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COMMERCIAL CAR—HIGHWAY USE PERMIT—NO VALIDITY FOR ANY PERIOD OF TIME OR SUBSEQUENT TO THE USE PERMIT YEAR—ESTABLISHED BY LEGISLATURE—SECTION 5728.02 RC.

SYLLABUS:

A highway use permit may have no validity for any period of time prior or subsequent to the use permit year as established by the legislature pursuant to the provisions of Section 5728.02, Revised Code.

Columbus, Ohio, January 5, 1954

Hon. R. E. Foley, Registrar of the Bureau of Motor Vehicles
Columbus, Ohio

Dear Sir:

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

“Section 5728.02, of the Revised Code, states:

‘Every person who is the owner of a commercial car with three or more axles or a commercial car which is to be operated as part of a commercial tandem or a commercial tractor which is operated or driven upon a public highway shall, on or before the first day of October, 1953, and on or before the first day of April in each year thereafter, cause to be filed with the registrar of motor vehicles or a deputy registrar of motor vehicles, a written application for a highway use permit on blank forms to be furnished by the registrar for that purpose. * * *

‘The application shall be accompanied by a fee of two dollars.

‘Upon receipt of such application and fee the registrar shall issue, to the person making the application a highway use permit together with an identification plate. * * * Such identification plate shall be displayed on the commercial car or commercial tractor for which it was issued at all times in such manner as the registrar shall prescribe and shall not be transferable. * * *

“It will be noted that the second permit must be applied for on or before the first day of April.

“Your opinion is requested whether or not the 1954 highway use permit can be legally issued on and after March 1st for use before April 1st to those applicants who did not obtain a 1953 highway use permit.

“There are five different highway use permit classifications, namely 3, 3C, 4C, 5C and T, each one denoting a definite type of commercial car, commercial tractor trailer combination or commercial tandem. The highway use tax for these classifications ranges from one-half cent per mile to two and one-half cents per mile respectively. The tax is collected by and paid to the tax commissioner.

“We have an administrative problem in attempting to determine the number of each of the different types of permits to supply the various deputy registrars who will issue use permits. It would be desirable for us to withdraw the 1953 permits after March 1st and issue only 1954 permits. This would coincide with our license plate registration law which permits the issuance of license plates on March 1st.

“Because there would be a printing of additional forms involved if it is required to issue 1953 permits during the month of March, your early opinion would be appreciated.”

It would appear from that portion of Section 5728.02, Revised Code, quoted in your letter, that the legislature intended a use permit year extending initially from October 1, 1953 to March 31, 1954, and thereafter from April 1 to March 31.

It will be noted that the language employed by Section 5728.02 supra, permits application before the first of April of any use permit year, and further provides for the issuance of the permit “upon receipt of such application and fee * * *.” An apparent contradiction is then raised when comparison is made with the further language employed in that same section, to the effect that “Such highway use permit will be valid until the first day of April *following the date of issue.*” (Emphasis supplied.) A literal reading of this last provision would lead to the conclusion that a current permit-holder who applies for his subsequent year’s permit any time before the first of April, does so at his peril, since the permit issued on application, would expire even prior to the time it was supposed to become effective. To state a concrete example, a current permit-holder applies for, and is issued, a permit on March 31, 1954, which purports to be valid for the 1954 use permit year, and until April 1, 1955. If the last quoted provision be given a literal effect, the permit would

expire on April 1, 1954, or one day after its issue. Clearly, such a result was not intended by the legislature. The statute makes it mandatory that he apply "on or before" the first of April, for the subsequent year's permit. That mandate would be rendered completely nugatory if the quoted portion pertaining to the period of validity were literally adhered to. Thus, the portion of the section relating to application and issuance, and the portion thereof relating to the effective period of the permit are mutually repugnant. In such case, in order to effectuate the obvious legislative intent, the latter portion of the section should be so interpolated as to read that a permit shall be valid until the first of April following its effective date. See *Jenks v. Langdon*, 21 Ohio St., 362.

Consequently, the effective date and the date of issue are only coincident when application and issuance for a given permit year occur on or after the first of April of that year.

In conjunction with the establishment of a permit year, the legislature has not provided an overlap period during which a permit for either a current or subsequent permit year is valid, as it has in the case of the licensing of motor vehicles. Section 4503.10, Revised Code, provides in part as follows:

"* * * From the first day of March to the first day of April of any given year, the owner of a motor vehicle may use license placards of either the current registration year or the next succeeding registration year."

Examination of those sections relative to the axle tax fails to disclose any similar or analogous provision. Nor does it appear that any authority is granted to establish such an overlap period by administrative ruling. In the absence of such statutory authority, the creation of an overlap period would amount to an unlawful extension of the permit year as to those owners not in possession of a permit for the then current permit year.

Accordingly, and in specific answer to your question it is my opinion that a highway use permit may have no validity for any period of time prior or subsequent to the use permit year as established by the legislature pursuant to the provisions of Section 5728.02, Revised Code.

Respectfully,
C. WILLIAM O'NEILL
Attorney General