

H...WAY PATROL) Patrol cannot change safety glass standard, and
MOTOR VEHICLES) must approve all types conforming with Sec. 8391,
R. S. Mo. 1939.

September 24, 1949

10/14/49

Honorable David W. Harrison
Superintendent, Missouri State
Highway Patrol
Jefferson City, Missouri



Dear Sir:

We are in receipt of your recent request for an opinion which reads as follows:

"Section 8392 of the Motor Vehicle Code reads as follows.

"The State Highway Patrol shall maintain a list of approved types of glass which conform to the requirements of Section 8391 and shall furnish a copy of such list to the Director of Revenue and thereafter shall keep the Director of Revenue informed as to any changes in or additions to such list."

"Section 8391 defines safety glass as follows.

"The term "safety glass," as used in sections 8389, 8390, and 8392 shall be construed as meaning glass so treated or combined with other materials as to reduce, in comparison with ordinary sheet glass or plate glass, the likelihood of injury to persons by objects from external sources or by glass when the glass is cracked or broken."

"There is a doubt in our mind as to what authority we have under this section so far as establishing specifications that glazing material must meet before it can be termed 'safety glass' as defined in Section 8391. In other words, does the State Highway Patrol have the authority to require safety glass or glazing

material to meet certain standards or must it approve any product manufactured when the manufacturers term it as safety glass. We feel that the statute has no meaning unless it carries with it the authority to establish standards.

"Attached is a copy of the American Standard Safety Code for Safety Glass for Glazing Motor Vehicles Operating on Land Highways. This code is followed by the manufacturers of such glazing material, and it is the standard which this department would like to adopt as a criteria for approval of glass used in motor vehicles operated within this state.

"We would also like to know, should this department have authority to establish such standards if it would be necessary to file with the Secretary of State a copy of the code as established in order that we might comply with Section XVI Article IV of the constitution."

Section 8392b, Laws of Missouri, 1945, page 1201, reads as follows:

"It shall be the duty of the Director of Revenue to refuse to issue a license for any motor vehicle manufactured or assembled after January 1, 1936 unless such motor vehicle is equipped as provided in Sections 8389, 8390 and 8391, Revised Statutes of Missouri, 1939, with such types of 'safety glass' as have been heretofore approved by the Secretary of State or may hereafter be approved by the State Highway Patrol."

(Underscoring ours.)

Prior to the enactment of this section, it was the duty of the Secretary of State to approve the various types of "safety glass." It is now made the duty of the State Highway Patrol to perform this function.

Section 8392, Laws of Missouri, 1945, page 1200, provides that:

"The State Highway Patrol shall maintain a list of approved types of glass which conform to the requirement of Section 8391 and shall furnish a copy of such list to the Director of Revenue and thereafter shall keep the Director of Revenue informed as to any changes in or additions to such list."

Therefore, it is expressly provided that the types of glass to be approved are those "which conform to the requirement of Section 8391." The Legislature has provided the standard to be used by the Patrol, and the Patrol has no authority to establish specifications or set up a standard other than that provided by Section 8391, supra. Should the Patrol do so, its action would in effect be an attempt to amend Section 8391, which is of course clearly not within the power of an administrative body. A Veterans Administration regulation was held invalid for this very reason in the case of Miller v. United States, 294 U.S. 435, in which case the Director was expressly given the power to make regulations to carry out the purposes of the act. At l.c. 439, the Court said:

"It is invalid because not within the authority conferred by the statute upon the Director (or his successor, the Administrator) to make regulations to carry out the purposes of the act. It is not, in the sense of the statute, a regulation at all, but legislation. The effect of the statute in force at the time of the adoption of the so-called regulation is that in respect to compensation allowances, loss of a hand and an eye shall be deemed total permanent disability as a matter of law. There being no such provision with respect to cases of insurance, the question whether a loss of that character or any other specific disability constitutes total permanent disability is left to be determined as matter of fact. The vice of the regulation, therefore, is that it assumes to convert what in the view of the statute is a question of fact requiring proof into a conclusive presumption

which dispenses with proof and precludes dispute. This is beyond administrative power. The only authority conferred, or which could be conferred, by the statute is to make regulations to carry out the purposes of the act - not to amend it."

CONCLUSION.

Therefore, it is the opinion of this department that the State Highway Patrol must approve all types of safety glass which conform to the requirement of Section 8391, R.S. Missouri, 1939, and that the Patrol has no authority to establish other specifications or a new standard which conflicts or changes the requirement of Section 8391, supra.

Respectfully submitted,

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APPROVED:

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