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MOTOR VEHICLES, LICENSING, HIGHWAY CONSTRUCTION EQUIPMENT, WATER TRUCK, SUBJECT TO, WHEN — §§ 4501.01, 4503.02, RC; OAG OPINION 830, 1933 FOLLOWED.

SYLLABUS:

A water truck is a motor vehicle within the meaning of Section 4501.01 (B), Revised Code, and when used in connection with construction of a new highway, without ever leaving the right of way of such new highway, such truck should be licensed as provided by Section 4503.02, Revised Code. (Opinion No. 830, Opinions of the Attorney General for 1933, page 712, approved and followed.)

Columbus, Ohio, January 18, 1960

Hon. Fred E. Jones, Prosecuting Attorney
Warren County, Lebanon, Ohio

Dear Sir:

I have before me your request for my opinion reading as follows:

“I have recently been contacted by an Inspector for the Bureau of Motor Vehicles relative to the filing of charges against a road contractor constructing a road under a contract with the State of Ohio in Warren County.

“Like most large contractors, this particular company has a great many vehicles in use for the construction of U. S. 25. Many of these vehicles, such as bulldozers, shovels, etc. naturally are not licensed. The Inspector desires to file charges against the contractor for failing to display a license on a water wagon which is also used for construction purposes and purportedly never leaves the road right-of-way.

“I respectfully request your opinion as to whether the Ohio Laws on licensing motor vehicles apply to those motor vehicles used for the construction of a new highway if such motor vehicles never leave the right-of-way presently under construction.”

There are two questions which require determination in the instant situation, namely: (1) Is a water wagon, assuming that such wagon is drawn by a gasoline engine, a motor vehicle within the meaning of Section 4501.01 (B), Revised Code? (2) Does a road under construction come within the definition of a public road and highway under Section 4501.01 (T), Revised Code?

Section 4501.01 (B), *supra*, reads as follows:

“(B) ‘Motor vehicle’ means any vehicle propelled or drawn by power other than muscular power or power collected from overhead electric trolley wires, except road rollers, traction engines, power shovels, power cranes, and other equipment used in construction work and not designed for or employed in general highway transportation, well drilling machinery, ditch digging machinery, farm machinery, threshing machinery, hay baling machinery, corn sheller, hammermill and agricultural tractors and machinery used in the production of horticultural, agricultural, and vegetable products.”

In *States ex rel. Tejan v. Lutz*, 31 Ohio N.P. (N.S.) 473, a leading case on the question here under discussion, it is stated on page 516:

“* * *

“It appears to the Court that this complete equipment is a tar-spreading outfit, and while it does help convey the tar, there is more than conveyance accomplished. Mere conveyance could not result in the final effect, that is, uniform tar-spreading on the road surface. * * * In this connection the court notices in the exhibits that gasoline tank bodies, as integral parts of trucks, are illustrated. When manufactured as tank bodies for trucks and placed on the truck as an integral part of it, such body equipment is truck equipment, and should be regarded as part of the truck fully equipped, for that particular motor truck purpose.

“The primary purpose of such a body is to hold and haul the load, and further, it is usable only while on the truck, being of no other purposeful use. It is, therefore, part of a truck equipment and not a part of the load. * * *”

It is quite clear from the manner in which the court in the above case distinguished between a tar-spreading outfit and a truck equipped with a gasoline tank, that a water wagon falls into the same category as a truck for the conveyance of gasoline. Hence, a water wagon as here under discussion is actually a water truck and must be considered a motor vehicle under the definition of Section 4501.01 (B), Revised Code.

Your second question was ruled upon by one of my predecessors in Opinion No. 830, Opinions of the Attorney General for 1933, page 712, where the second branch of the syllabus reads as follows:

“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 (now Section 4501.01 (T), Revised Code.) Motor vehicles used in the construction of a new highway are required to be licensed.”

On page 714 of the Opinion it is stated:

“* * *

“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. * * *”

I concur with the reasoning and the opinion of my predecessor, which is hereby approved and followed.

Accordingly, answering your question, it is my opinion and you are advised that a water truck is a motor vehicle within the meaning of Section 4501.01 (B), Revised Code, and when used in connection with construction of a new highway, without ever leaving the right of way of such new highway, such truck should be licensed as provided by Section 4503.02, Revised Code. (Opinion No. 830, Opinions of the Attorney General for 1933, page 712, approved and followed.)

Respectfully,

MARK McELROY

Attorney General