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**MOTOR VEHICLE—OWNED AND OPERATED BY VILLAGE OR TOWNSHIP BOARDS OF EDUCATION IN TRANSPORTATION OF PUPILS TO SCHOOL—NOT SUBJECT TO PAYMENT OF STATE LICENSE TAX—WHEN EMPLOYEES OF POST OFFICE DEPARTMENT ARE EXEMPT FROM LICENSE TAX.**

(1) *Under the provisions of section 6295 G. C. as amended in H. B. 573, motor vehicles, owned and operated exclusively by a village or township board of education in the transportation of pupils to school, are "publicly owned" and used for a "public purpose" and said owners are not subject to the payment of the state license tax.*

(2) *Employees of the United States post office department using privately owned motor vehicles for the exclusive business requirements of the post office department are exempt from payment of the state license tax under the provisions of section 6295 G. C., but must pay said license tax if said motor vehicles are used for private business or pleasure any part of the time.*

COLUMBUS, OHIO, January 24, 1920.

HON. HARVEY C. SMITH, *Secretary of State, Columbus, Ohio.*

DEAR SIR:—Acknowledgment is made of the receipt of the request of the registrar of automobiles for the opinion of this department, as follows:

"Please furnish this department with an opinion as to the limitation to be exercised by the secretary of state in functioning the automobile tax law, house bill 573, amending several, and enacting supplemental sections 6309-1 and 2, 12618-1-2-3 and 4, General Code, in the following instances:

1. Shall vehicles owned and used by town, village or township school boards for transporting pupils to centralized schools be exempted from payment of the automobile tax (section 6295, General Code)?

2. Shall motor vehicles privately owned and used by carriers of government mail and freight be exempted as noted in the enclosed ruling by the United States post office department? (See 6295, General Code.)

The enclosure to which you refer as being a "ruling by the United States post office department" is as follows:

"The post office department has rendered a ruling to the effect that it will not be necessary for letter carriers assigned to drive motorcycles, or letter carriers who drive rented machines or who use their own machines under a departmental allowance in connection with the delivery of mail matter, to procure a license. The department's decision is based on the view that the state is without power to tax or burden in any way the means properly employed by the United States government in carrying into effect any of its constitutional powers. The establishment of post offices and the collection and distribution of mail in all of its branches is expressly provided for by the constitution of the United States.

In *McCulloch vs. Maryland*, 4 Wheaton, page 430, the supreme court speaking through Chief Justice Marshall, said:

'A state is without power to tax or burden in any way the means employed by the United States government for the execution of its powers.'

And again at page 436:

'States have no power by taxation or otherwise to retard, impede, burden or in any manner control the operation of the constitutional laws enacted

by congress to carry into execution the powers vested in the general government.

These principles have been reaffirmed and redeclared in a number of subsequent decisions of that court.'

In the light of the foregoing, the department holds, it is apparent that if a state required the government to purchase license tags it would in effect place a burden or tax on the means employed by the post office department to transport mail, and therefore the action would be in conflict with the government's rights under the constitution as interpreted by the supreme court."

The parts of house bill No. 573, to which you refer, pertinent to your inquiries, are as follows:

"Sec. 6290. As used in this chapter and in the penal laws, except as otherwise provided:

(1) 'Motor vehicle' means any vehicle propelled or drawn by power other than muscular power and not operated exclusively upon rails or tracks, except road rollers, traction engines, tractors, trailers designed to be drawn by animal power and used principally for agricultural purposes, public ambulances, and vehicles belonging to any police department, municipal fire department, volunteer fire company or salvage company, organized under the laws of Ohio, or used by such department or company in the discharge of its functions.

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(5) 'Owner' includes any person, firm or corporation having title to a motor vehicle or the exclusive right to the use thereof for a period of greater than thirty days, other than a manufacturer or dealer."

"Sec. 6295. Every owner of a motor vehicle before operating or driving such motor vehicle upon the public roads or highways of this state, or permitting the same to be driven, shall file a like application. On all applications required by this section the taxes payable shall be as follows:

\* \* \* \* \*

Publicly owned and operated motor vehicles used exclusively for public purposes shall be registered as provided in this chapter, without charge of any kind; but this provision shall not be construed as exempting the operation of such vehicles from any other provision of this chapter and the penal laws relating thereto. The secretary of state shall accept any application to register a motor vehicle owned by the Federal government which may be made by any officer, department or agent of such government."

The consideration of your first inquiry involves the question as to what is meant by the use of the words "publicly owned and operated motor vehicles used exclusively for public purposes" in the statute above quoted. While there are a multitude of definitions as given by the courts and lexicographers for the word "public," it is believed that Webster's Dictionary clearly defines the same, when used as an adjective, in the following language, which definition is applicable to the case at hand:

"pertaining to, or belonging to the people; relating to a nation, people or community;—opposite to private."

Therefore, this clause must mean that motor vehicles owned by the people should not be required to pay the license tax provided. Theoretically speaking, under our form of government the people make all laws and their rights are superior to that of

every other authority. However, the people can only operate through the agencies of government which they have established. It is believed that the language "publicly owned and operated motor vehicles used exclusively for public purposes" relates to motor vehicles owned by the nation, state or any of their legally constituted subdivisions. It would therefore seem that your first inquiry must be answered in the affirmative.

In considering your second inquiry, it seems clear that the legislature exempted, in section 6295 supra, from a charge all motor vehicles owned by the federal government. Therefore it is not essential to discuss herein the proposition as to whether or not a state may legally require a federal agency to pay a license tax.

It will further be observed that a motor vehicle owned by a private person but exclusively operated and controlled by the federal government is in the same status in so far as this regulation is concerned as if said motor vehicle were actually owned by said government, and an agent of said post office department using a rented motor vehicle or his own under a departmental allowance, exclusively for the government business, will not be subject to the tax. However, this will not be true where said motor vehicle is used by the owner for a part of the time for business other than governmental or for pleasure. Such a motor vehicle would have a dual character. When being used in the government business it will be exempt from the tax; on the other hand, just the minute it is used for any other purpose aside from a strictly and exclusively governmental use, it has in all respects the same status as a privately owned and operated motor vehicle in so far as a license tax is concerned.

While the above quoted purported ruling of the United States post office department provides

"it will not be necessary for letter carriers assigned to drive motorcycles, or letter carriers who drive rented machines or who use their own machines under a departmental allowance in connection with the delivery of mail matter, to procure a license,"

it is not believed that said department in using this language said or intended to say that the private owner of a motor vehicle would not be subject to the state license tax when said motor vehicle was used for private business or pleasure a part of the time.

In specific answer to your second inquiry, you are advised that a motor vehicle used by a post office employe, whether rented by him or owned and operated by him under an allowance from said post office department, is not subject to the state tax when used exclusively in connection with the business of the post office department. On the other hand, a motor vehicle, rented or operated under a departmental allowance, is subject to the state tax if used by said employe a part of the time for private business or pleasure.

It may be noted in this connection that the provisions of the law, heretofore referred to, exempting owners of certain motor vehicles from the payment of the license tax, does not exempt such owners from the operation of said law relative to the registering of said vehicles.

Respectfully,  
JOHN G. PRICE,  
*Attorney-General.*