

"The writ is most frequently used to compel a public officer to perform a duty arising out of his office, and specifically enjoined by law. In fact, it has been declared that the object of the remedy by mandamus is to compel public officers and private individuals, in matters relating to the public, to perform their public duties. And, if any board or officer fails to discharge a lawful requirement, the action to secure such performance is mandamus."

Tiedeman on "Municipal Corporations," Section 360 reads as follows:

"If a corporation or its officials refuses or unreasonably neglect to perform a duty obligatory upon it or them, either by its charter or by the general law, and there is no adequate remedy by which a prompt and satisfactory performance can be enforced, the law is clear that a mandamus will be granted.

Where the official is deprived of all discretion as to performance or non-performance of the act; and the only discretion which he may exercise is as to the details of its execution, a mandamus will be granted to compel him to exercise his power for the accomplishment of the substantial result, which is required of him by law."

The board of trustees of public affairs, as has been seen, has certain duties imposed on it. It has no discretion as to whether or not it will carry out those duties. It is, therefore, my opinion in specific answer to your questions:

1. A village council may not proceed with plans and letting of contracts for the construction of a light plant, but must leave such functions to the board of trustees of public affairs.

2. When the council passes an ordinance authorizing the construction of a light plant, it is mandatory that the board of trustees of public affairs of a village comply with the ordinance.

Respectfully,

JOHN W. BRICKER,

Attorney General.

426.

TRACKLESS TROLLEY CAR—OPERATING ON PUBLIC STREETS—
SUBJECT TO MOTOR VEHICLE LICENSE TAX.

SYLLABUS:

1. *A vehicle constructed in a manner similar to the ordinary motor bus operating over public streets or highways, although limited in its sphere of travel by reason of the fact that it obtains its motive power from overhead trolley wires, by means of a trolley pole, is a "motor vehicle" within the meaning of Sections 6290 et seq. General Code, and is subject to the "license tax" therein imposed.*

2. *The driver of such vehicle is a chauffeur, within the meaning of such term, as defined in Section 6290, General Code, and as such, is required to obtain a chauffeur's license pursuant to the provisions of Section 6302, General Code.*

COLUMBUS, OHIO, March 31, 1933.

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

DEAR SIR:—I am in receipt of your request for my opinion as to whether "rail-less electric trolley cars" are motor vehicles within the meaning of the "motor vehicle license act" (Sections 6290 et seq. General Code), and as such are required to obtain a motor vehicle license; whether they are subject to taxation as motor vehicles, and also, whether the drivers thereof are subject to the "chauffeur's license act."

From an examination of the specifications and photographs accompanying your request it would seem that the body and external appearance of such vehicles are almost identical with the ordinary motor transportation bus, with the exception of the trolley poles. The seating arrangement is similar. The adits and exits are quite similar. The wheels are very similar, if not identical. The tires are ordinary automobile truck tires, the two front ones being size 22" x 10.50" and the four rear ones size 22" x 9.75". In other words, the only essential difference in the construction of the "rail-less electric trolley car" and the ordinary motor bus is in the equipment for the propulsion thereof. In the motor bus the propulsion equipment is ordinarily a gasoline engine, while in the "rail-less electric trolley car" the equipment for the propulsion thereof is an electric motor or motors of a type similar to that used in the ordinary electric traction car. The electrical current for the propulsion of the motors is obtained from overhead trolley wires through the medium of trolley poles of the type used on the ordinary street or interurban railway car.

By reason of the fact that the motive power for the operation of these cars is obtained from or through overhead wires it is evident that they must be operated over a fixed or determined route similar to that traversed by a street, interurban or suburban car for if such car would deviate from its course to a greater distance than the length of the trolley pole or poles the car could be unable to obtain the necessary power for its propulsion.

The so-called "motor vehicle license tax" is levied by virtue of the provisions of Sections 6291 et seq. General Code. Such section reads:

"An annual license tax is hereby levied upon the operation of motor vehicles *on the public roads or highways of this state*, for the purpose of enforcing and paying the expense of administering the law relative to the registration and operation of such vehicles, maintaining and repairing public roads, highways and streets, paying the counties' proportion of the cost and expense of cooperating with the department of highways in the improvement and construction of state highways, paying the counties' portion of the compensation, damages, cost and expenses of constructing, reconstructing, improving, maintaining and repairing roads and for the use of the general funds of the counties and townships. Such tax shall be at the rates specified in this chapter and shall be paid to and collected by the deputy commissioner, at the time of making application for registration as herein provided."

The term "motor vehicle" is defined in Section 6290, §2, General Code, for the purpose of license under the sections of the statute above referred to, as follows:

"'motor vehicle' means any vehicle propelled or drawn by power other than muscular power, except * * * (Exceptions not applicable.)"

The term "vehicle" is defined in the first paragraph of the same section of the Code, as:

"'Vehicle' means everything on wheels or runners, except vehicles operated exclusively on rails or tracks, and vehicles belonging to any police department, municipal fire department, volunteer fire department or salvage company organized under the laws of Ohio or used by such department or company in the discharge of its functions. * * *"

If we were to substitute for the word "vehicle" in the definition of "motor vehicle" its statutory definition set forth above (omitting the exceptions as to ownership which are inapplicable to the ownership of the vehicle in question) we would have the following definition of a "motor vehicle":

"'Motor vehicle' means everything on wheels or runners propelled or drawn by power other than muscular power, except those operated exclusively on rails or tracks."

From the specifications and photographs accompanying your request, it is apparent that the "rail-less electric trolley cars" are not equipped nor intended to be operated on rails. It is also apparent that they are neither equipped nor intended to be propelled by muscular power. The specifications clearly show that such vehicles are to be propelled by electrical power. It is apparent that the method of propulsion of such vehicles does not exempt them from such tax.

It would appear that no language is contained in such definition or exception which would exempt such vehicles from the tax unless their mode of travel constitutes *an operation exclusively on tracks*. From an examination of the dictionary definitions it would appear that the word "track" is one of the words in the English language the exact connotation of which must be gained from the context. Such word is defined in Webster's New International Dictionary, as:

"A course; path in which anything moves or has moved; as * *
(a) A road; path; (b) A path or course laid out for racing, exercise, etc., as * * (c) A metal way for wheeled vehicles; specifically, one or more pairs of parallel lines of rails with fastenings, ties, etc., for a railroad, railway or a tramway."

It is evident from this definition or series of definitions that the word has a concept which must be determined from its associated words. Thus, if the associated words are with reference to an automobile, motorcycle, or horse race, the word "track" would mean the course or path over which the race was or was to be run. If the associated words had reference to a railway the ordinary conception of the word would have reference to the ballast, ties and rails over which the railway trains traveled. However, in all of the definitions there is a

common concept, that is, the path or course over which the object moves must be definite or fixed, as its track. It is therefore apparent that the common conception of the word "track" is a fixed, definite course, path or course of travel. As stated by the court in *Levy v. McCarter*, 4 Pet. (U. S.) 102, 110, "the legislature must be presumed to use words in their common and ordinary signification." I therefore make such presumption in this opinion.

However, as stated in *Black on Interpretation of Laws*, 2d Ed. page 194:

"It is an ancient and fundamental rule in the construction of statutes that the meaning of a doubtful word or phrase may be ascertained by reference to the meaning of other words or phrases with which it is associated, and that where several things are referred to, they are presumed to be of the same class, where connected with a copulative conjunction, unless a contrary intent plainly appears."

Brown vs. Chicago & N. W. Ry Co., 102 Wis. 137; *Carson & Co. vs. Shilton*, 128 Ky. 329; *Merchants Bank & Ins. Co.*, 1 Disney, 469.

The word "rails" has a definite concept. It refers, ordinarily, to those pieces of steel upon which steam and electric trains are operated. Thus, when a vehicle is operated over a street or highway, on such rails, the legislative intent is clearly to exclude it from the operation of the so-called "Motor Vehicle License Law." The language of the act is, "on rails or tracks." The rule of statutory construction last quoted, would require that a meaning be given the word "track" related to that given to "rails." It would appear that the legislative intent in using the expression "on rails or tracks" was to exempt only that type of motor vehicle operated on rails or track of similar type.

The enclosed specifications show that the "trackless trolley," with the trolley pole therein specified, may be propelled sixteen and one-half feet on either side of the trolley wire. I am unable to state whether an unsurmountable mechanical difficulty would prevent the increase in the length of the trolley pole to the extent necessary to permit the vehicle to travel over the entire width of the city street or highway and thus travel over the entire portion of the highway used by any motor vehicle.

The language "on tracks or rails" is contained in an exception clause, and as stated by *Wanamaker, J.*, in *State ex rel. Keller vs. Forney*, 108 O. S. 463, 467:

"The rule is well and wisely settled that *exceptions* to a general law must be strictly construed. They are not favored in law, and the presumption is that what is not clearly excluded from the operation of the law is clearly included in the operation of the law."

The presumption is even greater in the case of exemption from taxation for, as has been held on several occasions, laws exempting any property in the state from taxation are in derogation of common right and should therefore be strictly construed. *Cincinnati College vs. State*, 19 Oh. 110, 115; *Lima vs. Cemetery Association*, 42 O. S. 128; *Lee vs. Sturges*, 46 O. S. 153; *Sturgis vs. Carter*, 114 U. S. 511, 29 L. Ed. 240; *Waterson vs. Halliday*, 77 O. S. 150.

As above set forth, I am unable to state that any language contained in the exception clause, Section 6290, General Code, clearly excludes the "track-less trolley" from the definition of the term "motor vehicles." I am of the opinion that such vehicle is a motor vehicle within the meaning of the so-called "motor vehicle license law."

With reference to your second inquiry as to whether a driver of a "trackless trolley" is a chauffeur, and required to obtain a license as such, the word "chauffeur" is defined in Section 6290, General Code, as "any operator who operates a motor vehicle as an employe or for hire." "Operator" is defined as including "any person who drives or operates a motor vehicle upon the public highways." Section 6302, General Code, provides that all chauffeurs shall be licensed pursuant to its provisions. Having held that the "trackless trolley" is a motor vehicle within the provisions of Sections 6290 et seq., General Code, it follows that the driver thereof, if an employe, must obtain a chauffeur's license in order to legally drive such vehicle.

Under date of January 25, 1930, the Attorney General of the state of Washington had before him for opinion the question as to whether the trackless trolley was a motor vehicle within the meaning of a statutory definition similar to that in the Ohio statute. He held (Wash. Op. Atty. Gen. 1930, p. 496) that such vehicles were not motor vehicles within the meaning of the Washington Motor Vehicle License Act. However, such opinion fails to disclose the reasoning by which he arrived at his conclusion.

The Attorney General of Illinois (Ill. Op. Atty. Gen. 1930, p. 302) held that the language in the exception clause "running only upon *fixed* rails or 'tracks'" meant "guided or steered by fixed rails or tracks." The Attorney General of Iowa likewise held trackless trolleys to be motor vehicles within the meaning of similar statutory definition but gave no reason for his opinion.

It is therefore my opinion, in specific answer to your inquiry:

1. A vehicle constructed in a manner similar to the ordinary motor bus operating over public streets or highways, although limited in its sphere of travel by reason of the fact that it obtains its motive power from overhead trolley wires, by means of a trolley pole, is a "motor vehicle" within the meaning of Sections 6290 et seq., General Code, and is subject to the "license tax" therein imposed.

2. The driver of such vehicle is a chauffeur, within the meaning of such term as defined in Section 6290, General Code, and as such, is required to obtain a chauffeur's license pursuant to the provisions of Section 6302, General Code.

Respectfully,

JOHN W. BRICKER,
Attorney General.

427.

APPROVAL, BONDS OF PARMA CITY SCHOOL DISTRICT, CUYA-HOGA COUNTY, OHIO—\$36,000.00.

COLUMBUS, OHIO, March 31, 1933.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

428.

APPROVAL, NOTES OF BYESVILLE VILLAGE SCHOOL DISTRICT, GUERNSEY COUNTY, OHIO—\$15,769.00.

COLUMBUS, OHIO, March 31, 1933.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.