trailer" as follows:

"Trailer means any vehicle without motive power designed or used for carrying property or persons wholly on its own structure and for being drawn by a motor vehicle."

The truck which is being drawn does not lose its identity as a commercial car within the definition of the term as defined by the legislature, and also such trucks drawn over the highways are being operated on the public roads or highways within the meaning of section 6291 of the General Code, and are therefore required to be licensed as commercial cars.

In specific answer to your inquiry, it is my opinion that:

1. Public roads or highways temporarily closed to vehicular traffic for the purpose of repair or improvement do not lose their identity as public roads or highways as defined in Section 6291, General Code. Motor vehicles used in the construction or repair within the confines of the closed portion of a public highway are required to be licensed under the motor vehicle license law.

2. Roads or highways being constructed under new rights of way are public roads or highways within the meaning of the term "public roads and highways" as defined in section 6291, General Code. Motor vehicles used in the construction of a new highway are required to be licensed.

3. Trucks towed or drawn over the public highways are motor vehicles within the motor vehicle license law and are required to be licensed as commercial cars.

Respectfully,

JOHN W. BRICKER,

*Attorney General.*