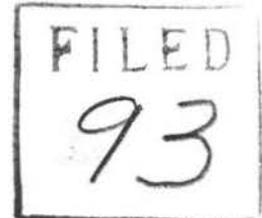


RECIPROCITY: As regards the registration of motor vehicles trans-
MISSOURI: porting passengers or property for hire, reciprocity
KANSAS: does not exist between the state of Missouri and the
state of Kansas.

June 23, 1953



Colonel Hugh H. Waggoner
Superintendent
Missouri State Highway Patrol
Jefferson City, Missouri

Dear Sir:

This department is in receipt of your request for an official opinion. You thus state your request:

"We request your opinion on whether or not reciprocity on commercial motor vehicle license should be granted to the residents of the State of Kansas as is presently done. Commercial operators, both private and for hire are required to register and pay a ton mile tax when operating on the highways of the State of Kansas. Of course, Missouri does not have such a tax and commercial motor vehicle operators from the State of Kansas, when properly licensed in that State are permitted to operate through Missouri without payment of any license fee other than the Public Service Commission sticker on for hire operation.

"Attached are several forms which a Missouri trucker must fill out for operation through the State of Kansas. We realize there is a great deal of difficulty on the part of motor carriers in complying with all State regulations, and of course, we have no desire to create any additional State barrier, however, we feel that Missouri truckers operating in the State of Kansas are discriminated against and would like to know whether or not Kansas truckers are entitled to reciprocity on State motor vehicle license when Missouri truckers are required to pay a fee for operation in the State of Kansas."

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The Missouri law setting forth the terms and conditions upon which reciprocity with other states will be recognized, is found in Section 301.270, RSMo 1949, which reads:

"A nonresident owner, except as otherwise herein provided, owning any motor vehicle which has been duly registered for the current year in the state, country or other place of which the owner is a resident and which at all times when operated in the state has displayed upon it the number plate or plates issued for such vehicle in the place of residence of such owner may operate or permit the operation of such vehicle within this state without registering such vehicle or paying any fee to this state, provided that the provisions of this section shall be operative as to a vehicle owned by a nonresident of this state only to the extent that under the laws of the state, country or other place of residence of such nonresident owner like exemptions are granted to vehicles registered under the laws of and owned by residents of this state."

The substance of the above section is that a motor vehicle duly registered in the state where it is owned may operate in this state without registering or paying any fee to this state, provided that a motor vehicle owned in this state and registered in this state may operate in such other state upon the same terms, to wit, without registering or paying any fee. It seems clear to us that this section means that in order for reciprocity to exist, the other state must not do either of these two things, require the Missouri motor vehicle to register in such state, and/or pay any fee in such state, or sum of money for any purpose for the privilege of operating in such state. This we infer from that part of the above section which, referring to motor vehicles from another state, reads:

"* * * without registering such vehicle or paying any fee to this state * * * only to the extent that under the laws of the state, country or other place of residence of such nonresident owner like exemptions are granted

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to vehicles registered under the laws of
and owned by residents of this state."

The matter which we now have to determine is whether the state of Kansas makes any registration or fee requirement of Missouri owned and registered motor vehicles that Missouri does not make of Kansas owned and registered motor vehicles operating in Missouri. That Kansas does do this is clearly shown by the following:

"INSTRUCTIONS FOR PREPARING APPLICATION FOR A
PRIVATE CARRIER PERMIT IN THE STATE OF KANSAS

"All enclosed forms must be filed in duplicate
except the form marked 'Designation of Agent
for Service of Process.'

"FILING FEE: The filing fee for a private
carrier application is \$10.

"ADVANCE MILEAGE TAX DEPOSIT: The advance
mileage tax deposit required for each piece of
equipment registered is \$20 for each unit
having a rated capacity of three tons or less
and \$6 for each additional ton. The deposit
on vehicles placed in service after July 1 of
any year will be graduated by periods of the
year as follows: July 1 to September 30 --
\$20 with \$6 for each additional ton; October 1
to December 31 -- \$15 with \$4.50 for each
additional ton; January 1 to June 30 -- \$10
with \$3 for each additional ton.

"FINANCIAL STATEMENT: Financial statements
must be furnished. In preparing this state-
ment, an accurate showing must be made of your
assets and liabilities. Partnerships must
furnish individual financial statements for
each of the partners as well as a combined
financial statement.

"PARTNERSHIP AGREEMENT - ARTICLES OF INCOR-
PORATION: When the applicant is a partnership,
a copy of the partnership agreement must
accompany the application. If there is no
written agreement, a statement of partnership
should be filed naming the partners and showing
the interest of each partner. The agreement or
statement must be signed by all partners. When
the applicant is a corporation, a certified copy
of the Articles of Incorporation must be attached
to the application.

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"SCALE TICKETS: Scale tickets showing the actual empty weight of each piece of equipment to be operated must accompany the application.

"DESIGNATION OF AGENT FOR SERVICE OF PROCESS:
If you reside outside the State of Kansas, you must designate an agent for service of process in this state. If you have no one in the State of Kansas who can act as process agent for you, you may consent that service of process be made upon the Secretary of State of the State of Kansas, or his successor, by so indicating on the designation of agent form.

"INSURANCE: The instructions for filing proper insurance are attached hereto.

"If the application is complete and properly executed and notarized, we can give the matter prompt handling.

"STATE CORPORATION COMMISSION

"s/ Ray R. McKinley

"Ray R. McKinley, Chief Clerk
"Motor Carrier Division"

The above is based upon Sections 66-1,120 General Statutes of Kansas Annotated 1949, et seq. Section 66-1,120 reads as follows:

"In addition to the regular license fees or taxes imposed upon 'public motor carriers of property or of passengers,' 'contract motor carriers of property or of passengers,' and 'private motor carriers of property,' there shall be assessed against and collected from every such carrier a tax of five-tenths mill per gross ton mile for the administration of this act and for the maintenance, repair and reconstruction of the public highways. The said gross ton mileage shall be computed: (a) The maximum seating capacity of each passenger carrying vehicle shall be estimated at 150 pounds per passenger seat; to this sum shall be added

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the weight of the vehicle, the total shall then be multiplied by the number of miles operated, and the amount thus obtained divided by 2,000; (b) 200 percent of the rated capacity of each property carrying vehicle plus the weight of the vehicle shall be multiplied by the number of miles the vehicle is operated, and the amount thus obtained divided by 2,000."

From the language of the above statute, it appears that the gross ton mileage tax is in part at least a use tax. It is so treated in the case of Continental Baking Company v. Woodring, Governor of Kansas, 55 Federal (2d) 347. At l.c. 351, the court stated:

"First looking at the statute as a whole: It is immediately observed that it draws no distinction between residents and non-residents. Next, it discloses a general intent to levy a reasonable tax for the use of its highways by those who habitually use the highways for business purposes.
* * *"

This also appears to be in part the nature of the Missouri motor vehicle registration law. In the case of State ex rel. McClung v. Becker, 288 Mo. 607, at l.c. 614, the court stated:

"The advent of motor vehicles made necessary the continued expenditure of large sums of money in the construction and maintenance of better roads and bridges, including the cost for the protection and identification of such vehicles, for police protection and for control and direction of the heavy and dangerous traffic which came with that class of high-powered vehicles. It is, therefore, not only a police regulation, but a revenue measure as well. (Berry, Automobiles, sec. 110, p. 119.)

"Its purpose is manifestly the production of revenue to be used for the purpose specifically set forth. If the law raised sufficient to pay only the expense of administering it, it would not be a tax at all. It would be in the nature

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of a license. Being a tax laid on the privilege for a specific purpose to be used for the maintenance and repair of the thing concerning which the privilege is granted, it is a valid tax unless unreasonable. The use of the entire proceeds in aid of the specific privilege enjoyed by those who pay the tax is an essential feature in determining its reasonableness. . . . The authorities agree that a statute is general and uniform if it operates equally upon every person and locality within the circumstances covered by the act, and when a classification has a reasonable basis it is not invalid merely because not made with exactness, or because in practice it may result in some inequality.' (Saviers v. Smith, 128 N.E. (Ohio) 269, l.c. 272, citing many cases.)

"The charging of an annual sum for the use of its highways by automobiles, instead of a mileage fee, is clearly a matter within the discretion of the State. No constitutional objection lies in the way of a legislative body prescribing any mode of measurement to determine the amount it will charge for the privilege it bestows. * * * * *"

Section 66-1,120, supra, refers to the mileage charge as a "tax", whereas the Missouri registration law and reciprocity law refer to the cost of registering a motor vehicle as a "fee", but whether it be called a "fee", a "tax", or simply a "charge", the fact remains that a Missouri owned and registered motor vehicle operating in the state of Kansas is subjected to a monetary payment to which a motor vehicle owned and registered in the state of Kansas is not subjected to when operating in Missouri. This, we believe, to be contrary to the intent and the letter of the Missouri reciprocity statute (Section 301.270, supra), and we believe, therefore, that as regards registration of motor vehicles transporting passengers or property for hire, reciprocity does not exist between the state of Missouri and the state of Kansas.

We do not believe that the fact that the gross ton mileage tax set out in Section 66-1,120, supra, is applicable to residents of Kansas as well as to nonresidents has any

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bearing upon the matter. The Missouri reciprocity statute (Section 301.270, supra) states that a motor vehicle duly registered in another state may operate in this state "without registering such vehicle or paying any fee to this state" if a Missouri registered motor vehicle may operate in such other state upon the same terms, which would be without registering or paying any fee. Clearly the gross ton mileage tax of Kansas is such a "fee" or charge as would come under the compass of the Missouri reciprocity statute.

CONCLUSION.

It is the opinion of this department that as regards the registration of motor vehicles transporting passengers or property for hire, reciprocity does not exist between the state of Missouri and the state of Kansas.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. Hugh P. Williamson.

Yours very truly,

JOHN M. DALTON
Attorney General

HPW:mm:sw