

TRANSPORTATION OF BUILDINGS
OR EQUIPMENT OVER STATE
HIGHWAYS BY MOTOR VEHICLES;
SPECIAL PERMITS REQUIRED,
WHEN.

) Transportation of building by motor
) vehicle under Secs. 8599-8604, Mo. R.S.A.,
) also requires special permit from Chief
) Engineer of St. Highway Dept. under Sec.
) 304.13, Senate Bill No. 1113. Transporta-
) tion of equipment of contractor by motor
) vehicle requires such special permit.

November 13, 1950

11-14-50

Honorable Christian F. Stipp
Prosecuting Attorney
Carroll County
Carrollton, Missouri



Dear Sir:

This is to acknowledge receipt of your recent request for a legal opinion of this department, which request reads as follows:

"Reference is made to sections 8599, 8600-1-2-3-4-5 R. S. Mo. 1939. Further reference is made to Section 8405 R. S. Mo. 1939.

"Let us assume that a resident of Carroll County desires to transport, on a motor vehicle, a hen house 25 feet square, over the public highways of this State. Let us assume further that he has complied with the provisions of sections 8599-8605 R. S. Mo. 1939; the question is:

"Is it necessary for him to obtain a permit from the State Highway Commission, as provided in Section 8405, R. S. Mo. 1939?"

"The second question is:

"If it is necessary for him to obtain a permit from the State Highway Commission as provided in Section 8405, is it also necessary for him to obtain a permit from the County Clerk as provided in Sections 8599-8605?"

"Let us further assume that a contractor desires to move a dirt moving machine over

Honorable Christian F. Stipp

a public highway of this state and that such movement will require the moving of electric transmission lines. The question then is from whom is he required to obtain a permit."

Sections 8599 to 8605, Mo. R.S.A., outline the necessary procedure to be followed in obtaining a permit to move a house, building or other structure upon or across any public highway, outside the limits of cities of certain classes. Section 8599 reads as follows:

"No person, firm or corporation shall move, haul or transport any house, building or other structure upon, across or over any public highway outside of the limits of any city of the first, second or third class, or any city existing under a scheme and charter or a special charter in the state of Missouri, without first obtaining a permit therefor, as hereinafter provided: Provided, that nothing herein shall apply to a city having a population of 15,000 or less."

Section 8600, Mo. R.S.A., provides for making the application to the county clerk of the county in which the property is located. Sections 8601, 8602, 8603 and 8604 provide other necessary steps in such procedure before the permit may be issued. Since we are not here particularly concerned with such procedure, we merely mention said sections in passing.

The facts given in the opinion request are very meager and no information is given as to whether the building to be moved is located outside the limits of one of the cities of those classes mentioned in Section 8599, but since the writer continues, "Let us assume further that he has complied with the provisions of Sections 8599-8605, R. S. Mo. 1939," we take it that the building to be moved is located in Carroll County outside the limits of one of the cities referred to in Section 8599, and that the person desiring to do the moving now has, or will receive, the permit from the county clerk of such county.

From the wording used in Section 8599, it appears to have been the intention of the Legislature to enact a general statute authorizing any person, firm or corporation to move, haul or transport any house, building or other structure upon, over or across any public highway outside the limits of certain classes of cities therein provided, and to require one seeking to move any such building or structure over any such highway to first obtain a permit authorizing him to move or transport such building or structure.

Honorable Christian F. Stipp

Such permission to move a building or other structure makes an act legal which, without the permission, would be illegal, subjecting one to prosecution under the criminal laws of the state for obstruction of a public highway. The permit is a grant to move the building described and nothing more. It does not, nor do any of the other sections of the statute referred to in the opinion request, go into detail as to how the building shall be moved. For example, no provision is made that the building shall be moved or transported only by a motor vehicle of a certain horsepower or tonnage. The details, the methods or the motive power to be used is not specified in such statutes, and it appears that such matters have been left to the discretion of the person in charge of the actual moving operations. It is therefore our thought that one who possesses a permit issued under authority of the above sections to move a certain building may employ whatever motive power he so desires, having due consideration for the safety of other persons, vehicles and property upon the highway at the time the moving operations are in progress.

Further inquiry is made as to whether such person is required to obtain a permit from the State Highway Commission under the provisions of Section 8405, R. S. Mo. 1939, which we interpret to mean in addition to the permit obtained or to be obtained from the County Clerk of Carroll County.

Section 8405, R. S. Mo. 1939, has been repealed and Section 304.10, Senate Bill No. 1113, has been enacted in lieu thereof and reads as follows:

"1. No motor drawn or propelled vehicle shall be operated on the highways of this state the width of which, including load, is greater than ninety-six inches (except clearance lights, rear view mirrors, or other accessories required by a Federal, state, or city law or regulation); or the height of which, including load, is greater than twelve and one-half feet, or the length of which, including load, is greater than thirty-five feet; and no combination of such vehicles coupled together of a total or combined length, including coupling, in excess of forty-five feet shall be operated on said highways.

Honorable Christian F. Stipp

"2. These restrictions shall not apply to agricultural implements operated occasionally on the highways for short distances, or to vehicles temporarily transporting agricultural implements or road making machinery, or road materials, or towing for repair purposes cars that have become disabled upon the highways."

Also Section 304.13 of Senate Bill No. 1113 provides under what circumstances the chief engineer of the State Highway Department may issue special permits for the temporary use of over-dimensioned motor drawn or propelled vehicles on the highways of the state, and reads as follows:

"1. The chief engineer of the state highway department, whenever in his opinion the public safety or public interest so justifies, may issue special permits for vehicles exceeding the limitations on width, length, height and weight herein specified. Such permits shall be issued only for a single trip or for a definite period, not beyond the date of expiration of the vehicle registration and shall designate the highways and bridges which may be used under the authority of such permit."

This is a special rather than a general statute since it applies only to vehicles of a certain type and regulates the width, height and length of all such motor drawn or propelled vehicles operated on the highways of the state. It further provides that no vehicle of this classification shall be operated upon the public highways without a due compliance with this section of the statute.

The resident of Carroll County referred to in the opinion request desiring to transport the hen house over the public highways of the state chose to use a motor vehicle in transporting such building and the description given of the motor vehicle is such that it comes within the classification of motor drawn or propelled vehicles referred to in Section 304.10, Senate Bill No. 1113. Therefore, the regulations as to width, height and length are fully applicable to the motor vehicle to be used in transporting the hen house, since said vehicle does not fall within that class of vehicles to which the exception is provided in said section.

While the above-mentioned regulations apply to all motor drawn or propelled vehicles not excepted therefrom and prohibits the operation of same on the highways of the state, yet it is noted

Honorable Christian F. Stipp

that such motor drawn or motor propelled vehicles may be operated on the state highways when the dimensions of such vehicles exceed those provided in said section, and that under certain circumstances the Chief Engineer of the State Highway Department may issue special permits for the temporary operation of such vehicles, under the terms of Section 304.10, supra.

The regulations as to the dimensions of the motor vehicles that may be operated over the state highways, and the power of the Chief Engineer of the State Highway Department to issue special permits for the temporary use of motor vehicles over such highways, where the dimensions of those vehicles exceed the limits provided by this section, is not unreasonable or a discriminatory law, nor does it vest authority in the Chief Engineer to exercise great power in an arbitrary manner over certain persons or their property. Rather it appears that the law is very reasonable, and that the Chief Engineer is only performing his duty as a public official in granting such special permits and enforcing the laws of the state pertaining to the use of motor vehicles upon the public highways of the state. It has long been the law in Missouri that the state has the power to supervise and control the movement of traffic over its highways, and in this connection we desire to call attention to the following cases which we believe fully sustains our contention.

In the case of Park Transportation Co., v. State Highway Commission, 332 Mo. 592, l. c. 599, the court said:

"The State has the right to regulate and control the movements of motor vehicles over its highways, and may exercise it in the interest of public convenience and safety and for the protection of the highways. Provisions of this character have been uniformly sustained. * * *"

Also in the case of Schwartzman Service, Inc. v. Stahl, 60 F. (2d) 1034, at l. c. 1037, the court said:

"The highways belong to the state. It may make provisions appropriate for securing the safety and convenience of the public in the use of them. * * *

"Assuming, therefore, the power and right of the state to regulate and supervise its highways, such right cannot be hampered or restricted within narrow bounds. On the contrary, to the end that such right might

Honorable Christian F. Stipp

be fully enjoyed and exercised, there is a constant recognition of the principle that the state 'has a broad discretion in classification in the exercise of its power of regulation.' * * * Upon such classification, no person can interpose an objection, save only in those cases where the classification or discrimination is entirely arbitrary."

Therefore, in answer to your first inquiry, it is our thought that the provisions of Section 304.10, Senate Bill No. 1113, supra, are such that it is mandatory upon the party referred to in the opinion request to secure a special permit from the Chief Engineer of the State Highway Department authorizing the use of an over-dimensioned motor drawn vehicle for moving the building referred to.

For reasons noted above, Section 8599 is a general statute, providing for the issuing of a permit to move a building over, across or upon any public highway of the state, and sections immediately following outline the procedure for obtaining that permit.

Also for reasons noted above, Section 304.10, Senate Bill No. 1113, is a special statute regulating the dimensions of all motor drawn or propelled vehicles that may operate over the state highways, and Section 304.13, supra, is also a special statute that provides for the issuing of special permits under certain circumstances by the Chief Engineer of the State Highway Department where the dimensions of such vehicles exceed the provisions of Section 304.10.

It is our further thought that there is no conflict between Section 8599, supra, and Section 304.10, Senate Bill No. 1113, but that such statutes must be read together and that both of them are to be given effect, and that they are to be harmonized.

In answer to your second inquiry, it is our thought that in the instance given and for reasons stated above, it will be necessary for the citizen of Carroll County to secure the special permit from the Chief Engineer of the State Highway Department as provided by Section 304.13, Senate Bill No. 1113. That in such instance it will also be necessary to secure the permit from the County Clerk of Carroll County, as provided by Sections 8599 to 8605, before attempting to move or transport the building mentioned over the public highways of the state.

The third inquiry is from whom a contractor, who desires to move dirt moving equipment over a public highway, where such transportation

Honorable Christian F. Stipp

will require the moving of electric transmission lines, will be required to obtain a permit authorizing him to transport such equipment.

The facts given do not indicate whether the dirt moving equipment is to be transported by motor drawn or propelled vehicle, and if so, whether the dimensions of such vehicle will exceed the regulations as to width, height and length provided by Section 304.10, Senate Bill No. 1113, supra.

Assuming that the dirt moving equipment is to be transported by motor drawn or propelled vehicle, the dimensions of which will exceed those provided by Section 304.10, supra, it is our thought that it will be necessary for the contractor to secure a special permit from the Chief Engineer of the State Highway Department as provided by Section 304.13, supra. However, such a special permit would not authorize the contractor to move or in any manner to interfere with any electric transmission lines along the route travelled by his vehicles.

As previously noted Sections 8599-8604 outline the procedure for obtaining a permit to move a house, building, or other structure over or across a public highway, and applies only to the movement of those structures coming within the classification set out by Section 8599.

Sections 8601, 8602, under certain circumstances therein provided, authorize the cutting and removal of electric transmission, and other lines where such removal is necessary to the transportation of the building or structure over or across a public highway. These statutes are very restrictive in nature and will be construed strictly against any person, firm, or corporation seeking to invoke them as a defense for the cutting and removal of any lines or poles of the description mentioned, while transporting a house or other structure on or across a public highway.

In this connection we desire to call attention to the case of Southwestern Bell Telephone Company v. Drainage District No. 8, 215 Mo. App. Rep. 456, which involved the interpretation of certain sections of the statutes then in force, and very similar to those referred to above, namely, Sections 8599 to 8604 of the 1939 statutes. The court said at l. c. 458:

"The law is well settled that statutes which undertake to subject private property to a charge on account of a public use must be strictly construed. (See Heman Construction

Honorable Christian F. Stipp

Co. v. Lyon et al., 277 Mo. 628, 211 S.W. 68.) Giving to statutes relied on by defendants herein a strict construction, we find, first, that it is made to apply only to 'houses, buildings and other structures.' The words 'other structures' is ejusdem generis. A dredge boat could in no sense be termed a house or a building.
* * * "

Applying the rule laid down in this case to the facts before us, it is our further thought that the dirt moving machine could not under the most strained interpretation, be classified as a house, building, or other structure, and particularly as an "other structure" within the meaning of Section 8599, and that the contractor, even though he had specified in his application for a permit under the provisions of Sections 8600 and 8601, that it would be necessary to have certain electric transmission lines, or poles, or such lines and poles located along a public highway over which his motor vehicle would travel while transporting a dirt moving machine removed, such facts would not be sufficient to authorize him to cut and remove any such electric transmission wires, or poles, or such electric transmission wires and poles.

CONCLUSION

It is the opinion of this department that a permit to transport a building over the public highways of the state as provided by Sections 8599 to 8604, Mo. R.S.A., inclusive, is sufficient authority for the transportation of the building by whatever means the holder of the permit may choose to employ in such transportation, having due regard for the rights and safety of persons and the property of others that may be upon the highway at the time the transportation of the building is in progress. However, where the holder of such a permit chooses to use a motor vehicle, the width, height and length of which, including load, shall exceed the limitation of the dimensions of motor drawn or propelled vehicles that may be operated upon the highways of the state, as provided by Section 304.13, Senate Bill No. 1113, and where said vehicle does not come within the classification of those vehicles specifically exempted from such limitations by said section, said motor vehicle may not be used to transport said building over the highways of the state unless the owner or operator thereof first secures a special permit from the Chief Engineer of the State Highway Department authorizing the use of such over-dimensioned

Honorable Christian F. Stipp

vehicle as provided by Section 8405, supra. Such special permit is to be in addition to the one authorized under Sections 8599 to 8604, supra.

It is the further opinion of this department that a contractor who desires to transport a dirt-moving machine over the highways of the state by means of a motor drawn or propelled vehicle, the width, height and length of which, including load, will exceed the limitation of the dimensions of such vehicle that may be operated over the highways of the state, as provided by Section 8405, supra, and that such vehicle does not come within the classification of those vehicles specifically exempted from such limitation by the further provisions of said section, that such motor vehicle may not be used to transport said dirt-moving machine until said contractor first obtains a special permit, from the Chief Engineer of the State Highway Department, as provided by Section 304.13, Senate Bill No. 1113, thereby authorizing the use of said vehicle over the public highways of the state. Such special permit will not authorize said contractor to move or in any manner to interfere with electric transmission lines located along the route over which he has been granted a special permit to operate the over-dimensioned motor vehicle.

Respectfully submitted,

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APPROVED:



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