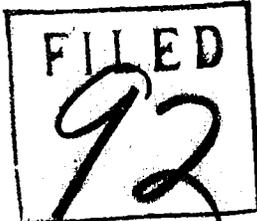


MOTOR VEHICLES: Section 301.260, RSMo 1949, providing display on
MUNICIPALITIES: side of motor vehicles, name of municipality,
POLICE: county or political subdivision, department thereof,
and distinguishing number, does not apply to ambulances, patrol wagons and fire apparatus owned and used by a municipality.



March 6, 1953

Honorable Raymond H. Vogel
Prosecuting Attorney
Cape Girardeau County
Farmers & Merchants Bank Building
Cape Girardeau, Missouri

Dear Mr. Vogel:

This is in reply to your recent request for an opinion of this office, which reads as follows:

"I desire your opinion with regard to the matter set out below.

"The Police Department of a third class city operates several four door automobiles as police and patrol vehicles. One of the cars has never been marked with letters on the sides or in any other way designating it as a police patrol car. For the past few weeks the police officers have placed on this unmarked police patrol car state license tags issued by other states such as Ohio, Michigan, etc., and have used such unmarked patrol car with foreign state plates in patrolling the city streets. Occasionally, traffic violators have been stopped and summons issued by the officers while patrolling the city streets in this unmarked patrol car, but the car is used for the prevention of other violations and crimes and the apprehension and arrest of criminals generally. However, the officers are in uniform and not in plain clothes while using the unmarked patrol car.

"The primary question is whether the above described use and operation of this motor

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vehicle, owned by a third class city, is unlawful and in violation of Sections 301.010 to 301.440, R.S.Mo. 1949, or whether it is exempt from the provisions of those sections as is apparently provided for in paragraph 2 of Section 301.260. If exempt, is such exemption from registration and display of number plates contingent on the displaying on the sides of such vehicles the name of the municipality and department thereof and a distinguishing number (as provided in the latter part of paragraph 2 of Section 301.260) or is the exemption absolute and complete without any restrictions as a patrol wagon as provided in the first line of paragraph 2 of Section 301.260.

"The secondary question is whether the police department of a third class city can properly and lawfully use out-of-state license plates as above described, within the city limits, even though such vehicle is not registered in that particular state and the license plate was not issued by that particular state to a third class city for the particular vehicle."

There have been few changes in this law since its initial enactment in Laws of Missouri, 1921, First Extra Session, page 76, Section 10. There is no change in the exemption of motor vehicles used as ambulances, patrol wagons and fire apparatus. That exemption still remains as it was in the former law "from all of the provisions of this article," in Laws of Missouri, 1941, page 446.

Although this above exemption clause appears in RSMo 1949, as "from all of the provisions of Sections 301.010 to 301.440," we do not believe authority to make such a change in the revision is granted by the legislature. We think that the true statute is contained in the laws of 1941, page 446.

Laws of 1941, page 446, Section 8374 in paragraph (b) is in pertinent part as follows:

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"(b) Motor vehicles used as ambulances, patrol wagons and fire apparatus, owned by any municipality of this state, shall be exempt from all of the provisions of this article while being operated within the limits of such municipality, but the municipality may regulate the speed and use of such motor vehicles owned by them; and all other motor vehicles owned by municipalities, counties and other political subdivisions of the state shall be exempt from the provisions of this article requiring registration, proof of ownership and display of number plates: Provided, however, that there shall be displayed on each side of such motor vehicle, in letters not less than 3 inches in height with a stroke of not less than 3/8 of an inch wide, the name of such municipality, county or political subdivision, the department thereof, and a distinguishing number. Provided, further, than ~~that~~ when any motor vehicle is owned and operated exclusively by any school district and is used solely for transportation of school children, the commissioner shall assign to each of such motor vehicles two plates bearing the words 'School Bus, State of Missouri, Car No.' (with the number inserted thereon), which plates shall be displayed on such motor vehicles when they are being used on the highways. No officer, or employee of the municipality, county or subdivision, or any other person shall operate such a motor vehicle unless the same is marked as herein provided, and no officer, employee or other person shall use such a motor vehicle for other than official purposes."

It will be noted that ambulances, patrol wagons and fire apparatus are exempted from "all of the provisions of this article," while being operated within the limits of the municipality, and there is the same provision that the municipality

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may regulate the speed and use of such motor vehicles owned by them. It will then be noticed that there is a semicolon after the word "them" and the statute reads: "and all other motor vehicles owned by municipalities, counties and other political subdivisions of the state shall be exempt from the provisions of this article requiring registration, proof of ownership and display of number plates:"

After the clause containing the above thought, it is provided, however, that the name that is to be placed on each side of such motor vehicle be the name of such municipality, county or political subdivision. The grammar used appears to refer to "other vehicles" and not to ambulances, patrol wagons and fire apparatus.

In regard to the use of a semicolon after a clause and its evident meaning, the United States Circuit Court of Appeals, 9th Circuit, in *McLeon v. Nagle*, 48 F. 2d 189, at l.c. 191, said:

"Again, Ward's 'Sentence and Theme' (Scott, Foresman & Co., 1923), at page 331, says the semicolon 'shows that two sentences, each of which should stand alone, have been combined into one sentence'; and continues; 'A semicolon is used to show that what follows is grammatically independent, though closely related in thought.' (Italics our own.)

"From the point of view of strict grammatical construction, therefore, it is evident that, since the semicolon has been used to set off the various subdivisions of the section, the initial phrase, 'within five years after entry,' cannot be presumed to carry over into the subsequent clauses that are separated from the initial clause by a semicolon. The initial phrase, 'within five years after entry,' is set off by a comma, a weaker punctuation mark than the semicolon. The function of that comma is to set off the phrase from the rest of the clause in which it appears, and not from the rest of the entire section. The semicolon effectually

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isolates the opening clause and its dependent phrase from the other and subsequent clauses. These clauses have only one grammatical construction in common; they are joint subjects of the common predicate with which the entire section is brought to a close."

The court in *State ex rel. vs. St. Louis*, 174 Mo. 125, l.c. 145, in regard to grammatical construction of a statute, stated as follows:

"* * * * * The particular intent expressed in a proviso or exception will control the general intent of the enactment. The proviso should be confined to what immediately precedes, unless a contrary intent clearly appears; and should be construed with the section with which it is connected. This rule is not, however, absolute, and if the context requires, the proviso may be construed as a limitation extending over more than what immediately precedes, or may amount to an independent enactment.' The cases cited in support or illustration of the text, are too numerous to be reviewed or analyzed here."

In accordance with the above it is indicated that the intention of the legislature still is of great effect in the construction of statutes even despite indications which are given by legislative punctuation and phrasing. Except for the condition that the municipality regulate the speed and use of ambulances, patrol wagons and fire apparatus, there is no other reason that appears, in this section, why these above three should be segregated from all other motor vehicles owned by municipalities, counties and political subdivisions of the state when one paragraph would have applied to them all. They are, however, segregated distinctly and apart from "all other" motor vehicles owned by municipalities, counties and other political subdivisions, and given a distinctive exemption. It appears that they are not to be taken in the same category as vehicles owned by municipalities, counties and other political subdivisions of the state. It is concluded that the regulations of the entire article do not apply to ambulances, patrol wagons and fire apparatus, with the exception of that part of this section which directs that the provisions do not apply, and permits the municipality to regulate their speed and use.

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The question then that arises is, is an unmarked passenger motor vehicle a "patrol wagon" when used by police to patrol the streets. A relevant case to this matter is found in *Edberg v. Johnson*, 184 N.W. Rep. 12, 149 Minn. 395, l.c. N.W. 13:

"Taking into consideration the objects sought to be attained by the statute, the general use of motorcycles in patrolling streets and highways when the statute was enacted, as well as at the present time, and the evident purpose of the Legislature to except from the operation of the statute vehicles employed as instrumentalities of municipal fire and police departments, we hold that motorcycles so employed come within the exceptions made by the statute."

Since we are of the opinion that that part of Chapter 301, RSMo 1949, requiring the licensing of motor vehicles, does not apply to a municipality, the answer to your second question, in part, is that the Motor Vehicle Registration Law is inapplicable, including Section 301.320, RSMo 1949, and it is not unlawful within the municipality for the Police Department to use out-of-state license plates.

CONCLUSION

It is, therefore, the opinion of this department that motor vehicles used as ambulances, patrol wagons and fire apparatus, owned by any municipality of this state, are not required to be marked with letters giving the name of the municipality, department and distinguishing number, and it is further the opinion of this department that the police department of a municipality of this state does not violate the law by the use of out-of-state license plates within the city limits of such municipality.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. James W. Paris.

Yours very truly,

JOHN M. DALTON
Attorney General

JWF/mw/fh