

2370.

MOTOR VEHICLES — TRACTOR AND TRAILER UNIT FOR
TRANSPORTATION DIRT, STONE AND SIMILAR MATERIAL
—DESIGNED FOR GENERAL HIGHWAY TRANSPORTATION
—SUBJECT TO MOTOR VEHICLE LICENSE LAWS—NOT EX-
EMPT BECAUSE EQUIPPED WITH “CATERPILLAR
WHEELS.”

SYLLABUS:

1. *A unit consisting of a tractor and trailer, which is designed for the transportation of dirt, stone and similar materials, is designed for general highway transportation and therefore constitutes a “motor vehicle” as that*

term is defined in Section 6290, paragraph 2, General Code, and is therefore subject to the motor vehicle license laws.

2. Such a unit is a "vehicle" as defined in Section 6290, paragraph 1, General Code, even though it is equipped with "caterpillar wheels".

Columbus, Ohio, June 8, 1940.

Honorable Cylon W. Wallace, Registrar,
Bureau of Motor Vehicles,
Columbus, Ohio.

Dear Sir:

This will acknowledge receipt of your request for my opinion which reads in part as follows:

"With particular reference to the provisions of sections 6290, 6291 and 7248-2, G. C., will you give us your opinion as to whether or not exemption from license plate registration is had upon certain types of tractors used in conjunction with trailers and semi-trailers primarily on road construction work to carry dirt and gravel, it being the contention of the manufacturers and owners that this particular type of equipment is rarely used upon a public highway except when operated from one construction job to another and that because the width of both tractor and trailer or semi-trailer exceeds the 96 inch width restriction such vehicles are not in fact motor vehicles. Descriptive literature and a photograph of a particular type known as 'Euclid Trac-Truk' are attached herewith which are representative of units of this type. * * *

Also, would the fact that these types of 'tractors' are equipped with 'caterpillar wheels' provide exemption, it being the contention that wheels of the caterpillar type are not in fact 'wheels or runners' as specified in section 6290 under the definition of 'vehicle'?"

An examination of the advertising material submitted with your request reveals that the unit in question is designed for the transportation of dirt, stone and similar materials. The descriptive matter emphasizes the efficiency of the unit in the loading, transportation and dumping of dirt in grading operations. The particular unit is composed of a tractor and trailer, the tractor having two axles and the trailer one. On the rear platform of the tractor there is a metal trailer hitch, to which is fastened a metal bar protruding from the front of the trailer. The second vehicle is a bottom dump conveyance. The unit can carry a load of approximately 14 tons, and has a maximum speed of 25 miles per hour.

Section 6290, paragraph 2, General Code, provides in part as follows:

"2. '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 and power cranes and other equipment used in construction work and not designed for or employed in general highway transportation. ***"

The above section, prior to its amendment in 1938 (117 O. L. 726), read the same as above quoted with the exception that the words "and other equipment" were not contained therein. Thus it appears that the Legislature contemplated that there might be other equipment similar to road rollers, traction engines, power shovels and power cranes used in construction work and not designed for or employed in general highway transportation which should be excepted from the definition of "motor vehicles" and therefore exempted from motor vehicle license registration.

Inasmuch as the use of equipment is a question of fact to be determined from the circumstances existing in a particular case, I believe it would be proper to first consider the design of the equipment. It will be noted that to be excepted from the definition of a "motor vehicle", as contained in Section 6290, paragraph 2, supra, such equipment must not be designed for general highway transportation.

In the case of *State ex rel. Yontz v. West*, 61 O. App. 382, the court said at pages 388 and 389, with reference to the question of a piece of equipment being designed for general highway transportation:

"It has been urged that the mixing, motor conveyances generally are not designed for and can not be employed in general highway transportation, but are strictly confined to moving cement mixture to the place where the same is deposited upon the work under construction. The same thing may be said of numerous specially constructed vehicles. The highways are clogged with heavy trucks upon which large tanks are placed by means of which oil and gas are transported over the highway to the gas stations where they are delivered to the retail customer. There are many specially constructed bodies such as those used for hauling groceries, transporting cattle and horses, farm products and manufactured goods, all of which are definitely devoted to a single purpose and are not designed for or employed in general highway transportation, If by 'general' we mean a transportation without restriction as to the load carried. Any vehicle that is designed for the transportation of objects and adapted to general transportation of special freight is still a motor vehicle under the definition of Section 6290, General Code.

But it is said that the vehicle in question is 'used in construction work.' The motive power is no different, and the transportation afforded cannot be distinguished from the transportation of an ordinary truck upon which the unmixed stone and cement may be transported over the highways for the purpose of reaching the place where it is to be used and no one would urge that these trucks should be exempted on the ground that they are used in construction work."

It appears that the reasoning contained in the above quotation may properly be applied to the instant situation. The unit in question is designed for the transportation of special freight, viz., dirt, stone, etc.

In construing the statute involved, some consideration should be given to the rule of *ejusdem generis*, which is defined in 37 O. Jur. pp. 779, 780, as follows:

"In accordance with what is commonly known as the rule of *ejusdem generis*, where, in a statute, general words follow a designation of particular subjects or classes of persons, the meaning of the general words will ordinarily be construed as restricted by the particular designation and as including only things or persons of the same kind, class or nature as those specifically enumerated, unless there is a clear manifestation of a contrary purpose. An explanation which has been given for the principle is that if the legislature had meant the general words to be applied without restriction it would have used only one compendious term. In accordance with the rule of *ejusdem generis*, such terms as 'other,' 'other thing,' 'others,' or 'any other,' when preceded by a specific enumeration, are commonly given a restricted meaning, and limited to articles of the same nature as those previously described."

In Section 6290, paragraph 2, General Code, prior to the words "and other equipment used in construction work and not designed for or employed in general highway transportation," the Legislature has referred to road rollers, traction engines, power shovels and power cranes. Consequently, by the use of the words "and other equipment", the Legislature apparently intended to except only such equipment as was similar to the specifically enumerated vehicles. It is obvious there is very little similarity between a road roller, for example, and the tractor and trailer involved in the instant situation. There is no material difference between the unit in question and an ordinary truck which might be used for the transportation of materials in construction work. Both are designed for general highway transportation. It will be noted that the statute provides that to be exempt, equipment must not only be used in construction work but it must not be designed for general highway transportation.

The general rule as to the interpretation of statutes relating to exemption from taxation is stated in the case of *Cullitan v. Sanitarium*, 134 O. S. 99, wherein the first branch of the syllabus reads:

“There is no presumption favorable to the exemption of property from taxation. An exemption from taxation must be clearly and expressly stated in the statute and must be such only as is authorized by the Constitution.”

It may be stated in passing that those vehicles that are not contained within the term “motor vehicle”, as defined by statute are exempted from motor vehicle taxation.

For the above reasons, I am constrained to the view that the equipment in question falls within the term “motor vehicle” as defined by statute and is, therefore, subject to the motor vehicle registration laws.

In your letter you have raised one further question as to whether the fact that one of these units might be equipped with “caterpillar wheels” would take such unit from the definition of the term “motor vehicle” as contained in Section 6290, paragraph 1, General Code, wherein, it is said: “‘Vehicle’ means everything on wheels or runners, except vehicles operated exclusively on rails or tracks ***.” It seems obvious that the Legislature intended to include within the term “vehicle” every type of vehicle except street cars and other transportation units operating on continuous tracks or rails. Caterpillar wheels are actually wheels operating on treads.

In view of the obvious intent of the Legislature, I do not believe that the mere fact that such equipment might be equipped with caterpillar wheels would cause the same to be exempted from the term “vehicle”, as defined by statute.

In view of the above, I am of the opinion that the unit in question is not exempt from motor vehicle license registration for the reason that it is designed for general highway transportation. Furthermore, the fact that it may be equipped with “caterpillar wheels” does not exempt the unit from such registration.

Respectfully,

THOMAS J. HERBERT,
Attorney General.