

MOTOR VEHICLES: Size and kind of plates to be used for
1943 in view of the Orders of the War Pro-
duction Board.

June 2, 1942

Honorable Forrest C. Donnell
Governor of Missouri
Jefferson City, Missouri



Dear Governor Donnell:

We are in receipt of your request for an opinion
under date of June 1, 1942, which is as follows:

"There are enclosed (a) copy of letter
dated April 7, 1942 from Maury Maverick,
Chief, Bureau of Governmental Require-
ments and (b) copy of General Limitation
Order L-32.

"Subsection (a) of Section 8377 of the
Revised Statutes of Missouri of 1939, in
reference to number plates, provides in
part as follows:

' . . . Such plates shall be metal
and of a different color or shade
each year and there shall be a
marked contrast between the color
of the numbers thereon and the back-
ground of said plates. Figures on
said plates shall not be less than
three inches in height and the
strokes thereof not less than five-
sixteenths of an inch in width:
Provided, that in the case of motor-
cycles and motortricycles said let-
ters and figures shall be not less
than one inch in height and the
strokes thereof one-eighth of an
inch in width . . . '

"Subsection (c) of said Section 8377 provides in part as follows:

' . . . On all motor vehicles one plate shall be displayed on the front and the other on the rear of such motor vehicle, . . . except that on trailers, motor-cycles and motortricycles one plate shall be so displayed on the rear thereof.'

"Subsection (e) of said Section 8377 provides in part as follows:

'No person shall operate a motor vehicle or trailer on which there is displayed on the front or rear thereof any other plate, tag or placard bearing any number except the plate furnished by the commissioner or the placard herein authorized, . . .'

"Your opinion is respectfully requested on the following questions:

"(1) What is the effect of General Limitation Order L-32 on each of the above quoted parts of Section 8377 of the Revised Statutes of Missouri of 1939?

"(2) May the commissioner of motor vehicles legally issue and deliver to the owner of each motor vehicle or trailer a single plate, the figures on said plate being (except in the case of motorcycles and motortricycles) approximately three-fourths of an inch in height and approximately five-eighths of an inch in width?

"(3) May a person legally operate, during the year 1943, a motor vehicle or trailer bearing front and rear 1942 Missouri plates and in addition thereto, a single plate furnished by the commissioner

of motor vehicles, the figures of which single plate shall be of the height and width as indicated in question number 2?"

Article I, Section 8, Clause 11, of the Constitution of the United States, provides as follows:

"The Congress shall have power to declare war * * *."

Article I, Section 8, Clause 16, of the Constitution of the United States, provides:

"The Congress shall have power to make all laws which shall be necessary and proper for carrying into effect the foregoing powers, and all other powers vested by this Constitution in the Government of the United States, or in any department or officer thereof."

Pursuant to its constitutional powers, Congress in an Act approved June 28, 1940 (41 U. S. C. A., Note preceding Sec. 1), provided in part:

" * * * Whenever the President is satisfied that the fulfillment of requirements for the defense of the United States will result in a shortage in the supply of any material for defense or for private account or for export, the President may allocate such material in such manner and to such extent as he shall deem necessary or appropriate in the public interest and to promote the national defense. * * *"

This same Act also provides as follows:

" * * * The President may exercise any power, authority, or discretion conferred on him by this section, through such department, agency, or officer of the Government as he may direct and in conformity

with any rules and regulations which he may prescribe."

Pursuant to this statutory authority, on August 28, 1941, the President of the United States issued Executive Order No. 8875, pertaining to the duties of the Office for Emergency Management, which in Section 5 contains the following:

"Consistent with the basic defense policies of the President, the Supply Priorities and Allocations Board shall:

"a. Determine the total requirements of materials and commodities needed respectively for defense, civilian, and all other purposes; establish policies for the fulfillment of such requirements, and, where necessary, make recommendations to the President relative thereto.

"b. Determine policies and make regulations governing allocations and priorities with respect to the procurement, production, transmission, or transportation of materials, articles, power, fuel and other commodities among military, economic defense, defense aid, civilian, and other major demands of the total defense program."

On January 16, 1942, the President of the United States issued Executive Order No. 9024, creating within the Office for Emergency Management a War Production Board, and conferred upon said War Production Board the functions and powers theretofore contained in Executive Order No. 8875.

On March 18, 1942, the War Production Board issued General Limitation Order L-32, which Order you have attached to your opinion request. That Order, in part, is as follows:

"(a) Definitions. For the purposes of this Order:

- (1) 'Governmental Unit' means any State, Territory or possession

of the United States, the District of Columbia, and any political, administrative or governmental division, subdivision, corporation or agency of any of the foregoing or of the United States, including - by way of example and not of limitation - counties, townships, cities, towns, villages and special governmental districts of every kind.

- (2) 'Metallic License Plate' means any type of plate, tag, emblem, insignia or marker which is or may be used by a Governmental Unit to evidence licensing or registration of any kind and for any purpose, into the physical composition of which metal, whether ferrous or nonferrous, is incorporated to the extent of five percent (5%) or more, by weight, of the finished item.
- (3) 'Licensing Year' means any twelve month period which has been established as the unit of time during which there shall be in effect the licensing or registration evidenced by a Metallic License Plate.
- (b) General Restrictions. Notwithstanding the provisions of any contract or of any federal, state or local statute or regulation, no Governmental Unit shall issue or use at any time Metallic License Plates greater in quantity than is specifically authorized herein or from time to time hereafter by the Director of Industry Operations.
- (c) Permitted Uses.
- (1) A Governmental Unit may issue or use Metallic License Plates to the

extent that, as of the date of the issuance of this Order, the cutting and stamping of the metal for the manufacture of such plates has been completed, and

- (2) in addition, a Governmental Unit may, during each Licensing Year which begins after December 31, 1941, issue or use Metallic License Plates licensing or registering any thing or activity, in total quantities not exceeding ten percent (10%), by weight, of the Metallic License Plates which it issued or used during the corresponding Licensing Year ending after June 30, 1941, and before July 1, 1942, to license or register that same type of thing or activity; provided that Metallic License Plates may be thus issued or used for the following purposes and under the following conditions only:
- (i) as replacement plates, that is, for the purpose of replacing Metallic License Plates which have been issued and which have thereafter been lost or destroyed,
 - (ii) to new licensees or registrants, that is, to persons who have not used or had issued to them during the Licensing Year immediately preceding that for which application is made, a Metallic License Plate licensing or registering the same thing or activity for which application for licensing or registration is made, and
 - (iii) in the case of the licensing or registering of any type of vehicle or instrumentality of transportation, in the form of 'date tabs',

in sizes not exceeding four square inches in area, to be attached to Metallic License Plates already issued so as to change the effective dates of those plates."

From the foregoing, it appears that Congress, in exercising its constitutional power, has declared that a state of war exists; that it has, under its power to make all laws which shall be necessary and proper for carrying into effect the war powers, enacted the statutes heretofore quoted, appearing in 41 U. S. C. A., preceding Section 1, authorizing the President, in the event that fulfillment of defense requirements results in a shortage of any material for defense or "for private account," to allocate such material in such manner and to such extent as he shall deem necessary or appropriate in the public interest and to promote the national defense, and authorizing the President to delegate those powers to an agency of the Government. The President, pursuant to the authority vested in him by that Act, has issued Executive Order No. 8875, setting up control over such materials and directing an agency to make regulations governing allocations with respect to said materials. That power now rests, under Executive Order No. 9024, in the War Production Board, and General Limitation Order L-32 prescribes the regulations determined upon by said War Production Board.

We have no doubt but what the foregoing synopsis demonstrates that General Limitation Order L-32 is valid and within the powers which Congress has conferred upon the President, and which the President has delegated to the War Production Board.

The rule of law decisive of the question is: "Whenever the constitutional powers of the federal government and those of the state come into conflict, the latter must yield." (Florida v. Mellon, 275 U. S. 12, 71 L. Ed. 511, 515.) More particularly, regarding the existence of a state of war, it is stated in State v. Burton, 103 Atl. 962 (R. I.), that:

"Under the Constitution of the United States, the conduct of the war now existing between this country and Germany vests wholly in the Federal government.

Any state law, the operation of which will hinder that government in carrying out such constitutional power, is, during the exercise of the power, suspended as regards the national government and its officers, who are charged with the duty of prosecuting the war. The principle is well established that, in respect to the powers and duties exclusively conferred and imposed upon the Federal government by the Constitution of the United States, the several states have subordinated their sovereignty to that of the nation. Ex parte Siebold, 100 U. S. 371, 25 L. ed. 717; Tennessee v. Davis, 100 U. S. 257, 25 L. ed. 648; Re Neagle, 135 U. S. 1, 34 L. ed. 55, 10 Sup. Ct. Rep. 658; Re Waite (D. C.) 81 Fed. 359; Re Fair (C.C.) 100 Fed. 149."

Only one other legal point need be considered before a conclusion may be reached. It will be noted that the conflicts in this instance are between a rule (Limitation Order L-32) of an agency of the Government and the statutes of Missouri. However, it appears in 41 U. S. C. A., preceding Section 1, that Congress, by stating that no one shall be held liable for damages or penalties which result from his compliance with any "rule, regulation, or order issued under this section," has recognized and authorized the President to make regulations to carry into effect his powers. When Congress authorized the President to delegate these powers, the subsequent delegation, as evidenced by the Executive Orders, supra, vested in the designated agency the same rule making power that Congress conferred upon the President, and in effect said agency's act is the act of the President. In United States v. Eaton, 144 U. S. 677, 36 L. Ed. 591, 594, it is stated:

"Regulations prescribed by the President,
* * * under authority granted by Congress,
may be regulations prescribed by law, * * *
and may thus have, in a proper sense, the
force of law."

We think that is the present status of Limitation Order L-32, and it having the force of law, and being an exercise of the constitutional powers of the Federal Government, the provisions of state statutes in conflict therewith must yield and are suspended.

Having reached this conclusion, and realizing that some difficulty in compliance with the terms of Limitation Order L-32 would arise from the four square inch size prescribed therein for date tabs, on June 3, 1942, we sent a telegram to the Honorable Maury Maverick, Chief, Division Of Industry Operations of the War Production Board, asking for a waiver on the four square inch size for date tabs if we stayed within the ten percent metal limitation. In answer to that telegram we received a letter, dated June 4, 1942, from J. S. Knowlson, Director of Industry Operations, as follows:

"This is your authorization to manufacture a metal date tab to attach to 1942 or older license plates for next licensing year.

"The amount of steel to be used in the manufacture of the above mentioned tab shall not exceed $6\frac{1}{2}$ square inches for each tab, and the amount of steel used for the licensing year shall not exceed 10% of the amount used in manufacture of license plates for the year 1942."

In view of the foregoing, our answers to your questions are as follows:

(1) In our opinion General Limitations L-32 suspends and replaces the provisions of Section 8377, R. S. Missouri, 1939, in so far as said statute is in conflict with the Order.

(2) A close examination of the General Limitation Order L-32 does not disclose that any restriction is placed upon the number of plates (we use the word "plates" in the sense of a full size license, as required by our statutes, as distinguished from a date tab) to be displayed on a motor vehicle. The restriction is on the weight of metal used in all the new or replacement plates and date tabs with a size limitation of four square inches on the tabs. This being so, subsection (c) of Section 8377, R. S. Missouri, 1939, requiring the display of a plate on both the front and rear of a

motor vehicle, is not affected and still controls.

It, therefore, is our opinion that the Commissioner of Motor Vehicles may not deliver to the owner of a motor vehicle for the year 1943 a single plate with figures on said plate being approximately three-fourths ($3/4$ ths) of an inch in height and five-eighths ($5/8$ ths) of an inch in width. Our statutes require that there be a plate on both the front and rear, and that the figures thereon shall be not less than three (3) inches in height and five-sixteenths ($5/16$ ths) of an inch in width.

(3) It is our opinion, however, that a person may legally operate during the year 1943 a motor vehicle or trailer, bearing front and rear 1942 plates and, in addition thereto, a single date tab not exceeding in area six and one-half ($6\frac{1}{2}$) square inches.

General Limitations Order L-32, we think, permits the following: the Motor Vehicle Commissioner of Missouri may issue replacement plates, that is, plates for the purpose of replacing 1942 plates that have been lost or destroyed, of the size and kind required by our statutes, bearing the year date of 1942. He may also issue new plates to persons who have not had 1942 plates theretofore issued to them, of the size and kind required by our statutes, bearing the year date 1942. There may be attached to the vehicle bearing replacement or new plates, a single 1943 date tab of the size previously indicated. As to those persons already holding 1942 license plates, there may be attached to said vehicle a single 1943 date tab of the size previously indicated, providing that all the plates, both new, replacement and date tabs, may be manufactured using only ten per cent (10%) of the metal which was used during the period after June 30, 1940 and before June 1, 1942.

It would thus appear, following this procedure, that a motor vehicle in Missouri would be licensed, as required by our statutes, in that, it would display on both front and rear a license plate dated for the year 1942, of the size and kind required by the Missouri law, brought up to date with a single date tab attached to said vehicle.

Hon. Forrest C. Donnell

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June 2, 1942

With respect to the size of the figures to be used on the date tab, we venture no opinion since that, of necessity, will be governed by the six and one-half ($6\frac{1}{2}$) square inches in area of the date tab.

Respectfully submitted,

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APPROVED:

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LLB/rv