State of Minnesota **District Court**

County of Dakota **First Judicial District**

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of Minnesota, Inc., et al		**Case Number: K3-96-0839**
Public Safety Department Inc., and City of Apple Valley, Inc.	)	
Plaintiff's,	)	
v.	)	
Private Citizen of Minnesota,	)	**MEMORANDUM OF LAW**
Karl G. Granse in propria persona, proceeding in summo jure jus regium,	)	**AND NEW EVIDENCE**
Defendant.	)	

MEMORANDUM OF LAW IN SUPPORT OF STANDING MOTION TO DISMISS

Comes now the defendant by and through his attorney, _____ and sets forth this memorandum and submission of new evidence in support of his standing motion to dismiss for lack of personam and subject matter jurisdiction of the District Court. The defendant is a private citizen without a business nexus within the State of Minnesota, nor any of it's agencies, or political subdivisions, and therefore proceeds by special appearance. The Department of Public Safety, and it's Division of Motor Vehicles is the agency with primary jurisdiction over these heretofore mentioned issues of law. These issues of law have been raised by correspondence, personal appearance, and affidavit with the Registrar for the Department of Motor Vehicle and its Director. See **Exhibit No. 2 and 3**, "Affidavit of Surrender" as set forth in the defendant's original "Motion to Dismiss" as dated the 15th day of February, 1996. No agency objection was made to the defendant's submitted documents, or personal appearance meeting, nor was a hearing offered.

FACTS OF THE CASE

Years prior the defendant surrendered the assigned Minnesota Drivers License and later the seller of the private auto to the defendant, did serve and surrender to the Commissioner by registered mail on February 24th 1993, the previously assigned Motor Vehicle Registration Plates, Certificate of Registration, Certificate of Title, pursuant to M.S. § 168.33 Subd 6 and 7, see as follows:

M.S. § 168.33 Subd. 6. Application forms furnished. The **registrar** shall furnish, from time to time, to the county recorder of each county in the state forms for listing and for applications for registration, as provided herein, and shall, before January first in each year, furnish to the county recorder of each county, and to such others as the **registrar** shall deem advisable, charts or lists setting forth the tax to which each motor vehicle is subject. **The registrar shall immediately destroy all number plates surrendered to the registrar which are unsuitable for further issue, and shall cancel all**

certificates so surrendered.

M.S. § 168.33 Subd. 7. Fees. In addition to all other statutory fees and taxes, a filing fee of $ 3.50 is imposed on every application; except that a filing fee may not be charged for a document returned for a refund or for a correction of an error made by the department or a deputy **registrar**. The filing fee shall be shown as a separate item on all registration renewal notices sent out by the department of public safety. **No filing fee or other fee may be charged for the permanent surrender of a certificate of title and license plates for a motor vehicle.** Filing fees collected under this subdivision by the **registrar** must be paid into the state treasury and credited to the highway user tax distribution fund, except fees for registrations of new motor vehicles. Filing fees collected for registrations of new motor vehicles must be paid into the state treasury with 50 percent of the money credited to the general fund and 50 percent credited to the highway user tax distribution fund.

A copy of the defendant's Bill of Sale and 6" X 12" Citizen's Identification Plate was also submitted for legal and constitutional rights consideration to the agency and Michael Jordan, Registrar of Motor Vehicles. No answer was forth coming nor was a hearing offered or granted in accordance with the Administrative Procedural Act, Minnesota Statutes under Chapter 14. Since under the agency's affected or primary jurisdiction the defendant's Constitutional Rights were involved e.g. private property, communication, safety, liberty, pursuit of happiness, and right of ordinary travel upon the highways, a hearing should have been offered to the defendant, for without hearing the defendant's due process rights can not be honored nor adjudicated. The doctrine under administrative law (contested cases) states that, "whatever issues are not brought before the agency, cannot be brought before the court". See **Exhibit No. 2 and 3, "Affidavit of Surrender"** as set forth in the defendant's original "Motion to Dismiss" dated the 15th day of February, 1996. If the defendant's private auto, same said as his private property was required to be registered or not under M.S. 168.33 Subd. 4, or the defendant's Citizen I.D. Plate was or was not within the requirements under the constitution, then a due process notice was required by the agency, same said as the Registrar of Motor Vehicles. Therefore, there was a duty of the agency under their primary jurisdiction to inform the defendant of the law as such, so the defendant could make arrangements for an administrative hearing and therefore remove the possibility of arrest or criminal charges. If the agency disagreed with the defendant's proffered legal position, the defendant could have subsequently gained a declaratory judgement hearing within the District Court of Minnesota over the issues of law within scope of the agency jurisdiction. See the following cases on the constitutional due process rights of the defendant:

In re Blodgett (S. Ct. 1994) 510 N.W.2d 910; "In this case, Blodgett argues that Pearson should not be controlling because in recent years the United States Supreme Court has decided a number of cases, especially Foucha v. Louisiana, 112 S.Ct. 1780 (1992), which have restricted a state's power to confine individuals in a noncriminal setting. n5 To live one's life free of physical restraint by the state is a fundamental right; **curtailment of a person's liberty is entitled to substantive due process protection**. See, e.g., Foucha, 112 S.Ct. at 1785; Jones v. United States, 463 U.S. 354, 361 (1983). The state must show a legitimate and compelling interest to justify any deprivation of a person's physical freedom. E.g., United States v. Salerno, 481 U.S. 739, 748 (1987)."

State v. Industrial Tool & Die Works (S. Ct. 1945) 21 N.W.2d 31, 220 Minn. 591, 600; "* * * **Due process of law** is satisfied when an opportunity is afforded to invoke the equal protection of the law by judicial proceedings appropriate

for the purpose and adequate to secure the end and object sought to be obtained." Zalk & Josephs Realty Co. {*600} v. Stuyvesant Ins. Co. 191 Minn. 60, 68, 253 N.W. 8, 13; State v. Weyerhauser, 68 Minn. 353, 362, 71 N.W. 265, 267."

Granger v. Craven, 159 Minn. 296, 299, 199 N.W. 10, 12 (1924); "**What one creates by his own labor is his.** Public policy does not intend that another than the producer shall reap the fruits of labor. Rather it gives to him who labors the right by every legitimate means to protect the fruits of his labor and secure the enjoyment of them to himself. "Freedom to contract must not be unreasonably abridged. Neither must the right to protect by reasonable restrictions that which a man by industry, skill, and good judgment has built up, be denied." Eureka Laundry Co. v. Long, 146 Wis. 205, 131 N.W. 412, 35 L.R.A. (N.S.) 119."

Rhodes v. Walsh, 57 N.W. 212 at 213 (1893); "These words were not inserted in the constitution as a matter of idle ceremony, or as "a string of glittering generalities." It is the pride of the American citizen, and one of the grandest attributes of citizenship, that these provisions of the fundamental law stand as a protection and unassailable bulwark against the enforcement of unjust and illegal power. **The constitution did not create property, or the liberty of the citizen, but it does protect both;** and its prohibitions and inhibitions stay the march of organized or individual power, when it attempts the conversion of one or the destruction of the other. The exercise of official or individual power can only be enforced within the constitutional restrictions, and it should pause when the danger line is reached, and the life, liberty, or property of the citizen becomes thereby imperiled. The attempt sometimes made to exercise illegal power is the first warning which the people have of its assumed existence." (ibid at 213)."

State ex rel. Larsen v. Scott (S. Ct. 1910) 126 N.W. 70, 110 Minn. 461, 462; "**Any enactment imposing a fee upon the exercise of a common right safeguarded by the constitution, is an invasion of the right to liberty and property without due process of law.** Rossmiller v. State, 114 Wis. 169, 188. * * * But the same principle must of necessity apply to legislative attempts to burden, **by the power of taxation, any rights and privileges which are above legislative interference.** See Rossmiller v. State, 114 Wis. 169, 188."

FACTS OF THE ARREST OR STOP

On the evening of January 8th, 1996, at approximately 11:00 Citizen Karl G. Granse the defendant in this case, and his companion Citizen Laura Karasek after having dinner left the restaurant named "Rascals" located at the intersection of 147th and Pennock, and was traveling home with his guest, not transporting persons or property nor in the receipt of a privilege. Officer Backus had toured the restaurant parking lot prior and found Granse's private auto in the parking lot and then had waited till Granse departed. Officer Backus upon seeing Granse depart the restaurant made his way east on 147th and crossed Pennock then did a U-Turn on 147th and waited for Granse at the intersection of 147th and Pennock. Granse traveled out of the parking lot and went west on 147th to the stop sign at the intersection of 147th and Pennock, stopped and observed Officer Backus's squad car facing him on the opposite side of the intersection, Granse then turned left and traveled south on Pennock. Officer Backus followed immediately and activated his emergency lights and stopped Citizen Granse. Officer Backus stated to Citizen Granse that, "I stopped you because of the license plates on your car". Officer Backus stopped the private auto for having what appeared to be non-agency registration/license plates. The 6" X 12" 3M reflective plates identified the owner

as K. G. Granse in very large letters, with an address of 7611 Whitney Drive, Apple Valley, Minnesota 55124, and a phone number on the plate as (612)-431-1845, see language as follows:

Citizen of Minnesota
IN EXERCISE OF HIS RIGHT'S TO TRAVEL, PRIVATE PROPERTY, ST.& HWY.
MN. CONST. ART.I.SEC.1,2,7,10,13,&16,U.S.CONST.ART.IV.SEC.2.Cl.1.,AMEND.V,IX,XIV.

Public Notice: Non-commercial, private property automobile, privately owned by;

K.G.GRANSE
7611 WHITNEY DRIVE, APPLE VALLEY, DAKOTA CTY, MINN., 612-432-1859
M.S.§ 168.33 SUBD. 4. "CARS, NON-PRIV. USE," I.D. PLATE
TAX, REG., LIC. CONST. IMMUNE

Upon further investigation by police radio to the DMV computer, Officer Backus was informed by agency records that the private auto that Granse was traveling in, was unregistered and untitled with the State of Minnesota Public Safety Department. Upon further investigation Officer Backus was either informed or learned that Granse's privilege to "operate a motor vehicle" had been canceled, he informed Granse of this fact and Granse stated that, "he had surrendered his drivers license". Officer Backus asked Granse and his automobile guest to vacate the private auto because he was going to have it towed to an impound lot, Granse stated, "I am not going to argue with you, we will let the court decide". At this time another police car arrived and two or three officers began to search the private auto, and then Officer Backus asked Granse what was the make or model of the car, Granse replied that, "it had been redesigned, and there were no identification or advertising insignias on the body." Mr. Granse's private auto was then towed and impounded by order of Officer Backus, and Officer Backus proceeded to transport Citizen Granse and his companion to his home in Burnsville. While in the police car Officer Backus asked Granse if he had proof of motor vehicle insurance, Citizen Granse replied that as to his private auto he was "self-insured". * Upon that answer Officer Backus handed Granse a Citation for violations of Minn. Stat. § 168.09," Unregistered Vehicle"; § 171.24, "Driving after cancellation", and § 169.791, "No proof of insurance". Granse further stated that, "he had traveled in his private car for three years and never been stopped", while being observed by Officer Backus. Citizen Granse then inquired of Officer Backus as to why he had followed Granse's auto on prior occasions, yet had not stopped him, Officer Backus admitted he had indeed followed Granse on three occasions, but replied with answers not based on law. Officer Backus was very curious about the legal issue on the right to travel and asked many questions regarding the law and the reasons for the styled Citizen identification plate. Upon arrival to Mr. Granse's home, Officer Backus was cordially invited in, and was supplied with a 40 page law brief taken from Granse's computer regarding the issues of the right to travel, private property, and the ordinary right to travel upon the streets and highways, in order that Officer Backus could gain a better understanding as to his previous questions. At no time during the encounter with Officer Backus did the Office give Citizen Granse a "Miranda Warning", yet at all times Officer Backus treated Granse and his companion with honesty, kindness and respect.

ISSUES OF LAW

PART I.

The first question of law before the court is; can the Department of Public Safety, it's Registrar, or the Minnesota Courts change the original legislative intent within the 16th Article of the Minn. Const., which is now Article 14, Section 9 (1974); Or the laws in effect which set forth the intent such as, Chapter 461 - H.F. No. 945 (1921); Chapter 418 - H.F. No. 1324 (1923); General Statutes of

Minnesota 1923, Sections 2672-2720; Chapter 185 - H.F. No. 929 (1925); Chapter 299 - H.F. 1075 (1925); Chapter 416 - S.F. No. 776 (1925). The foregoing embrace and define the legislative intent of both the above listed corresponding Acts and the 1920 Amendment to the Minn. Const. Article 16, named the "Babcock Good Roads Amendment". The preambles of the listed Legislative Acts describe and define that the excise tax is only imposed upon **certain** motor vehicles by Minn. Const. Article 16, related only to **certain** motor vehicles which "used" the streets and highways in a business status, as reaffirmed in Schultz v. City of Duluth, 203 N.W. 449 (1925) and which divided "motor vehicles" into two basic categories, **(1)** motor vehicles used for business purposes to transport persons or property (hotel bus, taxicab, livery service), and **(2)** motor vehicles (regular route common carrier buses and trucks) used in a greater public capacity as "for hire" as common carriers to transport passengers or property between fixed termini or over a regular routes. The following cases are definitive as to the legislative intent, yet not limited to the following:

Town of Kinghurst v. International Lumber Co. (S. Ct. 1928) 219 N.W. 172, 174 Minn. 305, 312;

"To learn the intent of the legislature we must read the law in the light of the object in view. Every presumption is in favor of the constitutionality of the law. Unless a statute is unconstitutional beyond a reasonable doubt it must be sustained. If it is susceptible of two different constructions one of which will render it constitutional and the other unconstitutional, the former construction must be adopted. State ex rel. Hildebrandt v. Fitzgerald, 117 Minn. 192, 134 N.W. 728; State ex rel. Wilcox v. Ryder, 126 Minn. 95, 147 N.W. 953, 5 A.L.R. 1449; State ex rel. Simpson v. County of St. Louis, 117 Minn. 42, 134 N.W. 299; Lommen v. Minneapolis Gaslight Co.65 Minn. 196, 68 N.W. 53, 33 A.L.R. 437, 60 A.S.R. 450; Curryer v. Merrill, 25 Minn. 1, 33 Am. R. 450; State ex rel. Arpin v. George, 123 Minn. 59, 142 N.W. 945; State ex rel. Olsen v. Board of Control, 85 Minn. 165, 88 N.W. 533; McReavy v. Holm, 166 Minn. 22, 206 N.W. 942.

McReavy v. Holm (S. Ct. 1926) 206 N.W. 942, 166 Minn. 22, 26; **"All much matters should be and are considered by the legislature in determining upon the classification of such vehicles for the purpose of taxation. It is within the exclusive province of that body to weigh and determine the effect of all such matters in placing property in one class or another, and such determination is binding upon the courts, unless it clearly appears from the act that the classification is unreasonable and arbitrary."**

Dohs v. Holm (S. Ct. 1922) 189 N.W. 418, 152 Minn. 529, 531; "By an amendment to the state Constitution adopted in 1920 and known as the **Babcock Amendment**, the legislature was authorized to provide for the taxation of motor vehicles, using the public streets and highways of the state, on a more onerous basis than other personal property. Pursuant to such authorization, **chapter 461, p. {*531} 708, Laws 1921**, was enacted."

State v. Peterson (S. Ct. 1924) 198 N.W. 1011, 159 Minn. 269, 271; **"Taxation of a certain class of property is one of the subjects covered by the Babcock amendment.** The tax authorized is in lieu of all other taxes and is based on the value of the property as ascertained by the secretary of state, by whom the tax is computed. Fairley v. City of Duluth, 150 Minn. 374, 185 N.W. 390; Dohs v. Holm, 152 Minn. 529, 189 N.W. 418.'

PART II.

The second question of law before the court is; whether or not under Minn. Const. I § 7, (due process, life, liberty, and property) the defendant's private car, same said as his private property, is by legislative intent a "passenger

automobile", "motor vehicle" and "vehicle" as defined within the current statutory definitions under Minn. Stats. § 171.01. Subd 2., and 3, M.S. § 169.01 Subd. 2. and 3., M.S. § 168.011 Subd. 4 and 7, M.S. § 168.013 Subd. 1a, M.S. § 221.011 Subd. 3, and M.S. § 65B.43. Subd. 2, or is the defendant's private car classified under M.S. 168.33 Subd. 4 Record of cars not using highways. **" * * * other than [except] those using the public streets or highways, according to the name of the owner only."** M.S. § 168.33 Subd 4, has been on the law books of Minnesota since 1921, see Session Laws 1921 Chapter 461 - H. F. No. 945, Page 722 Section 22(a) and page 723, Subd. (d), and also 1923 G.S. § 2693(d). It is clear from the foregoing that the legislature has set forth the classes of motor vehicles which must be registered, and those which are not. If the plaintiff cannot prove beyond a reasonable doubt that the defendant's private car is required to be registered as "passenger carrying automobile", "motor vehicle" and "vehicle", the charges must be dismissed. The following session laws define the motor vehicle which was required to be listed and registered as one that uses the streets or highways in the business of "carrying passengers". Further, for the purposes of understanding Wickman v. Holm under G.S. § 2674 (1923) the statutory language was identical to the 1921 Session Law, except that the percentage of tax was increased from 2% of the value to 2 3/4% of the value.

SESSION LAWS 1921 - Chapter 461 - H. F. No. 945, Pages 708, 709;

PREAMBLE - An act concerning the taxation under Article 16 of the State Constitution of motor-vehicles, using the public streets and highways, in lieu of all other taxes except wheelage taxes, so-called, and concerning the methods of registering and listing such motor-vehicles for taxation and the collection of such tax and the method of preventing escape therefrom.

Be it enacted by the Legislature of the State of Minnesota:

Section 1. Definitions -- Wherever in this act the following terms are used, they shall be construed to have the meaning herein ascribed to them:

"**Application for Registration**" shall have the same meaning as "listing for taxation" **and when a motor vehicle is registered it is also listed.**

Page 710 - Section 3. Rate of tax on motor vehicles--(a). **Motor vehicles**, except as set forth in Section 2 hereof, **using the public streets or highways in the state of Minnesota shall be taxed in lieu of all other taxes thereon**, except wheelage taxed, so-called, which may be imposed by any borough, city or village, as provided by law, **and shall be privileged to use the public streets and highways**, on the basis and at the rates for each calendar year as follows:

Motor vehicles for carrying passengers and hearses..... 2% of value.

Provided that the minimum tax on all passenger motor vehicles under 2,000 pounds weight shall be .....$12.00 and the minimum tax on all passenger motor vehicles 2,000 pounds and over in weight shall be .....$15.00.

Page 722 - Section 22. Secretary of State to be registrar.--(a)

Page 723 - (d) He shall keep a record of all motor vehicles listed for taxation or registered, **other than those using the public streets or highways, according to the name of the owner.**

Johnson v. Evans (S. Ct. 1919) 170 N.W. 220, 141 Minn. 356 Page 356

"**Defendant owned and kept upon his premises a five passenger automobile for business purposes, and also for the comfort and pleasure of the members of his family**, and his minor son was authorized and permitted to operate and use it for either purpose. While the son was so using the car, under defendant's permission, his negligent and careless operation thereof caused injury to plaintiff, who was riding therein as his guest. It is held (a) that, though using the car for his own personal pleasure and that of his friends, the son was the servant of defendant, within the meaning of the law, and defendant is

liable for his negligent misconduct in operating the same; (b) the evidence supports the verdict in finding the son guilty of negligence, and in exonerating plaintiff from the charge of contributory negligence."

Wickman v. Holm (S. Ct. 1926) 206 N.W. 705, 166 Minn. 26, 28; **"Applicant owned 5 motor vehicles used solely for the purpose of carrying passengers for hire between points within the two cities above named.** He held licenses to so operate the same from the state of Wisconsin and from the two cities. On April 11, 1923, **he made application to the defendant**, in due form, for the registration of such vehicles in the state of Minnesota, and at the same time paid to him the sum of $724.36, **the same being 2 3/4 per cent of the value of the vehicles.** The defendant refused to register the vehicles unless appellant pay a tax of 10 per cent of the value. This action was then brought and mandamus issued to compel the registration. {*28} The trial court sustained the registrar and this appeal followed."

Wickman v. Holm (S. Ct. 1926) 206 N.W. 705, 166 Minn. 26, 28; **"In such carrying of passengers, the vehicles were and are operated exclusively over and along one route between the business centers of the two cities and a charge of 25 cents each way is made for each passenger.** In proceeding north from Superior, the vehicles cross the bridge and continue north on one course or line to the business center of Duluth, the end of the trip. The vehicles do not use the Minnesota highways at any point outside of the city of Duluth. The right of the state to lay a tax against the vehicles, upon the same basis as other property similarly used, is not questioned in this proceeding."

Wickman v. Holm (S. Ct. 1926) 206 N.W. 705, 166 Minn. 26, 28; **"The act provides for the registration of motor vehicles generally and for a tax of 2 3/4 per cent of the value thereon.** That the value of the vehicle, coupled with the use of the highways of the state thereby, was steadily adhered to by the legislature, is apparent from a reading of the entire act. **The act provides that all passenger motor vehicles**, such as busses, shall pay a tax of 2 3/4 per cent of value, except those which are not operated wholly within the limits of the same city, village or borough, which shall pay a tax of 10 per cent of value. **The proceeds of all such taxes shall be covered into the state treasury and credited to a fund for the construction and maintenance of the state highways.** It is provided that, upon payment of such tax, **registration certificate and license number plate shall issue to the owner which enables him to legally operate the vehicle.** It is manifest that the **legislative intent was to deal with such vehicles** and their use of the highways of this state, without regard to whether they use the highways of another state or not, the main purpose of the act being to fix a proper tax, commensurate with the use of the highways of this state by such vehicle."

State v. Palmer (1942) 212 Minn. 388, 3 N.W.2d 666; "To do business on public streets is not a matter of right like the right of ordinary travel, nor is the right to carry on such a business to be placed on the same basis as that of conducting a lawful occupation on private property within a municipality, **and this is true as to a transportation business for private gain.**"

Stephenson v. Binford, 287 U.S. 251, 53 S.Ct. 181, 184, 77 L.Ed. 288, 87 A.L.R. 721;

"The use of the public roads for the conduct of business thereon, whether by common or by private carriers, is an extraordinary use, and as such **is enjoyed not as a right, but as a privilege.**"

Patterson v. Southern Ry. Co., 198 S.E. 364, 214 N.C. 38; "The statutory requirement that licenses be procured **for motor vehicles used upon the highways is based** on the servitude put on the highways by such use and **the**

advantage which the improved highways may afford the business in which the motor vehicle is employed."

Under the 1996 M.S. Chapter 168 "Motor Vehicle Registration, Taxation, Sale", § § 168.011 and 168.013, the language of the statutes is very similar to the original Minn. General Statutes of 1921, 1923, and 1925. Again, the registration requirement pertains to the "Passenger automobile" which "means any motor vehicle **designed and used for the carrying of not more than 15 persons"**, which also is a "motor vehicle" and "vehicle" under the definitions of M.S. Chapters 169 "Traffic Regulations", and 171 "Drivers' Licenses". It is clear by the language that the term "motor vehicle" and "vehicle", under those definitions defines a automobile (motor vehicle) **which is privileged to use the streets and highways** to transport persons or property in a business status, see the cases and statutes as follows:

Massachusetts v United States, 435 US 444, pp. 462 - 464, 55 L Ed 2d 403, pp. 417 - 418;

"A governmental body has an obvious interest in making those who specifically benefit from its services pay the cost and, **provided that the charge is structured to compensate the government for the benefit conferred**, there can be no danger of the kind of interference [435 US 463] with constitutionally valued activity that the Clauses were designed to prohibit."

In re D & A Truck Line, Inc. (App. Ct. 1994) 524 N.W.2d 1; "In Schultz v. City of Duluth, 163 Minn. 65, 203 N.W. 449 (1925), **the supreme court characterized the use of public streets for private enterprise as "a privilege that may be granted, regulated, or withheld."** Id. at 68, 203 N.W.2d at 450; see also Anderson v. Lappegaard, 302 Minn. 266, 273, 224 N.W.2d 504, 509 (1974) (tax on trucker based on weight is merely a return for the "privilege" of using the state's highways)."

M.S. § 168.013 Rate of tax.

Subdivision 1. Imposition. Motor vehicles, except as set forth in section 168.012, **using the public streets or highways in the state**, and park trailers taxed under subdivision 1j, **shall be taxed in lieu of all other taxes thereon**, except wheelage taxes, so-called, which may be imposed by any city as provided by law, and except gross earnings taxes paid by companies subject or made subject thereto, **and shall be privileged to use the public streets and highways**, on the basis and at the rate for each calendar year as hereinafter provided.

Subd. 1a. Passenger automobiles; hearses. (a) On passenger automobiles as defined in section ***168.011, subdivision 7**, and hearses, except as otherwise provided, the tax shall be $ 10 plus an additional tax equal to 1.25 percent of the base value.

Minn. Stat. § 168.011. Definitions.

Subdivision 1. Words, terms, and phrases. Unless the language or context clearly indicates that a different meaning is intended, the following words, terms and phrases, for the purposes of this chapter, shall be given the meanings subjoined to them.

Subd. 2. Application for registration; listing for taxation. **"Application for registration"** shall have the same meaning as **"listing for taxation,"** and when a motor vehicle is registered it is also listed.

Subd. 6. Tax, fee. "Tax" or "fee" means the annual tax imposed on motor vehicles in lieu of all other taxes thereon, except wheelage taxes, so-called, which may be imposed by any city and except gross earnings taxes paid by companies subject or made subject thereto. Such annual **tax shall be deemed both a**

property tax and a highway use tax and shall be on the basis of the calendar year.

Subd. 7. Passenger automobile. "Passenger automobile" means any motor vehicle **designed and used** for the **carrying of not more than 15 persons** including the driver. "Passenger automobile" does not include motorcycles, motor scooters, and buses described in subdivision 9, paragraph (a), clause (2). For purposes of taxation only, **"passenger automobile" includes pickup trucks and vans**, other than commuter vans as defined in section 168.126.

It is clear that the term "passenger automobile" as used in M.S. 168.011 Subd. 7, means a "motor vehicle **designed and used** for the **carrying of not more than 15 persons"**, these persons are passengers who are being transported upon the highway in a business sense. The motor vehicle's (passenger automobile) purpose is **designed and used** to carry passengers, which is also defined in the terms, "motor vehicle" and "vehicle" under the definitions of M.S. Chapters 169 "Traffic Regulations", and 171 "Drivers' Licenses".

***Subd. 35. Limousine.** For purposes of motor vehicle registration only, "limousine" means an unmarked luxury **passenger automobile** that is not a van or station wagon and has a seating capacity of not more than **12 persons**, excluding the driver.

The limousine is also defined as a "passenger automobile" under M.S. § 168.011 Subd. 7, there is no doubt that the limousine operates as a business to transport persons or property, which is defined in the terms, "motor vehicle" and "vehicle" under the definitions of M.S. Chapters 169 "Traffic Regulations", and 171 "Drivers' Licenses".

Subd. 36. Personal transportation service vehicle."Personal transportation service vehicle" is a **passenger vehicle** that has a seating capacity of up to **six persons excluding the driver**, or a van or station wagon with a seating capacity of up to **12 persons excluding the driver**, that provides **personal transportation service** as defined in section 221.011, subdivision 34.

M.S. § 221.011, subd. 34.
Subd. 34. Personal transportation service. "Personal transportation service" means service that:
(1) is not provided on a regular route;
(2) is provided in a personal transportation service vehicle as defined in section 168.011, subdivision 36;
(3) is not metered for the purpose of determining fares;
(4) provides prearranged pickup of passengers;
(5) charges more than a taxicab fare for a comparable trip.

The "Personal transportation service vehicle" is also defined as a "passenger automobile" under M.S. § 168.011 Subd. 7, there is no doubt that under M.S. § 221.011 Subd. 34 (4) & (5) the "Personal transportation service vehicle" operates as a business to transport persons (passengers) or property, which is defined under the terms, "motor vehicle" and "vehicle" under the definitions of M.S. Chapters 169 "Traffic Regulations", and 171 "Drivers' Licenses". This is further verified by the following language under the term or definition of "Gross weight" and "Bus", as the transporting of persons (passengers) or property (baggage), see as follows:

Subd. 9. Bus; intercity bus. (a) "Bus" means (1) **every motor vehicle designed for carrying more than 15 passengers** including the driver and used for **transporting persons**, * * *.
M.S. § 168.011 Definitions.
Subd. 16. Gross weight."Gross weight" means the actual unloaded weight of the

vehicle, * * * The term gross weight applied to school buses means the weight of the vehicle fully equipped with all fuel tanks full of fuel, **plus the weight of the passengers (persons) and their baggage (property) computed at the rate of 100 pounds per passenger seating capacity**, including that for the driver. The term gross weight applied to other buses means the weight of the vehicle fully equipped with all fuel tanks full of fuel, **plus the weight of passengers and their baggage computed at the rate of 150 pounds per passenger seating capacity**, including that for the driver.

The defendant was charged with "Criminal penalty for failure to produce proof of insurance", yet the insurance requirement pertains to a "passenger automobile", "motor vehicle", and vehicle, see as follows:

M.S. § 169.791. Criminal penalty for failure to produce proof of insurance.
Subdivision 1. Terms. (a) For purposes of this section and sections 169.792 to 169.799, the following terms have the meanings given. * * *
(g) "Proof of insurance" means an insurance identification card, written statement, or insurance policy as defined by section 65B.14, subdivision 2.
(h) "Vehicle" means a motor vehicle as defined in section 65B.43, subdivision 2, * * *.

M.S. § 65B.43. Definitions.
Subdivision 1. The following words and phrases, shall, for the purpose of sections 65B.41 to 65B.71, have the meanings ascribed to them, except where the context clearly indicates a different meaning.
Subd. 2. "Motor vehicle" means every vehicle, other than a motorcycle or other vehicle with fewer than four wheels, **which (a) is required to be registered pursuant to chapter 168**, and (b) is designed to be self-propelled by an engine or motor **for use primarily upon public roads, highways or streets in the transportation of persons or property,** and includes a trailer with one or more wheels, when the trailer is connected to or being towed by a motor vehicle.

Based upon the foregoing as to the definition and legal meaning of the terms "motor vehicle" and "vehicle", as it relates to M.S. § 169.791. "Criminal penalty for failure to produce proof of insurance.", the requirement for the motor vehicle to be insured, is when the operator or driver the of a "motor vehicle" meets the two requirements as follows, **(a) is required to be registered pursuant to chapter 168**, and **(b) * * * for use primarily upon public roads, highways or streets in the transportation of persons or property, * * *"**. In legal terms, if one is not required to be registered, because one does not transport persons or property, one is not required to be insured, see as follows:

Peterson v. Colonial Ins. of California (App. Ct. 1992) 493 N.W.2d 152; "The No-Fault Act does not define the business of transporting persons or property, but the intention is to place the exposure for injuries **to persons occupying a vehicle used in a business** on the insurer of the business's vehicles. Theodore J. Smetak et al., The Minnesota Motor Vehicle Insurance Manual, 119 (Minn. Inst. of Legal Educ. 1991).

In State v. Luscher 157 Minn. 192, 194, 195 N.W. 914, 915, the court said: **"While a statute may be limited in its operation to a specified class**, to be valid it must apply alike to all who are within that class and must not exclude from its operation any who are under the same conditions and in the same situation as those to whom it applies."

Further, the definition and legal meaning of the terms "motor vehicle" and "vehicle", as it relates to M.S. § 169.791. "Criminal penalty for failure to produce proof of insurance.", are much the same as the statutory definition as

found under M.S. § 169.01 Subd. 2 and 3., see as follows:

CHAPTER 169 - TRAFFIC REGULATIONS - M.S. § 169.01. Definitions.
Subdivision 1. Terms. For the purposes of this chapter, the terms defined in this section shall have the meanings ascribed to them.
Subd. 2. Vehicle. "Vehicle" means every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, excepting devices used exclusively upon stationary rails or tracks. [describes the privileged business activity]
Subd. 3. Motor vehicle. "Motor vehicle" means every vehicle which is self-propelled and every vehicle which is propelled by electric power obtained from overhead trolley wires. Motor vehicle does not include a vehicle moved solely by human power. [describes the physical aspects of the business machine]

It is clear that the term "passenger automobile" as used in M.S. 168.011 Subd. 7, means a "motor vehicle **designed and used** for the **carrying of not more than 15 persons**", these persons are passengers who are being transported upon the highway in a business sense. The motor vehicle's (passenger automobile) purpose is **designed and used** to carry passengers, which is also defined in the terms, "motor vehicle" and "vehicle" under the definitions of M.S. § 171 "Drivers' Licenses". The Class "C" Drivers License is the one which is identified as the license required to operate or drive a "passenger automobile" as used in M.S. 168.011 Subd. 7, see as follows:

CHAPTER 171 - DRIVERS' LICENSES AND TRAINING SCHOOLS - Minn. Stat. § 171.01. Definitions.
Subdivision 1. Scope. Unless the language or context clearly indicates that a different meaning is intended, the following words, terms, and phrases, for the purposes of this chapter, shall be given the meanings subjoined to them.

Subd. 2. Vehicle. Every **device** in, upon, or by which any person or property is or may be transported or drawn upon any highway, excepting devices moved by human power or used exclusively upon stationary rails or tracks. [Subd. 2. describes the privileged business activity]

Subd. 3. Motor vehicle. Every **vehicle** which is self-propelled and any vehicle propelled or drawn by a self-propelled vehicle, and not deriving its power from overhead wires except snowmobiles. [Subd. 3. describes the physical aspects of the business machine]

M.S. § 171.02. Licenses: types, endorsements, restrictions.
Subdivision 1. License required. No person, except those hereinafter expressly exempted, **shall drive any motor vehicle upon any street or highway in this state unless such person has a license** valid under the provisions of this chapter **for the type or class of vehicle being driven.**

Subd. 2. Driver's license classifications, endorsements, exemptions. **Drivers' licenses shall be classified according to the types of vehicles which may be driven by the holder of each type or class of license.** The commissioner may, as appropriate, subdivide the classes listed in this subdivision and issue licenses classified accordingly. No class of license shall be valid to operate a motorcycle, school bus, tank vehicle, double-trailer or triple-trailer combination, vehicle transporting hazardous materials, or bus, unless so endorsed.
There shall be four general classes of licenses as follows:
(a) Class C; valid for: * * *
(4) all single unit vehicles except vehicles with a gross vehicle weight of more than 26,000 pounds, **vehicles designed to carry more than 15 passengers** including the driver, and vehicles that carry hazardous materials.

M.S. § 168.011 Definitions

***Subd. 7. Passenger automobile.** "Passenger automobile" means any motor vehicle **designed and used** for the **carrying of not more than 15 persons** including the driver. * * *

The following statute 169.79, make it unlawfull for a motor vehicle to operate upon the highway "unless the vehicle is registered in accordance with the laws of this state". The state law and evidence as shown so far indcates that not all automobiles are required to be registered, only thoes used in a business sence are required to be registered, see as follows:

Minn. Stat. § 169.79. Vehicle registration.

No person shall operate, drive or park a motor vehicle on any highway unless the vehicle is registered in accordance with the laws of this state and has the number plates for the current year only, * * *.

In the final summation of this, we now look at the language of M.S. § 168.011 Subd 7; M.S. § 169.01 Subd. 2. and 3; M.S. § 171.01 Subd. 2 and 3; M.S. § 65B.43. Subd 2, and understand that based upon original and current legislative intent, that the motor vehicle registration, drivers license, and insurance is required for one who is privileged to operate or drive a "passenger automobile" and thereby privileged to transport persons or property by use of the streets and highways in the state of Minnesota as a business. This is further affirmed under the definition of the registration tax imposed pursuant to M.S. § 168.013 Subd. 6, wherein is stated that the tax is **"both a property tax and a highway use tax"**. The tax is a personal property tax as imposed pursuant to Minn. Stat. Chapters 272 (imposition of tax) and 273 (listing and filing). The personal property tax is a tax imposed upon property used in a business as verified by the following statutory definitions and cases:

M.S. § 168.013 Rate of Tax

Subd. 6. Tax, fee. "Tax" or "fee" means the annual tax imposed on motor vehicles in lieu of all other taxes thereon, except wheelage taxes, so-called, which may be imposed by any city and except gross earnings taxes paid by companies subject or made subject thereto. Such annual **tax shall be deemed both a property tax and a highway use tax** and shall be on the basis of the calendar year.

American Ry. Express v. Holm (S. Ct. 1926) 211 N.W. 467, 169 Minn. 323, 328; **"This court is definitely on record holding that it is both a property and a privilege tax.** Jefferson Highway Trans. Co. v. City of St. Cloud, 155 Minn. 463, 464, 193 N.W. 960; State v. Peterson, supra; State v. Oligney, supra; Raymond v. Holm, 165 Minn. 215, 206 N.W. 166; McReavy v. Holm, 166 Minn. 22, 206 N.W. 942. **The tax is indivisible and there is no way to say what proportion thereof is a property tax nor what proportion is a privilege tax.** To say that the owner of the car must therefore pay the whole thereof in order to be entitled to the privilege of the highways {*328} is to construe the law the same as if it was wholly a privilege tax which is not permissible. It includes a property tax.

M.S. § 272.01 Property subject to taxation

Subdivision 1. All real and personal property in this state, and all **personal property of persons** residing therein, including the property of corporations, banks, banking companies, and bankers, is taxable, except Indian lands and such other property as is by law exempt from taxation.

M.S. § 272.03 Definitions

Subd. 9. Person."person" includes firm, company, or corporation.

Ingels v. Riley, 5 Cal.2d 154, 159; 53 P.2d 939 (1936); "Generally speaking, the function of a property tax is to raise revenue. **Such a tax does not impose any condition nor does it place an restriction upon the use of the property taxed. A privilege tax**, although also passed to raise revenue, and as such is to be distinguished from the license tax or regulatory charge [the registration fee] imposed under the state's police powers, is imposed upon the right to exercise a privilege, and its payment is invariably made a condition precedent to the exercise of the privilege involved."

The defendant's private car is not the "personal property" of a business, it is non taxable private property protected by the Constitution pursuant to Article I Section 7, (life, liberty, property) and Article 10 section 1 (taxes must be uniform).

Hay v. City of Andover (App. Ct. 1989) 436 N.W.2d 800; "Both the federal constitution and the Minnesota State Constitution require that **"private" property shall not be taken** without just compensation."

PART III.

The third question of law before the court is, if the plaintiff proves that the defendant's private car is a "passenger automobile", "motor vehicle" and "vehicle", then defendant raises the issue of disparity and unequal taxation and treatment under the constitution. The disparity arises from the way in which the Minn. Motor Vehicle Code is enforced as a general policy without regard to the facts and law. The defendant makes an ordinary (non business) use of the highway, yet the policy of enforcement is to be that he is taxed, regulated, licensed, registered, and subjected to same strict liability statutes as the one who makes an extraordinary (business) use of the highway. In other words, the defendant in the status of a private citizen, exercising his ordinary right to travel upon the highway, does not exercise a privilege business use of the highway, yet the driver of a "taxicab" uses or operates on the highway in a extraordinary manner for business and employment purposes, which is indeed, a privileged use of the highway, yet the level of registration, licensing, enforcement, and regulation are equally the same as applied to the defendant or the "taxicab" operator.

The taxicab driver operates with the Class "C" drivers license under M.S. § 171.02 Subd. 2.(a)(4), and pays the same rate of tax for registration under M.S. § 168.013 Subd. 1a., "Passenger Automobile". Further, if the taxicab driver receives a traffic ticket he pays no more than the defendant would be obligated to pay. Also under M.S. § 297B.02 the Minn. excise tax imposed on the purchase of the "passenger automobile" which is used as the taxicab is the same rate as the defendant would be obligated to pay for his "private car" under the current policy. The statute imposing the excise tax under M.S. § 297B.02, also defines the terms "motor vehicle" and "vehicle" pursuant to M.S. § 297B.01 Subd. 4 and 5, these are identical to the same definitions in M.S. §§ 169.01 Subd. 2. & 3., and 171.01. Subd 2., & 3. Further, pursuant to M.S. § 297B.09 Subd.1, 75% of the excise tax collected, is placed into the General Fund, proving that it is not used for the cost of regulation of motor vehicles, nor the highway user fund, but indeed is a tax in the action or nature of revenue raising upon the occupation of operating motor vehicles upon the highways of the state for a business purposes. The State can not have it both ways, except if the State defines the "passenger automobile" as a "motor vehicle" and "vehicle", which may use the streets and highways for a privilege business purpose.

City of Duluth v. Northland Greyhound Lines (S. Ct. 1952) 52 N.W.2d 774, 236 Minn. 260, 269;

"The general principles to be applied are well established. Class legislation is forbidden by Minn. Const. art. 1, § 2, and art. 4, § 33, as well as by U.S.

Const. Amend. XIV. 1 Dunnell, Minn. Dig. (2 ed. & 1932 Supp.) § 1673, and cases cited. The problem arises when a law selects particular individuals from a class and imposes on them special burdens from which others of the same class are exempt. State ex rel. Madigan v. Wagener, 74 Minn. 518, 77 N.W. 424,42 L.R.A. 749, 73 A.S.R. 369; State v. Luscher, 157 Minn. 192, 195 N.W. 914; State v. Broden, 181 Minn. 341,232 N.W. 517. **To operate uniformly, a law must bring within its influence all who are in the same condition and treat them alike. State v. Dirnberger, 152 Minn. 44, 187 N.W. 972. Legislative enactments which discriminate against some and favor others are prohibited unless they affect alike all persons similarly situated and the classification is not arbitrary. State v. LeFebvre, 174 Minn. 248, 219 N.W. 167; In re Application of Humphrey, 178 Minn. 331, 227 N.W. 179; In re Application of Grantham, 178 Minn. 335, 227 N.W. 180.**

Cherokee State Bank v. Wallace (S. Ct. 1938) 279 N.W. 410, 202 Minn. 582, 591; "The power to classify is primarily with the legislature, and its laws should not be declared invalid unless it clearly appears that they transgress the constitution. *** * * The classification must not be unreasonable, arbitrary, or, as is sometimes said, capricious. It must rest on some ground of difference having a fair and substantial relation to the object of the legislation so that all persons similarly circumstances shall be treated alike. * * * It must operate 'equally and uniformly upon all persons in similar circumstances.' * * *** Any classification is permissible which has a reasonable relation to some permitted end of governmental action." Reed v. Bjornson, 191 Minn. 254, 264-265, 253 N.W. 102, 107.

Lyng v Castillo, 477 US 635, 91 L Ed 2d 527 FOOTNOTE 2 [2b]; **"The federal sovereign, like the States, must govern impartially.** The concept of equal justice under law is served by the Fifth Amendment's guarantee of due process, as well as by the Equal Protection Clause of the Fourteenth Amendment." Hampton v Mow Sun Wong, 426 US 88, 100, 48 L Ed 2d 495, 96 S Ct 1895 (1976). Accord, e.g., United States Dept. of Agriculture v Moreno, 413 US 528, 533, n 5, 37 L Ed 2d 782, 93 S Ct 2821 (1973); Bolling v Sharpe, 347 US 497, 499, 98 L Ed 884, 74 S Ct 693 (1954).

Cleburne v Cleburne Living Center, Inc., 473 US at 452-453, 87 L Ed 2d 313, 105 S Ct 3249;

"I have always asked myself whether I could find a 'rational basis' for the classification at issue. The term 'rational,' of course, includes a requirement that an impartial lawmaker could logically believe that the classification would serve a legitimate public purpose that transcends the harm to the members of the disadvantaged class. Thus, the word 'rational'--for me at least--includes elements of legitimacy and neutrality that must always characterize the performance of the sovereign's duty to govern impartially." * * * "In every equal protection case, we have to ask certain basic questions. What class is harmed by the legislation, and has it been subjected to a 'tradition of disfavor' by our laws? What is the public purpose that is being served by the law? What is the characteristic of the disadvantaged class that justifies the disparate treatment? In most cases the answer to these questions will tell us whether the statute has a 'rational basis.'"

Nordlinger v Hahn, 505 US ____, p. ____, 120 L Ed 2d 1, pp. 31 - 32; "If, however, a law creates a **disparity**, the State's interest preserving that **disparity** cannot be a "legitimate state interest" justifying that inequity."

Reed v. Bjornson (S. Ct. 1934) 253 N.W. 102, 191 Minn. 254, 263; "It is true that the Magoun, Billings, Knowlton, and Stebbins cases deal with graduated inheritance taxes, and it may be, as it is said, that the inheritance of

property is not a right but is a privilege which the state may confer or withhold at its pleasure, **and that, in conferring the privilege, it may attach such conditions thereto as it may see fit.** Nevertheless it will not do to say that they are not in point and controlling here, for the reason that it is beyond dispute, and was pointed out in the Magoun case that, **when the state confers a privilege, it must 'not fail to treat "all alike under like circumstances and conditions, both in the privilege conferred and the liabilities imposed."**

Storer v Brown, 415 US 724, 759 - 761, 39 L Ed 2d 714, 740 - 741; "The Court acknowledges the burdens imposed by § 6830(d) (Supp 1974) **upon fundamental personal liberties**, see ante, at 734, 39 L Ed 2d, at 726, but agrees with the State's assertion that the burdens are justified by the State's compelling interest in the stability of its political system, ante, at 736, 39 L Ed 2d, at 727. Without § 6830(d) (Supp 1974), the argument runs, the party's primary system, an integral part of the election process, is capable of subversion by a candidate who first opts to participate in that method of ballot access, and later abandons the party and its candidate- selection process, taking with him his party supporters. Thus, in sustaining the validity of § 6830(d) (Supp 1974), the Court finds compelling the State's interests in preventing splintered parties and unrestricted factionalism and protecting the direct-primary system, ante, at 736, 39 L Ed 2d, at 727.<fn 2> [415 US 760] * * *

But the identification of these compelling state interests, which I accept, does not end the inquiry. There remains the necessity of determining whether these vital state objectives "cannot be served equally well in significantly less burdensome ways." **Compelling state interests may not be pursued by "means that unnecessarily burden or restrict constitutionally protected activity. Statutes affecting constitutional rights must be drawn with 'precision,'** NAACP v Button, 371 US 415, 438, 9 L Ed 2d 405, 83 S Ct 328 (1963); United States v Robel, 389 US 258, 265, 19 L Ed 2d 508, 88 S Ct 419 (1967), **and must be 'tailored' to serve their legitimate objectives.** Shapiro v Thompson [394 US 618, 631 (1969)] [22 L Ed 2d 600, 89 S Ct 1322]. **And if there are other, reasonable ways to achieve those goals with a lesser burden on constitutionally protected activity, a State may not choose the way of greater interference. If it acts at all, it must choose 'less drastic means.'** Shelton v Tucker, 364 US 479, 488 [5 L Ed 2d 231, 81 S Ct 247] (1960)." Dunn v Blumstein, 405 US, at 343, 31 L Ed 2d 274.

Carli v. Stillwater, 28 Minn. 373; "Bouvier defines a highway as **"a passage, road, or street which every citizen has a right to use;"** a street as "a public thoroughfare or highway in a city or village." (ibid at 375). * * * "It can hardly be questioned that the primary and fundamental purpose of a public highway, street, or alley is to accommodate the public travel; to afford **citizens** and strangers an opportunity to pass and repass, on foot or in **vehicles**, with such movable property as they may have occasion to transport; and every man has the right to use upon the road a conveyance of his own at will, **subject to such proper regulations** as may be prescribed by authority." (ibid at 376).

Hanson v. Hall, 202 Minn. 381, 279 N.W. 227 (1938); **"Our society is builded in part upon the free passage of men and goods, and the public streets and highways may rightfully be used for travel by everyone.** 3 Dunnell, Minn. Dig. (2 ed. & Supps. 1932, 1934, 1937) Sec. 4168. But inherent in every private right is the duty to exercise it for lawful purpose and in a reasonable manner so that the equal rights of others will not be invaded or destroyed. The right to use a highway for purposes of travel does not give a person permission to use it in every fashion which suits his convenience. **The right to use a highway**

extends only to its use for communication or travel; there is not right merely to be on a highway. 16 Hallsbury's Laws of England (Hailsham ed.) 238. (ibid at 383-384).

Alexander Co. v. City of Owatonna, 222 Minn. 312, 24 N.W.2d 244, 257 (1946); "While it is said that the right of access may be regulated by public authority, that does not mean, as the text cited shows [25 Am.Jur., Highways, § 154] that under the guise of regulation the right may be taken away from the owner. **The power to regulate the right of access does not include that of taking it.** * * *" "* * * If there is to be a denial of plaintiff's right of access, it should be the result of a compensated taking under condemnation and not an uncompensated one under the guise of a police regulation."

Schultz v. City of Duluth, 203 N.W. 449 (1925); "To do business upon public streets is not a matter of right like the right of ordinary travel. Nor is the right to carry on such a business to be placed upon the same basis as that of conducting a lawful occupation upon private property within a municipality. The use of public streets for private enterprise may be for the public good, but, even so, it is a privilege that may be granted, regulated, or withheld. The authorities, without a discordant note, unless it be Curry V. Osborne, 76 Fla. 39, 79 So. 293, 6 A.L.R. 108, hold that a municipality having the care and control of its streets, and the authority to look to their convenient and safe travel, may regulate and even exclude the carrying on of a transportation business thereon for private gain, or grant the privilege to some and exclude others, since no one has a right as of course to carry on a private business upon the public streets. In Ex parte Dickey, 76 W. Va. 576, 85 S.E. 781, L.R.A. 1915F, 840, this apt language is used: **"The right of a citizen to travel upon the highway and transport his property thereon, in the ordinary course of life and business**, differs radically and obviously from that of one who makes the highway his place of business and uses it for private gain, in the running of a stage coach or omnibus. **The former is the usual and ordinary right of a citizen, a common right, a right common to all**, while the latter is special, unusual and extraordinary. As to the former, the extent of legislative power is that of regulation; but as to the latter, its power is broader -- the right may be wholly denied, or it may be permitted to some and denied to others, because of its extraordinary nature. This distinction, elementary and fundamental is character, is recognized by all the authorities." (ibid at 450).

Buck v. Kuykendall., 267 US 307, pp. 314 - 316, 69 L Ed 623, pp. 626 - 627 (1925); "Plaintiff claimed that the action taken by the Washington officials, and threatened, violates rights conferred by these Federal acts, and guaranteed both by the 14th Amendment and the commerce clause. In support of the decree dismissing the bill this argument is made: The right to travel interstate by auto vehicle upon the public highways may be a privilege or immunity of citizens of the United States. Compare Crandall v. Nevada, 6 Wall. 35, 18 L. ed. 745. **A citizen may have, under the 14th Amendment, the right to travel and transport his property upon them by auto vehicle. But he has no right to make the highways his place of business by using them as a common carrier for hire. Such use is a privilege which may be granted or withheld by the state in its discretion, without violating either the due process clause or the equal protection clause.** Packard v. Banton, 264 U. S. 140, 144, 64 L. ed. 596, 607, 44 Sup. Ct. Rep. 257."

Decisions of Supreme Court of United States are controlling as to validity of state statutes under Federal Constitution. Hard v State (1934) 228 Ala 517, 154 So 77.; Gates v Bank of Commerce & Trust Co. (1931) 185 Ark 502, 47 SW2d 806.; Zahn's Ex'r v State Tax Com. (1932) 243 Ky 167, 47 SW2d 925.

Decisions of United States Supreme Court are conclusive on state courts. Thompson v Atlantic C. L. R. Co. (1946) 200 Ga 856, 38 SE2d 774, affd 332 US 168, 91 L Ed 1977, 67 S Ct 1584, 173 ALR 1.; Walker v Gilman (1946) 25 Wash 2d 557, 171 P2d 797.

Decisions of Supreme Court of United States determining validity of state statutes under Fourteenth Amendment or of acts of Congress under Fifth Amendment constitute supreme law of land. Re Opinion of Justices (1933) 86 NH 597, 166 A 640.; Badger v Crockett (1927) 70 Utah 265, 259 P 921.

While states are really sovereign as to all matters which have not been granted to United States, **Constitution and laws of the latter are supreme law of land, and when they conflict with state laws, they are of paramount authority and obligation.** Ex parte Siebold (1880) 100 US 371, 25 L Ed 717.

ARGUMENT

Allow for thought as to the difference between the two jurisdictions as described in M.S. 168.33 Subd. 4 "Record of cars not **using** highways." The statutory terms such as; use, using, operated, operation, operating, privilege, transport, transporting, transportation, vehicle, motor vehicle, person, passenger, individual, personal (business), and service all have definite business, or commercial legal meaning within the statutory construction.

The private Citizen of Minnesota has secured constitutional rights, the individual, firm, copartnership, cooperative, company, association and corporation, or their lessees, trustees, or receivers are artificial entities that exercise privileges which come from the government and are taxed as an excise, same said as a tax on a privilege. Shannon v. Streckfus Steamers, 131 S.W.(2d) 833, 838; 279 Ky. 649. "An excise tax is often used as synonymous with privilege or license tax...." State v. Lee, 166 So. 249, 254; 122 Fla. 639 "A privilege tax is an excise tax and is authorized as a license tax." See as follows:

Minn. Stat. § 168.013 Rate of tax
Subdivision 1. Imposition. **Motor vehicles**, except as set forth in section 168.012, **using the public streets or highways in the state**, and park trailers taxed under subdivision 1j, **shall be taxed in lieu of all other taxes thereon**, except wheelage taxes, so-called, which may be imposed by any city as provided by law, and except gross earnings taxes paid by companies subject or made subject thereto, **and shall be privileged to use the public streets and highways**, on the basis and at the rate for each calendar year as hereinafter provided.

Minn. Stat. § 168.221 Commercial vehicles; taxes or fees
The registrar may promulgate such rules as may be necessary to accomplish the purpose of section 168.181, paragraph 6, as to the payment of partial taxes collectible under sections 168.181 to 168.231 and may waive any reciprocal agreement required thereunder with any state, district, territory, or possession or arrangements with foreign countries or provinces if under the laws of such state, district, territory, or possession or foreign country or province residents of Minnesota **are privileged to operate motor vehicles upon the streets and highways of such state**, district, territory, or possession or foreign country or province without the payment of taxes or fees of any character whatsoever.

The state would have us believe that these above mentioned terms encompass the private citizen and include his right to travel upon his streets and highways in the state. Taken as an example the case of Pegg v. City, 80 O.S. 367, 394, we

see the term "use" or "operate" as applying to such motor vehicles which make a "continued and repeated practice" of using the streets and highways, such as a "taxicab", delivery truck, bus, or the like, see as follows:

Pegg v. City, 80 O.S. 367, 394; "The ordinance is to license and regulate the use of the streets of Columbus by persons who use vehicles thereon. The opinion of the circuit court, by Wilson, J., 10 O.C.C., N.S., 199 is to the effect that **construing the term "use" as a continued and repeated practice**, the ordinance applies to those who, in the above sense, use the vehicles described."

Pegg v. City, 80 O.S. 367, 392; "* * * and for the same reason, a license may be exacted for vehicles used in the transportation of goods and merchandise, or of passengers, or for other purposes of traffic; **but such license is an occupation license**, and not one for the use of the streets, The license in the latter named case is designed to operate upon those who hold themselves out as **common carriers**, and a license may be exacted from such as a proper exercise of police power, **but no reason exists why it should be applied to the owners of private vehicles used for their individual use exclusively, in their own business, or for their own pleasure, as a means of locomotion.**" See Garden City v. Abbott, 34 Kans., 283"

Mayo v. Market Fruit Co. of Sanford, Fla., 40 So. 2d 555, 559; "**A license is merely a privilege to do business** and is not a contract between authority granting it and grantee nor is it a property right, nor does it create a vested right."

Ramaley v. City of St. Paul (S. Ct. 1948) 33 N.W.2d 19, 226 Minn. 406, 409; "The distinction between an occupation tax upon a business and a police power license fee **is that the former is exacted by reason of the fact that the business is carried on**, and the latter is exacted as a condition precedent to the right or privilege to carry it on. In the former case, the person may rightfully commence and carry on the business without paying the tax, and in the latter he cannot do so without paying the license fee. Adler v. Whitbeck, 44 Ohio St. 539, 9 N.E. 672; see, 4 Cooley (4 ed.) Taxation, § 1784. Both as to form and substance, the ordinance indicates an exercise of the taxing power for the primary purpose of revenue.

We must ask our self does the citizen technically in a business sense own a "motor vehicle", as defined in M.S. 171.01 Subd. 2 and 3, and therefore is required to obtain a "drivers license". How would one know until the true definition of "motor vehicle" is discovered. The definition of the terms "motor vehicle" and "vehicle", must be combined in order that one garners the true statutory meaning, see example as follows:

CHAPTER 171 - DRIVERS' LICENSES AND TRAINING SCHOOLS
Minn. Stat. § 171.01. Definitions.

Subdivision 1. Scope. Unless the language or context clearly indicates that a different meaning is intended, the following words, terms, and phrases, for the purposes of this chapter, shall be given the meanings subjoined to them.

Subd. 2. Vehicle. Every **device** in, upon, or by which any person or property is or may be transported or drawn upon any highway, excepting devices moved by human power or used exclusively upon stationary rails or tracks. [Subd. 2. describes the privileged business activity]

Subd. 3. Motor vehicle. Every **vehicle** which is self-propelled and any vehicle propelled or drawn by a self-propelled vehicle, and not deriving its power from overhead wires except snowmobiles. [Subd. 3. describes the physical

aspects of the business machine]

Now let us change the format of the statutory language so that the real meaning can be understood, see as follows:

RESTATED - Motor vehicle. Every **vehicle** (**device** in, upon, or [and] by which any person or property is or may be transported or [and] drawn upon any highway,) and which is self-propelled and any vehicle propelled or drawn by a self-propelled vehicle, and not deriving its power from overhead wires except snowmobiles.

The statute now really conveys the true meaning when you change the term "or" to "and", see 50 Am J1st Stat § 282 as follows. The interpretation of the terms "transported" and "drawn" differ in meaning, the term "transported" is a business service term, and the term "drawn" is a natural science or physical action term. In other words, the term "motor vehicle" as used in Minn. Stat. § 171.01. Definitions. Subd 2., and 3, means a business machine (device) which moves (drawn) upon the highway for a fee or compensation for the service rendered.

Statutory Definition - "Or" - 50 Am J1st Stat § 282

"Subject to construction as **"and"** in a statute or municipal ordinance where such is in keeping with the intent of the statute or ordinance as such appears from the entire context."

Let us now try the same statutory treatment as we did in M.S. 171.01 Subd. 2 and 3, to the definition of motor vehicle under M.S. 169.01 Subd. 2. and 3.

CHAPTER 169 - TRAFFIC REGULATIONS

M.S. § 169.01. Definitions.

Subdivision 1. Terms. For the purposes of this chapter, the terms defined in this section shall have the meanings ascribed to them.

Subd. 2. Vehicle. "Vehicle" means every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, excepting devices used exclusively upon stationary rails or tracks. [describes the privileged business activity]

Subd. 3. Motor vehicle. "Motor vehicle" means every vehicle which is self-propelled and every vehicle which is propelled by electric power obtained from overhead trolley wires. Motor vehicle does not include a vehicle moved solely by human power. [describes the physical aspects of the business machine]

RESTATED - Motor vehicle. "Motor vehicle" means every vehicle device in, upon, or by which any person or property is or may be transported or drawn upon a highway, and which is self-propelled and every vehicle which is propelled by electric power obtained from overhead trolley wires. Motor vehicle does not include a vehicle moved solely by human power.

Again we see the same result as we found to be in M.S. 171.01 Subd. 2 and 3, yet can we prove that beyond any doubt to the District Court and the Public Safety Department that the purpose of registration and licensing is solely for the privilege of transporting persons (passengers) or property (fright) as a business service. If we now go to Minn. Chapter 221, and look to see how the vehicles for service or hire, or even greater use (commercial) are defined in the statutes, we might have a break through in discovering the definition of the term "motor vehicle", and "vehicle" see as follows:

CHAPTER 221 - MOTOR CARRIERS; PIPELINE CARRIERS

Minn. Stat. § 221.011. Definitions.

Subdivision 1. Scope. For the purposes of this chapter, the terms defined in this section have the meanings given them.

Subd. 2. Department. "Department" means the **department of transportation.**

Subd. 3. Vehicle. "Vehicle" means a vehicle or combination of vehicles used upon the highways for the transportation of persons or property. [describes the privileged business activity]

Upon review of M.S. 221.011 Subd. 3, there can be no doubt the term "Motor Carrier" is a motorized business machine used solely upon the highway as a service for hire function. The term motor vehicle is not defined in these statutes, yet the term "vehicle" is, and it is very close to the definition as is stated in M.S. 171.01 Subd. 2 and M.S. 169.01 Subd. 2, excepting for one phrase, "person or property is or may be transported", the reason for this difference is that under M.S. 171.01 Subd. 2 and M.S. 169.01 Subd. 2, these vehicles don't always operated for hire, but they may. The state's policy of law regarding the phrase "is or may be transported" means if you can do it you are doing it, this is stated in the statutory language of M.S. 168.011 Subd 2., and M.S. 168.28, see as follows:

Minn. Stat. § 168.011. Definitions.

Subdivision 1. Words, terms, and phrases. Unless the language or context clearly indicates that a different meaning is intended, the following words, terms and phrases, for the purposes of this chapter, shall be given the meanings subjoined to them.

Subd. 2. Application for registration; listing for taxation. **"Application for registration" shall have the same meaning as "listing for taxation," and when a motor vehicle is registered it is also listed.**

Minn. Stat. § 168.28. Vehicles subject to tax; exceptions.

" * * * **Any dealer or distributor may register a motor vehicle** prior to its assessment or taxation as personal property, and pay the license fee and tax thereon for the full calendar year as one using the public streets and highways, **and thereafter such vehicle shall be deemed to be one using the public streets and highways** and shall not be subject to assessment or taxation as personal property during the calendar year for which it is so registered, **whether or not such vehicle shall actually have used the streets or highways.**"

Yet, how do we prove to the court that upon registration you are in a privileged business, in other words has the state been telling us that registration and licensing is only like being a little pregnant, where you don't waive the right not to be pregnant. Well let us see how pregnant we really are, by use of the following explanation of what a taxicab does along with the terms "taxicab" and "motor vehicle", under M. S. § 221.031 Rules for operation of carriers:

M. S. § 221.031 Rules for operation of carriers

Subd. 3b. Passenger transportation; exemptions. (a) A person who transports passengers for hire in intrastate commerce, who is not made subject to the rules adopted in section 221.0314 by any other provision of this section, must comply with the rules for hours of **service of drivers while transporting employees of an employer** who is directly or indirectly paying the cost of the transportation.

(b) This subdivision does not apply to: * * *

(vi) that is special transportation service as defined in section 174.29, subdivision 1, when provided by **a volunteer driver operating a private passenger vehicle** as defined in section 169.01, subdivision 3a;

(vii) **in a limousine the service** of which is licensed by the commissioner under section 221.84; or

(viii) in a taxicab, if the fare for the **transportation is determined by a meter** inside the taxicab that measures the distance traveled **and displays the fare** accumulated.

There can be no doubt that the "taxicab" collects a fare, and transports persons (passengers) by a device which is drawn upon the streets or highways. Yet, is the "taxicab" defined as a "motor vehicle" ? For that understanding we must go the Commissioner's promulgated rules under the department of transportation, which define and make definite the statutory language, pursuant to statute authority vested in the commissioner pursuant to: Minn. Stat. § 221.84, and History: 18 SR 2220, see as follows:

Chapter 8880 - LIMOUSINE SERVICE AND PERMIT REQUIREMENTS
Minn. Rules. 8880.0100. DEFINITIONS

Subpart 1. Scope. Unless the language or context clearly suggests a different meaning is intended, words, terms, and phrases used in this chapter have the meanings given them in this part.

Subp. 2. Bus. "Bus" has the meaning given it in Minnesota Statutes, section 169.01, subdivision 50.

Subp. 3. Commissioner. "Commissioner" means the commissioner of the Minnesota Department of Transportation.

Subp. 7. Driver. "Driver" means **a person who drives or is in actual physical control of a limousine** providing limousine service.

Subp. 13. Meter. "Meter" means a device that measures the **distance a motor vehicle travels**, records the time a motor vehicle travels or waits, **and shows the fare charged for the transportation of passengers.**

Subp. 14. Motor vehicle. "Motor vehicle" has the meaning given it in Minnesota Statutes, **section 169.01, subdivision 3.** [privileged business activity] & [describes the physical and business aspects of the business machine]

Subp. 22. Station wagon. "Station wagon" means a **motor vehicle** that is not a van, **is designed primarily for the transportation of passengers**, and is commonly manufactured with storage space **for the transportation of property** with no barrier or separation between the passenger area and the storage area.

Subp. 23. Taxicab. "Taxicab" means a **motor vehicle**, other than a limousine or bus, **used for transporting passengers for compensation as determined by a meter;** or by a flat rate schedule, according to the distance traveled, the time elapsed, or number of passengers carried, irrespective of whether the transportation extends beyond the boundary lines of a city.

Subp. 26. Van. "Van" means a **motor vehicle** of box-like design that is manufactured, equipped, modified, or **converted as a passenger motor vehicle.**

There remains no doubt, and it is self evident that the "taxicab" is defined as a "motor vehicle", pursuant to M.S. 169.01 Subd. 3, there is no doubt that it is a business "device in, upon, or by which any person or property is or may be transported or drawn upon a highway", pursuant to Minn. Rules. 8880.0100. Definitions. There is no doubt that it does not travel upon the streets as a matter of right, yet only as a matter of privilege, see as follows:

CHAPTER 169 - TRAFFIC REGULATIONS
M.S. § 169.01. Definitions.

Subdivision 1. Terms. For the purposes of this chapter, the terms defined in this section shall have the meanings ascribed to them.

Subd. 2. Vehicle. "Vehicle" means every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, excepting devices used exclusively upon stationary rails or tracks. [describes the privileged business activity]

Subd. 3. Motor vehicle. "Motor vehicle" means every vehicle which is self-propelled and every vehicle which is propelled by electric power obtained from overhead trolley wires. Motor vehicle does not include a vehicle moved solely by human power.

Now that we have ascertained the legal issue as to whether or not the "taxicab", is

the "motor vehicle", and that the motor vehicle is as defined in M.S. § 169.01 Subd. 2 and 3, and can do, or is doing business, or providing a service upon the highway for a fare. Yet, we must also discover whether or not it is the same "motor vehicle" as defined in 168.011 Subd. 4, which is required to be registered pursuant to 169.79 "Vehicle Registration", see as follows:

M.S. § 169.79. Vehicle registration.

No person shall operate, drive or park a motor vehicle on any highway unless the vehicle is registered in accordance with the laws of this state and has the number plates for the current year only, * * * as assigned to it by the commissioner of public safety, conspicuously displayed thereon in a manner that the view of any plate is not obstructed. * * * All plates shall be securely fastened so as to prevent them from swinging. The person driving the motor vehicle shall keep the plate legible and unobstructed and free from grease, dust, or other blurring material so that the lettering shall be plainly visible at all times. It is unlawful to cover any assigned letters and numbers or the name of the state of origin of a license plate with any material whatever, including any clear or colorless material that affects the plate's visibility or reflectivity. License plates issued to vehicles registered under section 168.017 must display the month of expiration in the lower left corner as viewed facing the plate and the year of expiration in the lower right corner as viewed facing the plate.

Now that we have ascertained the legal issue as to whether or not the "taxicab", is the "motor vehicle", and is so defined in M.S. 169.01 Subd. 2 and 3, and can do, or is doing business or providing a service upon the highway for a fare, we have also found that it is the same "motor vehicle" as defined in 168.011 Subd. 4, which is required to be registered pursuant to 169.79 "Vehicle Registration". Yet, is this "taxicab" a "motor vehicle" for the purposes of law which require the taxicab or motor vehicle to be insured, see as follows:

M.S. § 169.791. Criminal penalty for failure to produce proof of insurance.

Subdivision 1. Terms. (a) For purposes of this section and sections 169.792 to 169.799, the following terms have the meanings given. * * *

(g) "Proof of insurance" means an insurance identification card, written statement, or insurance policy as defined by section 65B.14, subdivision 2.

(h) "Vehicle" means a motor vehicle as defined in section 65B.43, subdivision 2, * * *

M.S. § 65B.43. Definitions.

Subdivision 1. The following words and phrases, shall, for the purpose of sections 65B.41 to 65B.71, have the meanings ascribed to them, except where the context clearly indicates a different meaning.

Subd. 2. "Motor vehicle" means every vehicle, other than a motorcycle or other vehicle with fewer than four wheels, **which (a) is required to be registered pursuant to chapter 168**, and (b) is designed to be self-propelled by an engine or motor **for use primarily upon public roads, highways or streets in the transportation of persons or property**, and includes a trailer with one or more wheels, when the trailer is connected to or being towed by a motor vehicle. [describes the privileged business activity]

Minn. Stat. § 221.011. Definitions.

Subdivision 1. Scope. For the purposes of this chapter, the terms defined in this section have the meanings given them.

Subd. 2. Department. "Department" means the **department of transportation.**

Subd. 3. Vehicle. "Vehicle" means a vehicle or combination of vehicles **used upon the highways for the transportation of persons or property.** [describes the privileged business activity]

Home Mut. Ins. Co. v. Snyder (App. Ct. 1984) 356 N.W.2d 780; "Home Mutual contends that to qualify under subdivision 1 the vehicle must be used in the sense that trucking, bus or taxicab company vehicles are used **"in the business of"** transporting persons or property, that is, "for hire." Since Snyder is in the business of farming, the argument goes, the vehicle does not qualify."

Now that we have ascertained the legal issue as to whether or not the "taxicab", is the "motor vehicle", and is so defined in M.S. 169.01 Subd. 2 and 3, and can do, or is doing business or providing a service upon the highway for a fare, we have also found that it is the same "motor vehicle" as defined in 168.011 Subd. 4, which is required to be registered pursuant to 169.79 "Vehicle Registration". We have also now found that the "taxicab" to be a the definition of "motor vehicle" for the purposes of law which require the "taxicab", same said as the "motor vehicle" to be insured. The statutory language is very clear as to the definition of "motor vehicle" for required insurance under M.S. § 169.791(h) and M.S. § 65B.43. Subd 2. Yet, also under M.S. 65B.43 Subd. 2, the phrase, "which (a) is required to be registered pursuant to chapter 168," also appears, its not difficult to now understand how the definition of "motor vehicle" under M.S. 169.01 Subd. 2 and 3, applies equally to Chapter 168 "Registration". Now, before we get totally lost on the point of what is the legal meaning of the term "motor vehicle" under 169.01 Subd. 2 and 3, let us now compare definition of motor vehicle under Minn. Stat. § 221.011 Subd. 3, and M.S. § 65B.43. Subd. 2, and we find the identical language used, **"used upon the highways for the transportation of persons or property", does it not:** [describes the privileged business activity] we think the statutory language is very clear on this point of law, if one can not see understand the reasoning underlining the statutes then one is avoiding reality.

Yet, we can not stop here, we must as * on now in the explanation of law now address the issue of law regarding the requirement of a "drivers license", pursuant to M.S. § 171.02, see as follows:

M.S. § 171.02. Licenses: types, endorsements, restrictions.
Subdivision 1. License required. No person, except those hereinafter expressly exempted, **shall drive any motor vehicle upon any street or highway in this state unless such person has a license** valid under the provisions of this chapter **for the type or class of vehicle being driven.**

Is the definition of "motor vehicle" under Chapter 171 the same as under Chapter 169, let us review the statutory language as to compare the text of the statute, see as follows:

CHAPTER 171 - DRIVERS' LICENSES AND TRAINING SCHOOLS
Minn. Stat. § 171.01. Definitions.
Subdivision 1. Scope. Unless the language or context clearly indicates that a different meaning is intended, the following words, terms, and phrases, for the purposes of this chapter, shall be given the meanings subjoined to them.
Subd. 2. Vehicle. Every **device** in, upon, or by which **any person or property is or may be transported** or drawn upon any highway, excepting devices moved by human power or used exclusively upon stationary rails or tracks. [describes the privileged business activity]
Subd. 3. Motor vehicle. Every vehicle which is **self-propelled** and any vehicle propelled or drawn by a self-propelled vehicle, and not deriving its power from overhead wires except snowmobiles. [describes the physical aspects of the business machine]
Subd. 5. Person. Every natural person, firm, copartnership, association, or corporation.
Subd. 6. Driver. Every **person**, who drives or is in actual physical control of a **motor vehicle.**
Subd. 14. License. "License" means any **operator's license** or any other license or

permit **to operate a motor vehicle** issued or issuable under the laws of this state by the **commissioner of public safety** including:
(a) Any temporary license or instruction permit;
(b) **The privilege of any person to drive a motor vehicle** whether or not such person holds a valid license;
(c) Any nonresident's **operating privilege** as defined herein.

Yet what class of license must the taxicab driver perform his business duties under, see as follows:

M.S. § 171.02. Licenses: types, endorsements, restrictions.
Subdivision 1. License required. No person, except those hereinafter expressly exempted, **shall drive any motor vehicle upon any street or highway in this state unless such person has a license** valid under the provisions of this chapter **for the type or class of vehicle being driven.**

Subd. 2. Driver's license classifications, endorsements, exemptions. **Drivers' licenses shall be classified according to the types of vehicles which may be driven by the holder of each type or class of license.** The commissioner may, as appropriate, subdivide the classes listed in this subdivision and issue licenses classified accordingly. No class of license shall be valid to operate a motorcycle, school bus, tank vehicle, double-trailer or triple-trailer combination, vehicle transporting hazardous materials, or bus, unless so endorsed.
There shall be four general classes of licenses as follows:
(a) Class C; valid for: * * *
(4) all single unit vehicles except vehicles with a gross vehicle weight of more than 26,000 pounds, vehicles designed to carry more than 15 passengers including the driver, and vehicles that carry hazardous materials.
The holder of a class C license may also tow vehicles if the combination of vehicles has a gross vehicle weight of 26,000 pounds or less.

Yet what if the citizen never wanted to exercise the privilege of operating for hire, would one still be required to register one's private car and turn it into a business machine. In light of M.S. 168.28 * the citizen by the process of registration would automatically be in the business of transporting person or property. Does the state have the right to force the citizen into business, and at the same time force one to waive their rights to privacy, liberty, safety, and property, of course not. This is the reason for the statute **M.S. 168.33 Subd. 4** "Record of cars **not** using highways." This then gives the citizen the required relief the constitution affords one under Article I, Section 7.

Now we must allow for the legal thought as to the difference between the two jurisdictions as described in M.S. 168.33 Subd. 4 "Record of cars not **using** highways." Knowing the power to regulate, and the power to license are two separate powers, and distinct in their action as the law performs. The statutory language in M.S. 168.33 Subd. 4, sets forth the two jurisdiction in the following matter: as The following cited cases from the Supreme Courts of the States are just a sampling, there are hundreds more like the following.

Minnetonka Elec. Co. v. Village of Golden Valley (S. Ct. 1966) 141 N.W.2d 138, 273 Minn. 301 Page 308
"We think it clear, however, that the power to license is not an integral or necessary part of the power to regulate. * * * Other jurisdictions have reached the same conclusion under circumstances similar to those disclosed by the record here."

Brooklyn Center v. Rippen, 255 Minn. 334, 96 N.W.2d 585 (1959); **"The power to**

regulate does not necessarily include the power to license. In passing on the question of whether in a particular case the power to regulate includes the power to license, it is well to bear in mind the distinction between regulation and license. Regulations apply equally to all. **A license, however, gives to the licensee a special privilege** not accorded to others and which he himself otherwise would not enjoy. Once a power to license exits, certain acts become illegal for all who have not been licensed." Note 3 **See, 33 Am. Jur., Licenses, Sec. 2; 53 C.J.S., License, Sub. Sec. 1 and 3.** (ibid at 336-337).

". . . the legislative intent may be ascertained by considering the consequences of a particular interpretation **(Sec. 645.16)** and by relying upon the presumption that the legislature does not intend a result that is absurd or unreasonable **(Sec. 645.17)**." (ibid at 338).

Andrews v. State, 50 Tenn. (3 Heisk.) 165, 180; "The power to regulate does not fairly mean power to prohibit."

Simpkins v. State, 249 P.168, 170; 35 Okla. Cr. 143; "Regulate, as ordinarily used, means to subject to rules and restrictions, to adjust by rule or method, to govern, and is not synonymous with prohibit."

City of Chicago v. Collins, 51 N.E. 907 S.Ct. Ill (1925); "General Incorporation Act, act. 5, Sec. 1, cls. 4, 7, 8, 10, 11, 12, 92, 75, 78, 66, 96, conferring general power on the common council to fix amount of licenses, to open, improve, light, and cleanse the streets, to plant trees thereon, to prevent annoyances, to make health regulations, and to enforce police ordinances, and to pass ordinances necessary to effectuate such powers, and **clause 9, expressly conferring power "to regulate the use" of streets, do not impliedly authorize the imposition of a license to use streets by the owners of private conveyances, because the use of streets is a right, and not a privilege or an occupation.** An ordinance imposing on bicycles and others wheeled vehicles a graduated tax to be created into a "wheel-tax fund" for the improvement of streets, when such vehicles are already subject to ad valorem tax, part of which is appropriated to the same purpose, and such vehicles are of varying values, is void, as obnoxious to the inhibition against double taxation, and also as being unequal and not uniform." (ibid at 907).

"The right of the public to use the streets is the right to use them for purposes of travel in the recognized methods in which the public highways of the state are used. Any method of travel may be adopted by individual members of the public which is an ordinary method of locomotion, or even an extraordinary method, if it is not, of itself, calculated to prevent a reasonably safe use of the streets by others." (ibid at 909).

"The license in the latter-named case is designed to operate upon those who hold themselves out as common carriers, and a license may be exacted from such as a proper exercise of police power; but no reason exists why it should be applied to the owners of private vehicles, used for their individual use exclusively in their own business, or for their own pleasure, as a means of locomotion. Farwell v. City of Chicago, 71 Ill. 269, Joyce v. City of East St. Louis, 77 Ill. 156; City of Collinsville v. Cole, 78 Ill. 114; City of St. Louis v. Grone, 46 Mo. 575; Livingston v. City of Paducah, 80 Ky. 657; City of Covington v. Woods (Ky.) S.W. 84. Anything which cannot be enjoyed without legal authority would be a mere privilege, which is generally evidenced by a license. Cate v. State, 3 Sneed, 120. **The use of the public streets of a city is not a privilege, but a right.** Tiedeman on Limitations of Police Power (section 281) says, in distinguishing between a license and a tax: "It is therefore conclusive that the general requirements of a license

for the pursuit of any business that is dangerous to the public can only be justified as an exercise of the power of taxation or the requirement of a compensation for the enjoyment of a privilege or franchise." In Cooley, tax'n, p. 596, it is said: "A license is a privilege granted by the state, usually on payment of a valuable consideration, though it is not essential. To constitute a privilege, the grant must confer authority to do something which, without the grant, would be illegal; for if what is to be done under the license is open to every one without it, the grant would be merely idle and nugatory, conferring no privilege whatever." A license, therefore, implying a privilege, cannot possibly exist with reference to something which is a right, free and open to all, as is the right of the **citizen** to ride and drive over the streets of the city without charge and without toll, provided he does so in a reasonable manner. That such a right exists in Chicago is recognized in Smith v. McDowell, 148 Ill. 51, 35 N.E. 141, where it was said, relative to the streets of a city (page 63, 148 Ill., and page 143, 35 N.E.). (ibid at 910).

"**A license could not be required of one to enter his own house** since he already possess the right to do so. There is no competent authority which is in the position to grant you the right or permission to enter your own house. Thus, those that have the right to do something cannot be licensed for what they already have the right to do as such license would be meaningless.(ibid at 910)."

"**The authority to impose a tax or to exact a license must clearly appear, and must be strictly construed. If there is a doubt as to the right, it must be resolved adversely to it.**" (ibid at 911).

Tech Lines v. Danforth, 12 So.2d 784 (1943); "**Aside from absurdity or unthought of consequences, we may advance a step, and a very vital step, further, and to the following inescapable consideration: "The right of a citizen to travel upon the public highways and to transport his property thereon in the ordinary course of life and business is a common right which he has under his right to enjoy life and liberty, to acquire and possess property, and to pursue happiness and safety. It includes the right in so doing to use the ordinary and usual conveyances of the day; and under the existing modes of travel includes the right to drive a horse-drawn carriage or wagon thereon, or to operate an automobile thereon, for the usual and ordinary purposes of life and business.**" Thompson v. Smith, 155 Va. 367, 154 S.E. 579, 71 A.L.R. 604, 610. **There seems to be no dissent among the authorities on this proposition.** See 11 Am.Jur. 1st, Constitutional Law, Sec. 329, p. 1135, and the language of the Court in Pinkerton v. Verberg, 78 Mich. 573, 44 N.W. 579, 7 L.R.A. 507, 18 Am.St.Rep. 473. (ibid at 787).

"**The right to travel means, of course, the right to go from one place to another.** It includes the right (1) to start, (2) to go forward on the way, and (3) to stop when the traveler's destination has been reached. To speak of the first two of these as fundamental rights without including the third would be to descend again to the absurd, and so far as the instant case is concerned that is what we have here. But we do not so limit the right. We affirm that it includes the right to stop on the way, temporarily, for a legitimate or necessary purpose when that purpose is an immediate incident to travel. So it is that the texts and authorities declare that the right to stop when the occasion demands is an incident to the right to travel, a proposition so completely self-evident that no authority is necessary to sustain it, and which we would pronounce irrefutable, had it never heretofore been mentioned. But here are some of the authorities which do declare and sustain it. 2 Blashfield Automobile Law, Perm.Ed, Sec. 1191, page 321; Fulton v. Chouteau County Farmers' Co., 98 Mont. 48, 37 P.2d 1025; Morton v. Mooney, 97 Mont. 1,

33 P.2d 262, 263; Albrecht v. Waterloo Const. Co., 218 Iowa 1205, 257 N.W. 183. When, then, the right to stop is arbitrarily or unreasonably restricted or cut off by statutory enactment, the statute is as objectionable from a constitutional standpoint as had the enactment prevented going forward. (ibid at 787).

"The rights aforesaid, being fundamental, are constitutional rights, and while the exercise thereof may be reasonably regulated by legislative act in pursuance of the police power of the State, and although those powers are broad, they do not rise above those privileges which are imbedded in the constitutional structure. The police power cannot justify the enactment of any law which amounts to an arbitrary and unwarranted interference with, or unreasonable restriction on, those rights of the citizen which are fundamental. State v. Armstead, 103 Miss. 790, 799, 60 So. 778, Ann.Cas. 1915B, 495. (ibid at 787-788).

"The statute, in my judgment, is a valid exercise of the police power, both as to public and privately owned motor vehicles. **But admit for the sake of argument that it is not as to privately owned cars.** That would not necessarily mean that it would be an unconstitutional exercise of the power as to public passenger and freight carriers. A statute may be constitutional in part, and unconstitutional in part. **We have here involved a public carrier of passengers."** (ibid at 790).

Storer v. Brown, 415 US 724, pp. 759 - 761, 39 L Ed 2d 714, pp. 740 - 741 **"Compelling state interests may not be pursued by "means that unnecessarily burden or restrict constitutionally protected activity. Statutes affecting constitutional rights must be drawn with 'precision,'** NAACP v Button, 371 US 415, 438, 9 L Ed 2d 405, 83 S Ct 328 (1963); United States v Robel, 389 US 258, 265, 19 L Ed 2d 508, 88 S Ct 419 (1967), **and must be 'tailored' to serve their legitimate objectives.** Shapiro v Thompson [394 US 618, 631 (1969)] [22 L Ed 2d 600, 89 S Ct 1322]. **And if there are other, reasonable ways to achieve those goals with a lesser burden on constitutionally protected activity, a State may not choose the way of greater interference. If it acts at all, it must choose 'less drastic means.'** Shelton v Tucker, 364 US 479, 488 [5 L Ed 2d 231, 81 S Ct 247] (1960)." Dunn v Blumstein, 405 US, at 343, 31 L Ed 2d 274.

Hanson v. Hall, 202 Minn. 381, 279 N.W. 227 (1938); **"Our society is builded in part upon the free passage of men and goods, and the public streets and highways may rightfully be used for travel by everyone.** 3 Dunnell, Minn. Dig. (2 ed. & Supps. 1932, 1934, 1937) Sec. 4168. But inherent in every private right is the duty to exercise it for lawful purpose and in a reasonable manner so that the equal rights of others will not be invaded or destroyed. The right to use a highway for purposes of travel does not give a person permission to use it in every fashion which suits his convenience. **The right to use a highway extends only to its use for communication or travel;** there is not right merely to be on a highway. 16 Hallsbury's Laws of England (Hailsham ed.) 238. (ibid at 383-384).

Alexander Co. v. City of Owatonna, 222 Minn. 312, 24 N.W.2d 244, 257 (1946); "While it is said that the right of access may be regulated by public authority, that does not mean, as the text cited shows [25 Am.Jur., Highways, § 154] that under the guise of regulation the right may be taken away from the owner. **The power to regulate the right of access does not include that of taking it.** * * *" "* * * If there is to be a denial of plaintiff's right of access, it should be the result of a compensated taking under condemnation and not an uncompensated one under the guise of a police regulation."

Schultz v. City of Duluth, 203 N.W. 449 (1925); "To do business upon public streets is not a matter of right like the right of ordinary travel. Nor is the right to carry on such a business to be placed upon the same basis as that of conducting a lawful occupation upon private property within a municipality. The use of public streets for private enterprise may be for the public good, but, even so, it is a privilege that may be granted, regulated, or withheld. The authorities, without a discordant note, unless it be Curry V. Osborne, 76 Fla. 39, 79 So. 293, 6 A.L.R. 108, hold that a municipality having the care and control of its streets, and the authority to look to their convenient and safe travel, may regulate and even exclude the carrying on of a transportation business thereon for private gain, or grant the privilege to some and exclude others, since no one has a right as of course to carry on a private business upon the public streets. In Ex parte Dickey, 76 W. Va. 576, 85 S.E. 781, L.R.A. 1915F, 840, this apt language is used: **"The right of a citizen to travel upon the highway and transport his property thereon, in the ordinary course of life and business**, differs radically and obviously from that of one who makes the highway his place of business and uses it for private gain, in the running of a stage coach or omnibus. **The former is the usual and ordinary right of a citizen, a common right, a right common to all**, while the latter is special, unusual and extraordinary. As to the former, the extent of legislative power is that of regulation; but as to the latter, its power is broader -- the right may be wholly denied, or it may be permitted to some and denied to others, because of its extraordinary nature. This distinction, elementary and fundamental is character, is recognized by all the authorities." (ibid at 450).

Buck v. Kuykendall., 267 US 307, pp. 314 - 316, 69 L Ed 623, pp. 626 - 627 (1925); "Plaintiff claimed that the action taken by the Washington officials, and threatened, violates rights conferred by these Federal acts, and guaranteed both by the 14th Amendment and the commerce clause. In support of the decree dismissing the bill this argument is made: The right to travel interstate by auto vehicle upon the public highways may be a privilege or immunity of citizens of the United States. Compare Crandall v. Nevada, 6 Wall. 35, 18 L. ed. 745. **A citizen may have, under the 14th Amendment, the right to travel and transport his property upon them by auto vehicle. But he has no right to make the highways his place of business by using them as a common carrier for hire. Such use is a privilege which may be granted or withheld by the state in its discretion, without violating either the due process clause or the equal protection clause.** Packard v. Banton, 264 U. S. 140, 144, 64 L. ed. 596, 607, 44 Sup. Ct. Rep. 257."

Decisions of Supreme Court of United States are controlling as to validity of state statutes under Federal Constitution. Hard v State (1934) 228 Ala 517, 154 So 77.; Gates v Bank of Commerce & Trust Co. (1931) 185 Ark 502, 47 SW2d 806.; Zahn's Ex'r v State Tax Com. (1932) 243 Ky 167, 47 SW2d 925.

Decisions of Supreme Court of United States determining validity of state statutes under Fourteenth Amendment or of acts of Congress under Fifth Amendment constitute supreme law of land. Re Opinion of Justices (1933) 86 NH 597, 166 A 640.; Badger v Crockett (1927) 70 Utah 265, 259 P 921.

While states are really sovereign as to all matters which have not been granted to United States, **Constitution and laws of the latter are supreme law of land, and when they conflict with state laws, they are of paramount authority and obligation.** Ex parte Siebold (1880) 100 US 371, 25 L Ed 717.

Respectfully submitted on the 10th day of August, 1996.

Carson v. Turrish, 140 Minn. 445;
"The streets belong to the public for purposes of travel. The court has been averse to giving by its decisions an arbitrary right or a priority in right of use to one over another." **Dunnell, Minn. Dig. & Supp. Sec. 9013.** (ibid at 448).

M.S. § 168.33 Subd. 4. Record of cars not using highways. The **registrar** shall keep a record of all motor vehicles listed for taxation or registered, **other than those using public streets or highways, according to the name of the owner only.**

M.S. § 168.09. Registration; reregistration. Subdivision 1. **No motor vehicle,** except as is exempted by section 168.012, **shall use or be operated upon the public streets or highways of the state** in any calendar year until it is registered, as provided in this section, **and the motor vehicle tax and fees as provided in this chapter are paid** and the number plates issued for the motor vehicle are displayed on the vehicle. No motor vehicle, except as provided by section 168.012, which shall for any reason not be subject to taxation as provided in this chapter, shall use or be operated upon the public streets or highways of this state until it is registered, as provided in this section, and shall display number plates as required by the provisions of this chapter, except that the purchaser of a new motor vehicle may operate that motor vehicle without plates if the permit authorized by section 168.091 or 168.092 is displayed.

Minn. Stat. § 168.013 Rate of tax
Subdivision 1. Imposition. **Motor vehicles**, except as set forth in section 168.012, **using the public streets or highways in the state**, and park trailers taxed under subdivision 1j, **shall be taxed in lieu of all other taxes thereon,** except wheelage taxes, so-called, which may be imposed by any city as provided by law, and except gross earnings taxes paid by companies subject or made subject thereto, **and shall be privileged to use the public streets and highways**, on the basis and at the rate for each calendar year as hereinafter provided.

Minn. Stat. § 168.221 Commercial vehicles; taxes or fees
The registrar may promulgate such rules as may be necessary to accomplish the purpose of section 168.181, paragraph 6, as to the payment of partial taxes collectible under sections 168.181 to 168.231 and may waive any reciprocal agreement required thereunder with any state, district, territory, or possession or arrangements with foreign countries or provinces if under the laws of such state, district, territory, or possession or foreign country or province residents of Minnesota **are privileged to operate motor vehicles upon the streets and highways of such state**, district, territory, or possession or foreign country or province without the payment of taxes or fees of any character whatsoever.

CHAPTER 221 - MOTOR CARRIERS; PIPELINE CARRIERS

Minn. Stat. § 221.011. Definitions.
Subdivision 1. Scope. For the purposes of this chapter, the terms defined in this

section have the meanings given them.

Subd. 2. Department. "Department" means the **department of transportation.**

Subd. 3. Vehicle. "Vehicle" means a vehicle or combination of vehicles used upon the highways for the transportation of persons or property.

Subd. 5. Public highway. "Public highway" means every public street, alley, road, highway or thoroughfare of any kind, except waterways, open to public travel and use.

Subd. 6. Person. "Person" means any individual, firm, copartnership, cooperative, company, association and corporation, or their lessees, trustees, or receivers.

Subd. 16. For hire. "For hire" means for remuneration or compensation of any kind promised, paid, or given to or received by a person **for the transportation of persons or property on the highways**, and includes compensation obtained by a motor carrier indirectly, by subtraction from the purchase price or addition to the selling price of property transported, when the purchase or sale of the property is not a bona fide purchase or sale. The transportation of property by a person who purchases it immediately before transporting it, and sells it immediately after transporting it, is transportation for hire. **The lease or rental of a motor vehicle to a person for transportation of the person's property is transportation for hire** and not private carriage when the lessor, directly or indirectly, serves as driver or obtains or arranges for a driver under the terms of the motor vehicle lease. For hire does not include motor vehicle operations conducted by a private carrier.

Subd. 26. Private carrier. "Private carrier" means a person engaged in the transportation of property or passengers by motor vehicle when:

(a) the person transporting the property or passengers is engaged in a business other than transportation; and

(b) the transportation is within the scope of and furthers a primary business, other than transportation, of that person.

"Private carrier" does not include a person while engaged in transportation described in section 221.025.

Subd. 27. Commuter van. "Commuter van" means a motor vehicle used in a ridesharing arrangement and used principally to provide prearranged transportation of persons for a fee to or from their place of employment or to or from a transit stop authorized by a local transit authority:

(a) when the vehicle is operated by a person who does not drive the vehicle for that person's principal occupation but is driving it only to or from that person's principal place of employment or to or from a transit stop authorized by a local transit authority; or

(b) when the vehicle is operated for personal use at other times by an authorized driver.

Subd. 32. Special passenger carrier. "Special passenger carrier" means a person who holds out to the public to provide transportation of passengers for hire by motor vehicle over the public highways under the following conditions: (1) the service is provided in vehicles that are not limousines, (2) the vehicle has a seating capacity, excluding the driver, of more than six persons, (3) the service does not begin or end at an airport, and (4) the service is provided to definite, predetermined locations to which tickets are sold on an individual basis.

Subd. 34. Personal transportation service. "Personal transportation service" means service that:

(1) is not provided on a regular route;

(2) is provided in a personal transportation service vehicle as defined in

section 168.011, subdivision 36;
(3) is not metered for the purpose of determining fares;
(4) provides prearranged pickup of passengers;
(5) charges more than a taxicab fare for a comparable trip.

Minn. Stat. § 221.031. Rules for operation of carriers.
Subdivision 1. Powers, duties, reports, limitations. (a) This subdivision applies to motor carriers engaged in intrastate commerce.
(b) The commissioner shall prescribe rules for the operation of motor carriers, including their facilities; accounts; leasing of vehicles and drivers; service; safe operation of vehicles; equipment, parts, and accessories; hours of service of drivers; driver qualifications; accident reporting; identification of vehicles; installation of safety devices; inspection, repair, and maintenance; and proper automatic speed regulators if, in the opinion of the commissioner, there is a need for the rules.

M.S. § 221.031 Rules for operation of carriers
Subdivision 1. Powers, duties, reports, limitations. (a) This subdivision applies to motor carriers engaged in intrastate commerce.

(b) The commissioner shall prescribe rules for the operation of motor carriers, including their facilities; accounts; leasing of vehicles and drivers; service; safe operation of vehicles; equipment, parts, and accessories; hours of service of drivers; driver qualifications; accident reporting; identification of vehicles; installation of safety devices; inspection, repair, and maintenance; and proper automatic speed regulators if, in the opinion of the commissioner, there is a need for the rules.

M. S. § 221.031 Rules for operation of carriers
Subd. 3b. Passenger transportation; exemptions. (a) A person who transports passengers for hire in intrastate commerce, who is not made subject to the rules adopted in section 221.0314 by any other provision of this section, must comply with the rules for hours of **service of drivers while transporting employees of an employer** who is directly or indirectly paying the cost of the transportation.
(b) This subdivision does not apply to: * * *

(vi) that is special transportation service as defined in section 174.29, subdivision 1, when provided by a volunteer driver operating a private passenger vehicle as defined in section 169.01, subdivision 3a;

(vii) in a limousine the service of which is licensed by the commissioner under section 221.84; or

(viii) in a taxicab, if the fare for the transportation is determined by a meter inside the taxicab that measures the distance traveled and displays the fare accumulated.

M.S. § 221.031 Rules for operation of carriers
Subd. 6. Vehicle identification rule. (a) The following carriers shall display the carrier's name and address on the power unit of each vehicle:
(1) motor carriers, regardless of the weight of the vehicle;
(2) interstate and intrastate private carriers operating vehicles with a gross vehicle weight of more than 10,000 pounds; and
(3) vehicles providing transportation described in section 221.025 with a gross vehicle weight of more than 10,000 pounds except those providing transportation described in section 221.025, clauses (a), (c), and (d).
Vehicles described in clauses (2) and (3) that are operated by farmers or farm employees and have four or fewer axles are not required to comply with the vehicle identification rule of the commissioner.

(b) Vehicles subject to this subdivision must show the name or "doing business as" name of the carrier operating the vehicle and the community and abbreviation of the state in which the carrier maintains its principal office or in which the vehicle is customarily based. If the carrier operates a leased vehicle, it may show its name and the name of the lessor on the vehicle, if the lease relationship is clearly shown. If the name of a person other than the operating carrier appears on the vehicle, **the words "operated by" must immediately precede** the name of the carrier.

(c) The name and address must be in letters that contrast sharply in color with the background, be readily legible during daylight hours from a distance of 50 feet while the vehicle is stationary, and be maintained in a manner that retains the legibility of the markings. The name and address may be shown by use of a removable device if that device meets the identification and legibility requirements of this subdivision.

Chapter 8880 - LIMOUSINE SERVICE AND PERMIT REQUIREMENTS
Minn. Rules. 8880.0100. DEFINITIONS
Subpart 1. Scope. Unless the language or context clearly suggests a different meaning is intended, words, terms, and phrases used in this chapter have the meanings given them in this part.

Subp. 2. Bus. "Bus" has the meaning given it in Minnesota Statutes, section 169.01, subdivision 50.

Subp. 3. Commissioner. "Commissioner" means the commissioner of the Minnesota Department of Transportation.

Subp. 4. Conviction. "Conviction" has the meaning given it in Minnesota Statutes, section 171.01, subdivision 13.

Subp. 5. Criminal record. "Criminal record" means the conviction records of the Minnesota Bureau of Criminal Apprehension in which the last date of discharge from the criminal justice system is less than five years.

Subp. 6. Department. "Department" means the Minnesota Department of Transportation.

Subp. 7. Driver. "Driver" means **a person who drives or is in actual physical control of a limousine** providing limousine service.

Subp. 8. For hire. "For hire" has the meaning given it in Minnesota Statutes, section 221.011, subdivision 16.

Subp. 9. Limousine. "Limousine" means an unmarked luxury passenger automobile that is not a van or station wagon and has a seating capacity of not more than 12 persons, excluding the driver.

Subp. 10. Limousine operator. "Limousine operator" means a person who owns or leases and operates a limousine and who is subject to Minnesota Statutes, section 221.84, and this chapter. "Limousine operator" does not include a broker or other person who arranges for, but does not provide, limousine service.

Subp. 11. Limousine service. "Limousine service" means a service that:
A. is not provided on a regular route;
B. is for hire;
C. is provided in a limousine;
D. provides only prearranged pickup; and
E. charges more than a taxicab fare for a comparable trip.

"Limousine service" does not include service provided by a person who is a private

carrier as described in Minnesota Statutes, section 221.011, subdivision 26.

Subp. 13. Meter. "Meter" means a device that measures the **distance a motor vehicle travels**, records the time a motor vehicle travels or waits, **and shows the fare charged for the transportation of passengers.**

Subp. 14. Motor vehicle. "Motor vehicle" has the meaning given it in Minnesota Statutes, **section 169.01, subdivision 3.**

Subp. 15. Permit. "Permit" means the license issued to a limousine operator under this chapter.

Subp. 16. Person. "Person" has the meaning given it in Minnesota Statutes, section 221.011, subdivision 6.

Subp. 17. Pickup truck. "Pickup truck" has the meaning given it in Minnesota Statutes, **section 168.011, subdivision 29.**

Subp. 18. Political subdivision. "Political subdivision" means a state agency, a county, a city, or the Metropolitan Airports Commission.

Subp. 19. Prearranged pickup. "Prearranged pickup" means limousine transportation initiated at the request of a passenger or a passenger's representative.

Subp. 20. Public highway. "Public highway" has the meaning given it in Minnesota Statutes, section 221.011, subdivision 5.

Subp. 22. Station wagon. "Station wagon" means a **motor vehicle** that is not a van, **is designed primarily for the transportation of passengers**, and is commonly manufactured with storage space **for the transportation of property** with no barrier or separation between the passenger area and the storage area.

Subp. 23. Taxicab. "Taxicab" means a **motor vehicle**, other than a limousine or bus, **used for transporting passengers for compensation as determined by a meter**; or by a flat rate schedule, according to the distance traveled, the time elapsed, or number of passengers carried, irrespective of whether the transportation extends beyond the boundary lines of a city.

Subp. 26. Van. "Van" means a **motor vehicle** of box-like design that is manufactured, equipped, modified, or **converted as a passenger motor vehicle.**

Statute Authority: Minn. Stat. § 221.84 History: 18 SR 2220

CHAPTER 171 - DRIVERS' LICENSES AND TRAINING SCHOOLS
Minn. Stat. § 171.01. Definitions.

Subdivision 1. Scope. Unless the language or context clearly indicates that a different meaning is intended, the following words, terms, and phrases, for the purposes of this chapter, shall be given the meanings subjoined to them.

Subd. 2. Vehicle. Every device in, upon, or by which any person or property is or may be transported or drawn upon any highway, excepting devices moved by human power or used exclusively upon stationary rails or tracks.

Subd. 3. Motor vehicle. Every vehicle which is self-propelled and any vehicle propelled or drawn by a self-propelled vehicle, and not deriving its power from overhead wires except snowmobiles.

Subd. 4. Farm tractor. Every motor vehicle designed and used primarily as a farm implement for drawing plows, mowing machines and other implements of husbandry.

Subd. 5. Person. Every natural person, firm, copartnership, association, or corporation.

Subd. 6. Driver. Every **person,** who drives or is in actual physical control of a **motor vehicle.**

Subd. 14. License. "License" means any **operator's license** or any other license or permit **to operate a motor vehicle** issued or issuable under the laws of this state by the **commissioner of public safety** including:

(a) Any temporary license or instruction permit;

(b) **The privilege of any person to drive a motor vehicle** whether or not such person holds a valid license;

(c) Any nonresident's operating privilege as defined herein.

M.S. 171.015. Driver's license division.

Subdivision 1. Created; director. A division in the department of public safety to be known as the driver's license division is hereby created, under the supervision and control of a director. The commissioner may place the director's position in the unclassified service if the position meets the criteria established in section 43A.08, subdivision 1a. **The director shall be assigned the duties and responsibilities prescribed in this section.**

Subd. 2. Powers and duties transferred. All the powers and duties now vested in or imposed upon the department of transportation and the commissioner of transportation in regard to drivers' licensing and safety responsibility as prescribed by this chapter and chapters 169 and 170, are hereby transferred to, vested in, and imposed upon the commissioner of public safety. The duties and responsibilities of the department of transportation and the commissioner of transportation, in relation to such matters as heretofore constituted, are hereby abolished.

Subd. 3. Licensing chauffeurs and school bus drivers. The commissioner of public safety, with the approval of the governor, may transfer and assign to the driver's license division duties and responsibilities in relation to chauffeurs' licensing and school bus drivers' **licensing as vested in and imposed upon the division of motor vehicles.**

M.S. § 171.02. Licenses: types, endorsements, restrictions.

Subdivision 1. License required. No person, except those hereinafter expressly exempted, **shall drive any motor vehicle upon any street or highway in this state unless such person has a license** valid under the provisions of this chapter **for the type or class of vehicle being driven.**

Subd. 2. Driver's license classifications, endorsements, exemptions. **Drivers' licenses shall be classified according to the types of vehicles which may be driven by the holder of each type or class of license.** The commissioner may, as appropriate, subdivide the classes listed in this subdivision and issue licenses classified accordingly. No class of license shall be valid to operate a motorcycle, school bus, tank vehicle, double-trailer or triple-trailer combination, vehicle transporting hazardous materials, or bus, unless so endorsed.

There shall be four general classes of licenses as follows:

(a) Class C; valid for:

(1) all farm trucks operated by (i) the owner, (ii) an immediate family member of the owner, (iii) an employee of the owner not primarily employed to operate the farm truck, within 150 miles of the farm, or (iv) an employee of the owner employed during harvest to operate the farm truck for the first, continuous transportation of agricultural products from the production site or on-farm storage site to any

other location within 50 miles of that site;

(2) fire trucks and emergency fire equipment, whether or not in excess of 26,000 pounds gross vehicle weight, operated by a firefighter while on duty, or a tiller operator employed by a fire department who drives the rear portion of a midmount aerial ladder truck;

(3) recreational equipment as defined in section 168.011, subdivision 25, that is operated for personal use; and

(4) all single unit vehicles except vehicles with a gross vehicle weight of more than 26,000 pounds, vehicles designed to carry more than 15 passengers including the driver, and vehicles that carry hazardous materials.

The holder of a class C license may also tow vehicles if the combination of vehicles has a gross vehicle weight of 26,000 pounds or less.

M.S. § 171.043. Notice of persons under driver's license cancellation.

The commissioner of public safety shall develop a program under which the commissioner provides a monthly notice to local law enforcement agencies of the names and addresses of persons residing within the local agency's jurisdiction whose driver's licenses or driving privileges **have been canceled under section 171.04, subdivision 1, clause (8).** At the commissioner's discretion, the commissioner may adopt necessary procedures so that the information is current and accurate. **Data in the notice are private data on individuals and are available to law enforcement agencies.**

M.S. § 171.04. Persons not eligible for driver's licenses.

Subdivision 1. Persons not eligible. The department shall not issue a driver's license hereunder:

(8) To any person when the commissioner has good cause to believe that the **operation of a motor vehicle** on the highways by such person would be **inimical to public safety or welfare;**

M.S. § 171.25. Enforcement; delegation of authority.

The commissioner shall be charged with the responsibility for the **administration and execution of this chapter.** Any duties required of or powers conferred on the commissioner under the provisions of this chapter may be done and performed or exercised by any of duly authorized agents.

History.-- (2720-145k, 2720-146) 1939 c 401 s 26,27; 1986 c 444

M.S. § 171.28. Citation, drivers' license law.

Sections 171.01 to 171.28 may be cited as the drivers' license law.

History.-- 1939 c 401 s 30

CHAPTER 169 - TRAFFIC REGULATIONS

M.S. § 169.01. Definitions.

Subdivision 1. Terms. For the purposes of this chapter, the terms defined in this section shall have the meanings ascribed to them.

Subd. 2. Vehicle. "Vehicle" means every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, excepting devices used exclusively upon stationary rails or tracks.

Subd. 3. Motor vehicle. "Motor vehicle" means every vehicle which is self-propelled and every vehicle which is propelled by electric power obtained from overhead trolley wires. Motor vehicle does not include a vehicle moved solely by human power.

Subd. 3a. Passenger vehicle. "Passenger vehicle" means a passenger automobile defined in section 168.011, subdivision 7; a pickup truck defined in section 168.011, subdivision 29; a van defined in section 168.011, subdivision 28; and a self-propelled, recreational vehicle licensed under chapter 168 to use the public streets or highways. "Passenger vehicle" does not include a motorcycle, motorized bicycle, bus, school bus, a vehicle designed to operate exclusively on railroad tracks, a farm truck defined in section 168.011, subdivision 17, or special mobile equipment defined in section 168.011, subdivision 22.

M.S. § 169.01 Definitions

Subd 29. Street or highway. "Street or highway" means the entire width between boundary lines of any way or place when any part thereof is open to the use of the public, **as a matter of right**, for the purposes of vehicular traffic.

M.S. § 169.05 Private roadways

Nothing in this chapter shall be construed to prevent the owner of real property used by the public for purposes of vehicular travel by permission of the owner and not **as a matter of right**, from prohibiting such use, or from requiring other or different or additional conditions than those specified in this chapter, or otherwise regulating such use as may seem best to such owner.

M.S. § 169.13 Reckless or careless driving

(2) in a parking lot ordinarily used by or available to the public though not **as a matter of right**, and a driveway connecting such a parking lot with a street or highway.

Home Mut. Ins. Co. v. Snyder (App. Ct. 1984) 356 N.W.2d 780

Home Mutual contends that to qualify under subdivision 1 the vehicle must be used in the sense that trucking, bus or taxicab company vehicles are used **"in the business of"** transporting persons or property, that is, "for hire." Since Snyder is in the business of farming, the argument goes, the vehicle does not qualify.

Ford v. Stevens (S. Ct. 1968) 157 N.W.2d 510, 280 Minn. 16 Page 19

2. It is generally well established that a **taxicab company is a common carrier** of passengers and, as such, is bound to exercise the high degree of care for the safety of **passengers for hire** that is imposed on carriers generally with respect to their passengers. 37 Am. Jur., Motor Transportation, § 154; Annotation, 75 A.L.R. (2d) 988, 990; 14 Am. Jur. (2d) Carriers, § 918; 3A Dunnell, Dig. (3 ed.) § 1261. However, a taxicab carrier is not an insurer of the safety of its passengers. The duty of the cab driver was expressed by this court in McKellar v. The Yellow Cab Co. Inc. 148 Minn. 247, 250, 181 N.W. 348, 349:

MINN. DUNNELL DIGEST - MOTOR VEHICLES, 4.06 Taxies

A taxicab company that carries passengers for hire as a business is a common carrier and is required to exercise the highest degree of care for the safety of its passengers consistent with the proper conduct of its business. McKellar v. Yellow Cab Co. (1921) 148 Minn. 247, 181 N.W. 348; Ford v. Stevens (1968) 280 Minn. 16, 157 N.W.2d 510 (taxicab company whose driver stopped at front door of apartment building to pick up regular passenger was not liable for injuries sustained by passenger when taxicab was struck from rear by another vehicle just after passenger got into cab where there was no evidence of negligence on part of taxicab company). The general principles governing the liability of common carriers for injury to their passengers are applicable to common carriers by automobile, taxicab, and the like. Fairchild v. Fleming (1914) 125 Minn. 431, 147 N.W. 434 (recovery against carrier by automobile was sustained where chauffeur drove into bridge in making sharp turn while driving in excessive speed); McKellar v. Yellow

Cab Co. (1921) 148 Minn. 247, 181 N.W. 348 (recovery against carrier by taxicab sustained); Leban v. Range Rapid Transit Co. (1926) 167 Minn. 40, 208 N.W. 533 (plaintiff, while passenger on motorbus, the seats of which were reached only through doors on right side, was standing preparatory to a lighting at next stop); Hoppe v. Boulevard Transp. Co. (1927) 172 Minn. 516, 215 N.W. 852 (driving motorbus down ice-covered hill without chains or other safety devices to keep it from sliding); Rau v. Smuda (1928) 175 Minn. 328, 221 N.W. 232 (plaintiff was injured when taxicab in which she was riding as passenger collided with another vehicle); McMurray v. Twin City Motor Bus Co. (1929) 178 Minn. 561, 228 N.W. 154 (woman passenger in motorbus injured on alighting); Paulos v. Koelsch (1935) 195 Minn. 603, 263 N.W. 913 (where taxicab of common carrier stopped on street to let off passenger in place where it was likely that vehicle coming from behind would be unable to pass on left or to stop because of streetcar rails and icy ruts, it was for jury to determine whether driver of cab was negligent and whether that negligence proximately caused or contributed to injury received by plaintiff when car coming up from behind struck cab as plaintiff was in act of alighting); Finney v. Norwood (1936) 198 Minn. 554, 270 N.W. 592 (plaintiff fell into cab while entering it). A passenger of a taxicab has a right to assume that the carrier is familiar with the dangers to be apprehended and will use proper care, skill, and diligence to avoid them, and the passenger owes the driver no duty to make suggestions or give warnings; the failure of the passenger to protest against the manner in which the driver operates the taxicab or to give warning of the likelihood of a collision with another vehicle will not relieve the driver from liability for injury to the passenger resulting from the driver's negligence. McKellar v. Yellow Cab Co. (1921) 148 Minn. 247, 181 N.W. 348.

MINN. DUNNELL DIGEST - CRIMINAL LAW, Endnotes

147 State v. Layman, 376 N.W.2d 298 (Minn. Ct. App. 1985) **(penal statutes must be construed strictly; any reasonable doubt must interpreted in favor of defendant)**; State v. Corbin, 343 N.W.2d 874 (Minn. Ct. App. 1984) (penal statutes must be construed strictly; any reasonable doubt must be interpreted in favor of the defendant). See Wisniewski v. United States, 247 F.2d 292 (8th Cir. 1957) (criminal statute must be strictly construed in favor of accused; if regulation is promulgated pursuant to criminal statute, then it has force and effect of criminal statute and must be strictly construed in favor of accused; where federal criminal statute authorized secretary of treasury to promulgate regulations relative to traffic in containers of distilled liquor whenever necessary to protect revenue, defendant could not be convicted of violating regulation prohibiting reuse of marked liquor bottles for packaging distilled liquor and increasing original contents remaining in liquor bottle or in any other authorized container by addition of any substance on ground defendant only reused one marked liquor bottle in which he mixed two different brands of distilled liquor on both of which tax had been paid); Anderson v. Burnquist, 216 Minn. 49, 11 N.W.2d 776 (1943) (rules of construction of penal statutes apply to construction of provisions of motor-vehicle-transportation-for-hire Act, that terms common carrier and contract carrier shall not apply to certain persons, as statute is penal in its nature); State v. State Bd of Examiners, 189 Minn. 1, 250 N.W. 353 (1933) (court rejected argument that would lead to amendment rather than construction of statute); State v. DeGuile, 160 Minn. 191, 199 N.W. 569 (1924) (it is familiar rule of construction that statute regulating conduct which is not criminal or wrongful unless it has been made so by statute is to be strictly construed, and statute is not to be extended by implication to classes not clearly within its terms); State v. Finch, 37 Minn. 433, 34 N.W. 804 (1887) (statute is ineffectual to make criminal act otherwise innocent, unless it clearly appears that such act is within prohibition of statute, statute being reasonably construed for purpose of arriving at expressed intention of legislature; it is not enough that case be within apparent reason and policy of statute); State v. Small, 29 Minn. 216, 12 N.W. 703 (1882) (penal statutes are to be construed strictly; penal statutes shall not, by what may be thought their spirit and equity, be extended to offenses other than those which are

specifically and clearly described and provided for; the reason of the rule is that the law will not allow constructive offenses or arbitrary punishments); State v. Mims, 26 Minn. 191, 2 N.W. 492 (1879); United States v. Gideon, 1 Minn. 292 (Gil. 226) (1857).

Peterson v. Colonial Ins. of California (App. Ct. 1992) 493 N.W.2d 152

"The No-Fault Act does not define the business of transporting persons or property, but the intention is to place the exposure for injuries to persons occupying a vehicle used in a business on the insurer of the business's vehicles. Theodore J. Smetak et al., The Minnesota Motor Vehicle Insurance Manual, 119 (Minn. Inst. of Legal Educ. 1991). **Occupants of taxicabs and delivery trucks, for example, come within the first level of priority.** Id. In some cases, it is clear that a vehicle is being used in the business of transporting persons or property. See e.g., American Family Ins. v. Metropolitan Transit Comm'n, 424 N.W.2d 825 (Minn. App. 1988) (MTC bus is clearly in the business of transporting persons or property). In some cases, when the vehicle is not for hire, the decision is more difficult. See Home Mut. Ins. Co. v. Snyder, 356 N.W.2d 780 (Minn. App. 1984) (vehicle being used by potato farmer at time of accident to deliver his own potatoes to retailers was "being used in the business of transporting persons or property").

The fact that a vehicle is used in connection with a person's occupation is insufficient by itself to make this provision applicable. **The use to which the vehicle is being put must be the business of transporting persons or property.** This implies more than transporting a driver, or driver's companion. That is a tangential connection between use of the motor vehicle and a person's occupation. n1 Such a tangential connection is all that is present here."

Pegg v. City, 80 O.S. 367, 394

"The ordinance is to license and regulate the use of the streets of Columbus by persons who use vehicles thereon. The opinion of the circuit court, by Wilson, J., 10 O.C.C., N.S., 199 is to the effect that **construing the term "use" as a continued and repeated practice**, the ordinance applies to those who, in the above sense, use the vehicles described."

"The use of the public roads for **the conduct of business thereon**, whether by common or by private carriers, is an extraordinary use, and as such is enjoyed not as a right, but as a privilege." **Stephenson v. Binford, 53 F.2d 509. Stephenson v. Binford, 287 U.S. 251, 53 S.Ct. 181, at 184, 77 L.Ed. 288, 87 A.L.R. 721.**

"The statutory requirement that licenses be procured **for motor vehicles used upon the highways is based** on the servitude put on the highways by such use and **the advantage which the improved highways may afford the business in which the motor vehicle is employed."** Patterson v. Southern Ry. Co., 198 S.E. 364, 214 N.C. 38.

Chapter 171, Drivers' Licenses 171.181. Resident driving privilege.
Minn. Stat. § 171.01 Definitions
(b) **The privilege of any person to drive a motor vehicle** whether or not such person holds a valid license;
(c) Any nonresident's operating privilege as defined herein.
History.-- (2720-145) 1939 c 401 s 15; 1978 c 783 s 6

Minn. Stat. § 171.181 Resident driving privilege

Subdivision 1. Foreign state conviction. On revoking or suspending the driver license of a Minnesota resident as a result of a foreign state conviction, the commissioner shall notify that foreign state when the driver license is reinstated or a new license issued.

For the purposes of this section, "foreign state" means a state as defined in section 171.01, subdivision 15, excluding the state of Minnesota.
History.-- 1978 c 783 s 8; 1986 c 444

Minn. Stat. § 171.181 Resident driving privilege

Minn. Stat. § 171.182 Suspension; uninsured vehicles

Subd. 3. Conditions. The commissioner, upon receipt of a certified copy of a judgment, shall forthwith suspend the license or the nonresident's **operating privilege**, of the person against whom judgment was rendered if:

Minn. Stat. § 171.182 Suspension; uninsured vehicles

Subd. 4. Duration. A license or nonresident's **operating privilege** shall remain suspended and shall not be renewed, nor shall a license be thereafter issued to the person until every judgment is satisfied in full, or has expired, or to the extent hereinafter provided.

Minn. Stat. § 171.184 Installment payments

Subdivision 1. Authorization. A judgment debtor upon due notice to the judgment creditor may apply to the court in which the judgment was rendered for the privilege of paying the judgment in installments. The court, in its discretion and without prejudice to any other legal remedies which the judgment creditor may have, may so order and fix the amounts and times of payments of the installments.

Minn. Stat. § 171.184 Installment payments

Subd. 2. Stay of suspension. The commissioner shall not suspend a license or a nonresident's operating privilege if the judgment debtor gives proof of maintaining the reparation security required by section 65B.48, obtains an order or enters into a written agreement with the judgment creditor permitting the payment of the judgment in installments, and does not default on the payment of any installment.

Minn. Stat. § 171.184 Installment payments

Subd. 3. Termination of stay. If the judgment debtor fails to pay any installment as specified by an order or agreement, then upon notice of default, the commissioner shall forthwith suspend the license, or nonresident's **operating privilege**, of the judgment debtor until the judgment is satisfied.

Minn. Stat. § 171.186 Suspension; nonpayment of support

Subd. 3. Duration. **A license or operating privilege** must remain suspended and may not be reinstated, nor may a license be subsequently issued to the person, until the commissioner receives notice from the court, an administrative law judge, or public authority responsible for child support enforcement that the person is in compliance with all current orders of support or written payment agreements regarding both current support and arrearages. A fee may not be assessed for reinstatement of a license under this section.

Minn. Stat. § 171.20 Licenses must be surrendered

Subd. 2. Operation after revocation, suspension, cancellation, or disqualification. (a) A resident or nonresident whose **driver's license or right or privilege to operate a motor vehicle** in this state has been suspended, revoked, or canceled, shall not **operate a motor vehicle** in this state under license, permit, or registration certificate issued by any other jurisdiction or otherwise during the suspension, or after the revocation until Minnesota driving privileges are

reinstated.

Minn. Stat. § 171.20 Licenses must be surrendered

(b) A resident or nonresident who has been disqualified from holding a commercial driver's license or been denied the **privilege to operate a commercial motor vehicle** in this state shall not operate a commercial motor vehicle in this state under license, permit, or registration certificate issued by any other jurisdiction or otherwise during the disqualification period until Minnesota commercial driving privileges are reinstated.

(1) the person's driver's license or driving privilege has been suspended;

(3) the person disobeys the order by operating in this state any motor vehicle, the operation of which requires a driver's license, while the person's license or privilege is suspended.

(1) the person's driver's license or driving privilege has been revoked;

(3) the person disobeys the order by operating in this state any motor vehicle, the operation of which requires a driver's license, while the person's license or privilege is revoked.

(1) the person's driver's license or driving privilege has been canceled;

(3) the person disobeys the order by operating in this state any motor vehicle, the operation of which requires a driver's license, while the person's license or privilege is canceled.

(1) has been disqualified from holding a commercial driver's license or been denied the privilege to operate a commercial motor vehicle;

(3) disobeys the order by operating in this state a commercial motor vehicle while the person is disqualified to hold the license or privilege.

(1) the person's driver's license or driving privilege has been canceled or denied under section 171.04, subdivision 1, clause (8);

(3) the person disobeys the order by operating in this state any motor vehicle, the operation of which requires a driver's license, while the person's license or privilege is canceled or denied.

Subd. 2. 60-day waiting period. A limited license shall not be issued for a period of 60 days to an individual whose license or privilege has been revoked or suspended for commission of the following offenses:

(1) 15 days, to a person whose license or privilege has been revoked or suspended for a violation of section 169.121, 169.123, or a statute or ordinance from another state in conformity with either of those sections;

(2) 90 days, to a person who submitted to testing under section 169.123 if the person's license or privilege has been revoked or suspended for a second or subsequent violation of section 169.121, 169.123, or a statute or ordinance from another state in conformity with either of those sections;

(3) 180 days, to a person who refused testing under section 169.123 if the person's license or privilege has been revoked or suspended for a second or subsequent violation of section 169.121, 169.123, or a statute or ordinance from another state in conformity with either of those sections; or

(4) one year, to a person whose license or privilege has been revoked or suspended for committing manslaughter resulting from the **operation of a motor vehicle**, committing criminal vehicular homicide or injury under section 609.21, or violating a statute or ordinance from another state in conformity with either of those offenses.

Subd. 3. Conditions on issuance. The commissioner shall issue a limited license restricted to the vehicles whose operation is permitted only under a Class A, Class B, or Class CC license whenever a Class A, Class B, or Class CC license has been suspended under section 171.18, or revoked under section 171.17, for violation of the highway traffic regulation act committed in a private passenger motor vehicle. This subdivision shall not apply to any persons described in section 171.04, subdivision 1, clauses (4), (5), (6), (8), (9), and (11), or any person whose license or privilege has been suspended or revoked for a violation of section 169.121 or 169.123, or a statute or ordinance from another state in conformity with either of those sections.

Subd. 2. Pilot program. The commissioner shall establish a statewide pilot program for the use of an ignition interlock device by a person whose driver's license or driving privilege has been canceled and denied by the commissioner for an alcohol or controlled substance related incident. The commissioner shall conduct the program until December 31, 1995. The commissioner shall evaluate the program and shall report to the legislature by February 1, 1995, on whether changes in the program are necessary and whether the program should be permanent. No limited license shall be issued under this program after August 1, 1995.

Subd. 2. Cancellation for disqualifying and other offenses. Within ten days of receiving notice under section 631.40, subdivision 1a, or otherwise receiving notice for a nonresident driver, that a school bus driver has been convicted of a disqualifying offense, the commissioner shall permanently cancel the school bus driver's endorsement on the offender's driver's license and in the case of a nonresident, the driver's privilege to operate a school bus in Minnesota. A school bus driver whose endorsement or privilege to operate a school bus in Minnesota has been permanently canceled may not apply for reinstatement. Within ten days of receiving notice under section 631.40, subdivision 1a, or otherwise receiving notice for a nonresident driver, that a school bus driver has been convicted of a gross misdemeanor, or a violation of section 169.121, 169.129, or a similar statute or ordinance from another state, and within ten days of revoking a school bus driver's license under section 169.123, the commissioner shall cancel the school bus driver's endorsement on the offender's driver's license or the nonresident's privilege to operate a school bus in Minnesota for five years. After five years, a school bus driver may apply to the commissioner for reinstatement. Even after five years, cancellation of a school bus driver's endorsement or a nonresident's privilege to operate a school bus in Minnesota for a violation under section 169.121, 169.123, 169.129, or a similar statute or ordinance from another state, shall remain in effect until the driver provides proof of successful completion of an alcohol or controlled substance treatment program. For a first offense, proof of completion is required only if treatment was ordered as part of a chemical use assessment. Within ten days of receiving notice under section 631.40, subdivision 1a, or otherwise receiving notice for a nonresident driver, that a school bus driver has been convicted of a fourth moving violation in the last three years, the commissioner shall cancel the school bus driver's endorsement on the offender's driver's license or the nonresident's privilege to operate a school bus in Minnesota until one year has elapsed since the last conviction. A school bus driver who has no new convictions after one year may apply for reinstatement. Upon canceling the offender's school bus driver's endorsement, the commissioner shall immediately notify the licensed offender of the cancellation in writing, by depositing in the United States post office a notice addressed to the licensed offender at the licensed offender's last known address, with postage prepaid

thereon.

(2) The applicant has held such a license, but the same has been revoked by reason, in whole or in part, of a violation and if such revocation has not terminated, except that after the expiration of one year from the date the license was revoked, such person may make application for a new license if permitted by law. The licensing authority may refuse to issue a license to any such applicant if, after investigation, the licensing authority determines that it will not be safe to grant to such person the privilege of driving a motor vehicle on the public highways.

(10) INGELS V. RILEY, 5 Cal.2d 154, 159; 53 P.2d 939 (1936)
Generally speaking, the function of a property tax is to raise revenue. **Such a tax does not impose any condition nor does it place an restriction upon the use of the property taxed.** A privilege tax, although also passed to raise revenue, and as such is to be distinguished from the license tax or regulatory charge [the registration fee] imposed under the state's police powers, is imposed upon the right to exercise a privilege, and its payment is invariably made a condition precedent to the exercise of the privilege involved.

Minn. Stat. § 168.011. Definitions.
Subdivision 1. Words, terms, and phrases. Unless the language or context clearly indicates that a different meaning is intended, the following words, terms and phrases, for the purposes of this chapter, shall be given the meanings subjoined to them.
Subd. 2. Application for registration; listing for taxation. "Application for registration" shall have the same meaning as "listing for taxation," and when a motor vehicle is registered it is also listed.
Subd. 3. Highway. A "highway" is any public thoroughfare for vehicles, including streets in cities.
Subd. 4. Motor vehicle. (a) "Motor vehicle" means any self-propelled vehicle not operated exclusively upon railroad tracks and any vehicle propelled or drawn by a self-propelled vehicle and includes vehicles known as trackless trolleys which are propelled by electric power obtained from overhead trolley wires but not operated upon rails, except snowmobiles, manufactured homes, and park trailers.
(b) "Motor vehicle" also includes an all-terrain vehicle, as defined in section 84.92, subdivision 8, which (1) has at least four wheels, (2) is owned and operated by a physically disabled person, and (3) displays both physically disabled license plates and a physically disabled certificate issued under section 169.345, subdivision 3.
(c) Motor vehicle does not include an all-terrain vehicle as defined in section 84.92, subdivision 8; except (1) an all-terrain vehicle described in paragraph (b), or (2) an all-terrain vehicle licensed as a motor vehicle before August 1, 1985, in which case the owner may continue to license it as a motor vehicle until it is conveyed or otherwise transferred to another owner, is destroyed, or fails to comply with the registration and licensing requirements of this chapter.
Subd. 5. Owner. "Owner" means any person, firm, association, or corporation owning or renting a motor vehicle, or having the exclusive use thereof, under a lease or otherwise, for a period of greater than 30 days.
Subd. 5a. Registered owner. "Registered owner" means any person, firm, association, or corporation, other than a secured party, having title to a motor vehicle. If a passenger automobile, as defined in subdivision 7, is under lease for a term of 180 days or more, the lessee is deemed to be the registered owner, for purposes of registration only, provided that the application for renewal of the registration of a passenger automobile described in this subdivision shall be sent to the lessor.
Minn. Stat. § 168.011. Definitions.
Subd. 6. Tax, fee. "Tax" or "fee" means the annual tax imposed on motor

vehicles in lieu of all other taxes thereon, except wheelage taxes, so-called, which may be imposed by any city and except gross earnings taxes paid by companies subject or made subject thereto. Such annual tax shall be deemed both a property tax and a highway use tax and shall be on the basis of the calendar year.

Subd. 7. Passenger automobile. "Passenger automobile" means any motor vehicle designed and used for the carrying of not more than 15 persons including the driver. "Passenger automobile" does not include motorcycles, motor scooters, and buses described in subdivision 9, paragraph (a), clause (2). For purposes of taxation only, "passenger automobile" includes pickup trucks and vans, other than commuter vans as defined in section 168.126.

Minn. Stat. § 168.28. Vehicles subject to tax; exceptions.

Every motor vehicle (except those exempted in section 168.012, and except those which are being towed upon the streets and highways and which shall not be deemed to be using the streets and highways within the meaning of this section) **shall be deemed to be one using the public streets and highways and hence as such subject to taxation under this act if such motor vehicle has since April 23, 1921, used such public streets or highways, or shall actually use them**, or if it shall come into the possession of an owner other than as a manufacturer, dealer, warehouse operator, mortgagee or pledgee. New and unused motor vehicles in the possession of a dealer solely for the purpose of sale, and used or secondhand motor vehicles which have not theretofore used the public streets or highways of this state which are in the possession of a dealer solely for the purpose of sale and which are duly listed as herein provided, shall not be deemed to be vehicles using the public streets or highways. The driving or operating of a motor vehicle upon the public streets or highways of this state by a motor vehicle dealer or any employee of such motor vehicle dealer for demonstration purposes or for any purpose incident to the usual and customary conduct and operation of the business in which licensed under section 168.27 to engage, or solely for the purpose of moving it from points outside or within the state to the place of business or storage of a licensed dealer within the state or solely for the purpose of moving it from the place of business of a manufacturer, or licensed dealer within the state to the place of business or residence of a purchaser outside the state, shall not be deemed to be using the public streets or highways in the state within the meaning of this chapter or of the Constitution of the state of Minnesota, article XIV, and shall not be held to make the motor vehicle subject to taxation under this chapter as one using the public streets or highways, if during such driving or moving the dealer's plates herein provided for shall be duly displayed upon such vehicle. Any dealer or distributor may register a motor vehicle prior to its assessment or taxation as personal property, and pay the license fee and tax thereon for the full calendar year as one using the public streets and highways, and thereafter such vehicle shall be deemed to be one using the public streets and highways and shall not be subject to assessment or taxation as personal property during the calendar year for which it is so registered, whether or not such vehicle shall actually have used the streets or highways.

Minn. Stat. § 169.79. Vehicle registration.

No person shall operate, drive or park a motor vehicle on any highway unless the vehicle is registered in accordance with the laws of this state and has the number plates for the current year only, except as provided in section 168.12, subdivision 2f, **as assigned to it by the commissioner of public safety, conspicuously displayed thereon in a manner that the view of any plate is not obstructed.** If the vehicle is a semitrailer, the number plate displayed must be assigned to the registered owner and correlate to the certificate of title documentation on file with the department and shall not display a year indicator. If the vehicle is a motorcycle, motor scooter, motorized bicycle, motorcycle sidecar, trailer, semitrailer, or vehicle displaying a dealer plate, one plate shall be displayed on the rear thereof; if the vehicle is a truck-tractor, road-tractor or farm truck, as defined in section 168.011, subdivision 17, but

excluding from that definition semitrailers and trailers, one plate shall be displayed on the front thereof; if it is any other kind of motor vehicle, one plate shall be displayed on the front and one on the rear thereof. All plates shall be securely fastened so as to prevent them from swinging. The person driving the motor vehicle shall keep the plate legible and unobstructed and free from grease, dust, or other blurring material so that the lettering shall be plainly visible at all times. It is unlawful to cover any assigned letters and numbers or the name of the state of origin of a license plate with any material whatever, including any clear or colorless material that affects the plate's visibility or reflectivity. License plates issued to vehicles registered under section 168.017 must display the month of expiration in the lower left corner as viewed facing the plate and the year of expiration in the lower right corner as viewed facing the plate.

169.791. Criminal penalty for failure to produce proof of insurance.

Subdivision 1. Terms.(a) For purposes of this section and sections 169.792 to 169.799, the following terms have the meanings given.

(b) "Commissioner" means the commissioner of public safety.

(c) "District court administrator" or "court administrator" means the district court administrator or a deputy district court administrator of the district court that has jurisdiction of a violation of this section.

(d) "Insurance identification card" means a card issued by an obligor to an insured stating that security as required by section 65B.48 has been provided for the insured's vehicle.

(e) "Law enforcement agency" means the law enforcement agency that employed the peace officer who demanded proof of insurance under this section or section 169.792.

(f) "Peace officer" or "officer" means an employee of a political subdivision or state law enforcement agency, including the Minnesota state patrol, who is licensed by the Minnesota board of peace officer standards and training and is authorized to make arrests for violations of traffic laws.

(g) "Proof of insurance" means an insurance identification card, written statement, or insurance policy as defined by section 65B.14, subdivision 2.

(h) "Vehicle" means a motor vehicle as defined in section 65B.43, subdivision 2, or a motorcycle as defined in section 65B.43, subdivision 13.

(i) "Written statement" means a written statement by a licensed insurance agent stating the name and address of the insured, the vehicle identification number of the insured's vehicle, that a plan of reparation security as required by section 65B.48 has been provided for the insured's vehicle, and the dates of the coverage.

(j) The definitions in section 65B.43 apply to sections 169.792 to 169.799.

Subd. 2. Requirement for driver, whether or not owner. Every driver shall have in possession at all times when operating a vehicle and shall produce on demand of a peace officer proof of insurance in force at the time of the demand covering the vehicle being operated. If the driver does not produce the required proof of insurance upon the demand of a peace officer, the driver is guilty of a misdemeanor. A person is guilty of a gross misdemeanor who violates this section within ten years of the first of two prior convictions under this section, section 169.797, or a statute or ordinance in conformity with one of those sections. The same prosecuting authority who is responsible for prosecuting misdemeanor violations of this section is responsible for prosecuting gross misdemeanor violations of this section. A driver who is not the owner of the vehicle may not be convicted under this section unless the driver knew or had reason to know that the owner did not have proof of insurance required by this section, provided that the driver provides the officer with the name and address of the owner at the time of the demand or complies with subdivision 3.

Subd. 2a. Later production of proof by driver who is owner.A driver who is the owner of the vehicle may, within ten days after the demand, produce proof of insurance stating that security had been provided for the vehicle that was being operated at the time of the demand to the court administrator. The required proof

of insurance may be sent by mail by the driver as long as it is received within ten days. If a citation is issued, no person shall be convicted of violating this section if the court administrator receives the required proof of insurance within ten days of the issuance of the citation. If the charge is made other than by citation, no person shall be convicted of violating this section if the person presents the required proof of insurance at the person's first court appearance after the charge is made.

Subd. 3. Later production of information by driver who is not owner.If the driver is not the owner of the vehicle, the driver shall, within ten days of the officer's demand, provide the district court administrator with proof of insurance or the name and address of the owner. Upon receipt of the name and address of the owner, the district court administrator shall communicate the information to the law enforcement agency.

Subd. 4. Requirement for owner who is not driver.If the driver is not the owner of the vehicle, the officer may send or provide a notice to the owner of the vehicle requiring the owner to produce proof of insurance for the vehicle that was being operated at the time of the demand. Notice by mail is presumed to be received five days after mailing and shall be sent to the owner's current address or the address listed on the owner's driver's license. Within ten days after receipt of the notice, the owner shall produce the required proof of insurance to the place stated in the notice received by the owner. The required proof of insurance may be sent by mail by the owner as long as it is received within ten days. Any owner who fails to produce proof of insurance within ten days of an officer's request is guilty of a misdemeanor. The peace officer may mail the citation to the owner's current address or address stated on the owner's driver's license. It is an affirmative defense to a charge against the owner that the driver used the owner's vehicle without consent, if insurance would not have been required in the absence of the unauthorized use by the driver. It is not a defense that a person failed to notify the department of public safety of a change of name or address as required under section 171.11. The citation may be sent after the ten-day period.

Subd. 5. Exemptions.Buses or other commercial vehicles operated by the metropolitan council, commercial vehicles required to file proof of insurance pursuant to chapter 221, and school buses as defined in section 171.01, subdivision 21, are exempt from this section.

Subd. 6. Penalty.In addition to any sentence of imprisonment that the court may impose, the court shall impose a fine of not less than $ 200 nor more than the maximum fine applicable to misdemeanors upon conviction under this section. The court may allow community service in lieu of any fine imposed if the defendant is indigent. In addition to criminal penalties, a person convicted under this section is subject to revocation of a driver's license or permit to drive under section 169.792, subdivision 7, and to revocation of motor vehicle registration under section 169.792, subdivision 12.

Subd. 7. False information; penalty.Any person who knowingly provides false information to an officer or district court administrator under this section is guilty of a misdemeanor.

History.-- 1989 c 321 s 10; 1992 c 571 art 14 s 2,13; 1994 c 615 s 17; 1994 c 628 art 3 s 13

M.S. § 171.20 Licenses must be surrendered

Subd. 2. Operation after revocation, suspension, cancellation, or disqualification. **(a) A resident or nonresident whose driver's license or right or privilege to operate a motor vehicle in this state** has been suspended, revoked, or canceled, shall not operate a motor vehicle in this state under license, permit, or registration certificate issued by any other jurisdiction or otherwise during the suspension, or after the revocation until Minnesota driving privileges are reinstated.

Marvin JOHNSON, et al., Appellants
vs.
CITY OF PLYMOUTH, Respondent
No. 47651
SUPREME COURT OF MINNESOTA
263 N.W.2d 603
January 20, 1978
Rehearing Denied March 29, 1978

SYLLABUS

The construction by a city of curb and gutter along a city street does not give rise to a right to compensation in abutting property owners pursuant to Minn. Const. Aart. 1, § 13, except where it is shown that such construction deprives an owner of reasonably convenient and suitable access to his property from the street. On the facts of this case, access to appellants' property was not so impaired as to render respondent's action a compensable taking under the Minnesota Constitution.

COUNSEL

Miller, Neary & Zins and Joseph M. Goldberg and John (Jack) M. Miller, Minneapolis, for appellants.

LeFevere, Lefler, Pearson, O'Brien & Drawz, and Herbert P. Lefler, Minneapolis, for respondent.

JUDGES

Heard before ROGOSHESKE, TODD, and WAHL, JJ., and considered and decided by the court en banc.
AUTHOR: TODD

OPINION

TODD, Justice.

Marvin Johnson and Medicine Lake Bus Company, a Minnesota corporation, (appellants) own Lot 1 and Lot 2, Block 1, of the Glen Erie Addition in the city of Plymouth, Minnesota. The property is bounded on the north by 36th Avenue North and on the east by Kilmer Lane. A curb and gutter was installed on Kilmer Lane in 1969, regulating vehicular access to appellants' property. This action for damages was instituted against the city of Plymouth on the theory that the city had infringed appellants' property rights without awarding just compensation therefor. Pursuant to an agreement between the parties, the liability and damage issues were separated for trial. The court below considered the liability question only and held the city not liable. We affirm.

This matter was submitted to the trial court on a set of stipulated facts, the pertinent portions of which are reproduced below:

"1. Plaintiff, Medicine Lake Bus Company, is a Minnesota corporation of which Plaintiff, Marvin Johnson, is the principal owner.

"2. Defendant is a Minnesota municipal corporation.

"3. Plaintiffs are the sole owners of all the real property interest in Lots 1 and 2, Block 1, Glen Erie Addition, Hennepin County, Minnesota, otherwise known and numbered as 9625 36th Avenue North, Plymouth, Minnesota.
"4. Plaintiffs acquired the above-described property in 1962 and ever since

that date have continuously used the property for the commercial purpose of operating a bus company.

"5. Kilmer Lane and 36th Avenue North, at all times relevant herein, were and are public thoroughfares within the City of Plymouth.

"7. When Plaintiffs acquired said property in 1962 there were no curbs, gutters or sidewalks on either 36th Avenue North or Kilmer Lane and the buses owned by Plaintiffs had access to and in fact entered the property from both of said streets at any and all points without restriction.

"8. In 1967 curb and gutter was installed on 36th Avenue North pursuant to a street improvement proceeding which was petitioned for by Plaintiffs and others. In 1969 curb and gutter was installed on Kilmer Lane pursuant to a street improvement petition of various parties not including Plaintiffs. Plaintiff Marvin Johnson attended the public hearing on the improvement and expressed his opposition to it. Sidewalk was installed on 36th Avenue North adjacent to Plaintiffs' property in 1974. Plaintiffs first gained knowledge of the location of curbing and cuts on Kilmer Lane at the time of the actual installation of the curbing and curb cuts on Kilmer Lane. At the time of this installation, Plaintiff Marvin Johnson expressed to Defendant's consulting engineer in charge of the operation his opposition to the placement and width of the curb cuts, n1 stating that they were not adequate for his use.

"10. The installation of the curbs, gutters and sidewalk as referred to above [was] done pursuant to public improvement proceedings under Chapter 429, Minnesota Statutes, and such proceedings were in all respects legal and proper with reference to the requirements of Chapter 429. Assessments to pay for the cost of such improvements were levied against benefited properties, including the property of Plaintiffs, and were paid in full without appeal by all property owners so assessed. Plaintiffs' action in paying the assessment was not intended to constitute a waiver of claims arising out of the installation of curbing and curb cuts on Kilmer Lane, but rather was for the sole purpose of keeping his accounts with Defendant current.

"11. Within six months following the installation of the curb and gutter on Kilmer Lane, Plaintiffs placed bituminous material between the top of the curb line of Kilmer Lane and the surface of the street which permitted Plaintiffs' buses to enter onto and exit from their property at any point on the street rather than to and from driveways between the curb cuts.

"12. The Defendant has regularly maintained Kilmer Lane from 1969 to date including, but not limited to, snowplowing, street cleaning, etc.

"13. On or about October 1, 1974, the present city engineer of the Defendant was advised of the presence of such bituminous material and requested Plaintiffs to remove it. When Plaintiffs failed to do so, employees of the Defendant removed the material and restored the curb line.

"14. Plaintiffs claim that the installation of the curb and gutter and curb cuts by Defendant resulted in an impairment of access to their property without due process of law and seek to require Defendant to condemn such access by eminent domain proceedings or, in the alternative, to pay money damages.

"16. Without prejudice to Defendant to hereafter deny the nature and extent of damages to Plaintiffs' property, if any, it is agreed by the parties that for the limited purposes of determining the legal issues raised by the above stipulated facts, such damages by way of impairment of access may be regarded by the Court as substantial."

The trial court found that the construction by the city of the curb and gutter along Kilmer Lane was a valid exercise of the city's police power and therefore did not constitute a compensable taking of private property. The issue presented on appeal is whether the installation of curb and gutter so restricted the right of access to appellants' property as to require compensation under the Minnesota Constitution.

Minn. Const. Art. 1, § 13, provides that "**[private] property shall not be taken, destroyed or damaged for public use without just compensation** * * * ." This constitutional provision imposes a condition on the exercise of the state's inherent supremacy over private property rights. To be constitutionally compensable, the taking or damage need not occur in a strictly physical sense and can arise out of any interference by the state with the ownership, possession, enjoyment, or value of private property. See, Burger v. City of St. Paul, 241 Minn. 285, 293, 64 N.W.2d 73, 78 (1954); 2 Nichols, Eminent Domain, (3 ed.rev.) § § 6.1, 6.3.

It is well settled under Minnesota law that property owners have a right of "reasonably convenient and suitable access" to a public street or highway which abuts their property. **This right is in the nature of a property right.** See, Hendrickson v. State, 267 Minn. 436, 446, 127 N.W.2d 165, 173 (1964); State, by Mondale, v. Gannons Inc., 275 Minn. 14, 145 N.W.2d 321 (1966); State, by Mattson, v. Prow's Motel, Inc., 285 Minn. 1, 171 N.W.2d 83 (1969); Johnson Bros. Grocery v. State, Dept. of Highways, 304 Minn. 75, 229 N.W.2d 504 (1975). **Like other property rights**, the right of reasonable access can be infringed or "taken" by the state, giving the property owner a constitutional right to compensation.

Courts have long struggled with the notion of reasonable access and the compensable "taking" thereof. In so doing, they have adopted labels for the results they have reached which even today generate substantial linguistic and analytical confusion. Thus, if a governmental action has been found not to infringe the right of access, such action has been deemed a "reasonable" assertion of the police power and therefore noncompensable. n2 On the other hand, where courts have determined that official action has eliminated a right of access, the action has been characterized as a constitutional "taking." n3 The result has been the creation of an unfortunate rhetorical device: Reasonable assertions of the police power are not compensable but the "taking" of a reasonable right of access is compensable. There is an obvious difficulty, however, with any attempted application of this statement as a rule of law. The statement itself provides no principled means for distinguishing a due process "taking" from a noncompensable exercise of police powers.

It seems apparent to us that the implementation of any improvement project on a puble thoroughfare is undertaken in the interest of the public safety and welfare pursuant to inherent governmental police powers. At the same time, however, the exercise of such powers can operate to deny an abutting property owner the right of reasonable access which this court has frequently recognized. As we observed in Hendrickson v. State, 267 Minn. 436, 441,127 N.W.2d 165, 170:

" * * * While courts have assumed that designating a regulation an exercise of police power prevents compensation by eminent domain proceedings, for practical purposes this is simply a convenient way of describing which activities confer a right to damages and which do not. The prohibiting or limiting of access to a highway may well be an exercise of police power in the sense that it is designed to promote public safety, but at the same time it may cause compensable injury to an abutting owner."

The relationship between the state's police powers and the property owner's

right to compensation was discussed in more general terms in State ex rel. Lachtman v. Houghton, 134 Minn. 226, 230, 158 N.W. 1017, 1019 (1916):

" * * * The dividing line between restrictions which may be lawfully imposed under the police power and those which invade the rights secured to the property owner by the constitutional provisions that his property shall not be taken or damaged without compensation, nor he be deprived of it without due process of law, has never been distinctly marked out, and probably cannot be. As different cases arise, the courts determine from the facts and circumstances of the particular case whether it falls upon one side or the other of the line."

The court further stated:

"The police power of the state is very broad, but not without limits. Under it the legislative power may impose any reasonable restrictions and may make any reasonable regulations, in respect to the use which the owner may make of his property, which tend to promote the general well-being or to secure to others that use and enjoyment of their own property to which they are lawfully entitled; **but when the legislative power attempts to forbid the owner from making a use of his property which is not harmful to the public and does not interfere with the rightful use and enjoyment of their own property by others, it invades property rights secured to the owner by both the state and Federal Constitutions.** Only such use of property as may produce injurious consequences, or infringe the lawful rights of others, can be prohibited without violating the constitutional provisions that the owner shall not be deprived of his property without due process of law nor without compensation therefor first paid or secured." (134 Minn. at 237, 158 N.W. at 1021.)

In the present case, therefore, the operative question is not whether the city of Plymouth exercised its police powers in a reasonable fashion by upgrading Kilmer Lane but rather whether the city's admittedly legitimate police power action unduly restricted vehicular access to the subject property and thereby deprived appellants of their right of reasonable access.

What constitutes reasonable access must, of course, depend to some extent on the nature of the property under consideration. The existence of reasonable access is thus a question of fact to be determined in light of the circumstances peculiar to each case. See, Antonelli v. Planning Bd. of Waldwick, 77 N.J.Super. 119, 185 A.2d 431 (1962); Newman v. Mayor of City of Newport, 73 R.I. 385, 57 A.2d 173 (1948). The curb cuts actually constructed by the city of Plymouth to provide access to appellants' property appear to be generous and were quite plainly designed with the commercial use of appellants' property in mind. The north side of the property is served by a driveway and curb cut approximately 65 feet wide. On the Kilmer Lane side there are three curb cuts along the property's 275-foot boundary. One cut of approximately 22 feet serves the parking area behind the headquarters and maintenance building. A second cut 70 feet wide is aligned with the garage doors which face Kilmer Lane. The third cut is roughly 52 feet wide and serves the fuel pump area in the northeast corner of the property. In sum, we find that access to plaintiffs' property is available along approximately 144 feet of the 275-foot frontage on Kilmer Lane.

On these facts, we cannot agree that reasonable access to appellants' property has been denied by the city. At oral argument, counsel for appellants stated that the northern-most and the southern-most curb cuts on Kilmer Lane are too narrow to allow appellants' buses to enter from the routes most convenient for them. We note, however, that the imposition of even substantial inconvenience has not been considered tantamount to a denial of the right of reasonable access. n4 See Delta Rent-A-Car Systems, Inc. v. City of Beverly Hills, 1 Cal.App.3d 781, 82 Cal.Rptr. 318 (1969); Dumala v. State, 72 Misc.2d 687, 340 N.Y.S.2d 515 (Ct.Cl.

1973); see, also, Oregon Investment Co. v. Schrunk, 242 Or. 63, 408 P.2d 89 (1965); City of San Antonio v. Pigeonhole Parking of Texas, 158 Tex. 318,311 S.W.2d 218 (1958); Wood v. City of Richmond, 148 Va. 400, 138 S.E. 560 (1927); City of Miami v. Girtman,104 So.2d 62 (Fla.App. 1958). n5 We conclude, therefore, that the curb cuts linking appellants' property with Kilmer Lane did not so interfere with access to the property as to be deemed a "taking" of private property within the purview of Minn. Const. Art. 1, § 13.

As a final matter, our decision in The Alexander Co. v. City of Owatonna, 222 Minn. 312, 24 N.W.2d 244 (1946), was the subject of much discussion on this appeal and warrants brief comment. In that case, the owner of a commercial building in downtown Owatonna was remodeling the building to permit the operation of a Firestone automobile service store. The nature of the business required access for automobiles to and from the adjacent street, but at the time of the remodeling, the building was entirely without such access. The owner received permission from the city engineer to make a curb cut, but the city council rescinded this action and subsequently refused to allow the curb cut. Ultimately, this court upheld the action of the council and ruled that the property owner was not entitled to compensation on the theory that the welfare of pedestrians in the downtown area justified the exercise of the council's police power. In light of the foregoing discussion, we think the majority opinion in the Alexander case erroneously failed to consider whether the council's action operated to deny reasonable access to the property in question. The correct rule of law was stated in the dissenting opinion as follows (222 Minn. 312, 24 N.W.2d at 257):
Impt *

"While it is said that the right of access may be regulated by public authority, that does not mean, as the text cited shows [25 Am.Jur., Highways, § 154] that under the guise of regulation the right may be taken away from the owner. The power to regulate the right of access does not include that of taking it. * * *

"* * * If there is to be a denial of plaintiff's right of access, it should be the result of a compensated taking under condemnation and not an uncompensated one under the guise of a police regulation."

The judgment of the trial court is affirmed, and the decision in The Alexander Co. v. City of Owatonna, supra, to the extent it is inconsistent with the opinion expressed herein, is overruled.

Affirmed.

SHERAN, C.J., and PETERSON, J., took no part in the consideration or decision of this case.

OPINION FOOTNOTES

n1 A "curb cut" is a gap in the concrete curbing along a public street designed to allow a driveway to connect the property with the street.

n2 For example, in Gibson v. Commissioner of Highways, 287 Minn. 495, 500, 178 N.W.2d 727, 730 (1970), this court said: " * * * The right to control access is an exercise of the state's inherent police power which, if reasonably asserted, does not give a property owner the right to compensation * * * ."

n3 E.g., see, Johnson Bros. Grocery v. State, Dept. of Highways, 304 Minn. 75, 229 N.W.2d 504 (1975).

n4 Also, it is apparent that appellants had full knowledge of the city's intention to upgrade Kilmer Lane before construction was even begun. Yet, appellants appear to have made no effort to communicate their special needs to the

city engineer's office until the project design was complete and construction was well under way. See, stipulation of fact No. 8, supra.

n5 For a more general discussion of the right of access and governmental infringement thereof, see, 1A Antieau, Municipal Corporation Law, § § 9.42 to 9.44; 10 McQuillin, Municipal Corporations (1966 rev.vol.) § § 30.63 to 30.64. See, also, City of Phoenix v. Wade, 5 Ariz.App. 505, 428 P.2d 450(1967); Ben Lomond, Inc. v. City of Idaho Falls, 92 Idaho 595, 448 P.2d 209 (1968).

Minnetonka Elec. Co. v. Village of Golden Valley (S. Ct. 1966) 141 N.W.2d 138, 273 Minn. 301 Page 308

In the light of the foregoing statement, we think the contention that the state has not preempted the field is unsound despite the fact that the legislature has not specifically said so. It will be conceded that there is a split of authority among the states as to the power of a municipality to license where the state has already licensed. In this state the legislature has recognized that villages should be able to regulate matters of local concern. The quality of electrical installations is certainly within this category and the state has given broad powers of regulation. § § 326.31, subd. 4, and 326.32, subd. 1. **We think it clear, however, that the power to license is not an integral or necessary part of the power to regulate.** We therefore reach the conclusion that municipalities have no power to license electricians in this state. Other jurisdictions have reached the same conclusion under circumstances similar to those disclosed by the record here.

Minnetonka Elec. Co. v. Village of Golden Valley (S. Ct. 1966) 141 N.W.2d 138, 273 Minn. 301 Page 309

{*309} "* * * Even if it be assumed that the statutory provisions mentioned, and they probably do, vest in the city power to regulate the occupation or business of plumbing, **there is nothing contained in such provisions that can be said to authorize or empower the city to require such licenses**, for such power to regulate may be exercised though no license is required or granted. The power to license is not 'indispensable' to the power of the municipality to regulate the plumbing occupation or business."

M.S. § 297B.02 Tax imposed

§ 297B.02 Tax imposed

Subdivision 1. Rate.There is imposed an excise tax at the rate provided in chapter 297A on the purchase price of any motor vehicle purchased or acquired, either in or outside of the state of Minnesota, which is required to be registered under the laws of this state.

§ 297B.02 Tax imposed

The excise tax is also imposed on the purchase price of motor vehicles purchased or acquired on Indian reservations when the tribal council has entered into a sales tax on motor vehicles refund agreement with the state of Minnesota.

§ 297B.02 Tax imposed

Subd. 2. In lieu tax for older passenger automobiles. In lieu of the tax imposed in subdivision 1, there is imposed a tax of $ 10 on the purchase price of any passenger automobile described in section 297B.025, subdivision 1.

§ 297B.02 Tax imposed

Subd. 3. In lieu for collector vehicles. In lieu of the tax imposed in subdivision 1, there is imposed a tax of $ 90 on the purchase price of a passenger automobile or a fire truck described in section 297B.025, subdivision 2.

§ 297B.02 Tax imposed

History.-- 1971 c 853 s 2; Ex 1971 c 31 art 1 s 9; 3Sp1982 c 1 art 6 s 5; 1983 c 342 art 6 s 10; 1Sp1985 c 14 art 2 s 11; 1988 c 636 s 13,14; 1989 c 277 art 1 s 21; 1994 c 587 art 2 s 21; 1995 c 264 art 2 s 35

297B.01. Definitions.

Subdivision 1. Scope. The following words, terms and phrases when used in **Laws 1971, chapter 853,** shall have the meaning ascribed to them in this section except where the context clearly indicates a different meaning.

Subd. 2. Person. "Person" includes any individual, firm, partnership, joint adventure, association, corporation, estate, business trust, receiver, or any other group or combination acting as a unit and the plural as well as the singular number.

Subd. 3. Motor vehicle registrar. "Motor vehicle registrar" shall mean the registrar of motor vehicles who is the officer in charge of the motor vehicle division, department of public safety, of this state and who shall act as the agent of the commissioner of revenue in administering the provisions of this chapter.

Subd. 4. Vehicle. "Vehicle" shall include every device in, upon, or by which any person or property may be transported or drawn upon a public highway, except devices moved by human power or animal power or used exclusively upon stationary rails or tracks.

Subd. 5. Motor vehicle. "Motor vehicle" means any self-propelled vehicle not operated exclusively upon railroad tracks and any vehicle propelled or drawn by a self-propelled vehicle for which registration is required by chapter 168. Motor vehicle includes vehicles known as trackless trolleys which are propelled by electric power obtained from overhead trolley wires but not operated upon rails and motor vehicles that are purchased on Indian reservations where the tribal council has entered into a sales tax on motor vehicles refund agreement with the state of Minnesota. Motor vehicle does not include snowmobiles or manufactured homes.

Subd. 6. Use. "Use" shall mean the exercise by any person of any right or power over a motor vehicle incident to the ownership or possession of such a vehicle, except that it shall not include the sale or holding for sale of such a vehicle in the regular course of business. The term shall not include motor vehicles rented or leased.

F. R. Mudeking
vs.
W. R. PARR
Nos. 16,270 - (30)
SUPREME COURT OF MINNESOTA
123 N.W. 408, 109 Minn. 147

November 26, 1909

F. R. Mudeking having been arrested and imprisoned for an alleged violation of chapter 248, Laws 1909, obtained from the district court for Winona county a writ of habeas corpus directed to the sheriff of that county, on the ground that his imprisonment was unlawful and that chapter 248 was unconstitutional. The matter was heard before Snow, J., who ordered the release of relator. From that order, defendant appealed. Affirmed.

SYLLABUS

Act Unconstitutional -- Class Legislation.

Chapter 248, Laws 1909, entitled "An act to tax the occupation of and to license hawkers, peddlers and transient merchants, and defining said occupations," is unconstitutional as a police regulation, being class legislation, and is prohibited by sections 33 and 34, article 4, of the constitution.

Act Unconstitutional -- Unequal Taxation.

The act is also unconstitutional as a tax measure, in that the tax imposed on the occupation of peddling does not fall equally and apply uniformly on all members of the class, as required by the amendment to article 9 of the constitution.

COUNSEL

George T. Simpson, Attorney General, Earl Simpson, County Attorney, O'Brien & Stone and Young & Stone, for appellant.

Webber & Lees, for respondent.

A. J. Daley, by consent, filed a brief in favor of relator.

AUTHOR: LEWIS

OPINION

{*147} LEWIS, J.

Relator, having been arrested for violating the provisions of chapter 248, p. 293, Laws 1909, sued out a writ of habeas corpus, alleging that his imprisonment was unlawful for the reason that the law was unconstitutional.

Section 1 defines hawkers and peddlers as follows: "Every person traveling from house to house for the purpose of offering for sale {*148} any article of merchandise, either for immediate or future delivery or according to sample is hereby declared to be a hawker and peddler." The same section defines a transient merchant to be a person, corporation, or copartnership exposing and offering for sale at retail in any city or village, goods, wares, and merchandise, unless the carrying on of such business is in pursuance of an intention to maintain and carry on the same permanently.

Section 2 provides how a license may be taken out by hawkers and peddlers, and establishes the rate to be paid upon the basis of $50 for a wagon or other vehicle drawn by two or more horses, or other beasts of burden, or propelled by any mechanical power, $25 for a wagon or other vehicle drawn by one horse or other beast of burden, and $10 when carrying on the business by means of a push or hand cart, or on foot by means of pack, basket, or other way of carrying merchandise on foot.

Section 4 provides that a transient merchant is required to pay into the state treasury the sum of $150 upon application for a license, and by section 5 no person, copartnership, firm, or corporation shall carry on the business of transient merchant in more than one place in this state at the same time.

Section 6 reads: "Nothing in this act contained shall be construed as prohibiting or in any way limiting or interfering with the right of any city, village or other municipal corporation or governmental subdivision of the state to regulate or license the carrying on within such municipality of the business of hawker or peddler or transient merchant in any case where authority has been or shall hereafter be conferred upon it so to do, but the requirements of this act shall be in addition thereto."

Section 9: "The provisions of this act shall not apply to persons engaged in interstate or foreign commerce, nor to the sale of articles which at the time of such sale are the subjects of interstate or foreign commerce, nor to the salesmen of wholesale merchants or manufacturers in selling to retail merchants, nor to the solicitation by permanent merchants or their employees of orders from customers

resident in the same or the adjoining county as such permanent merchant, nor to any sale made by virtue of any judgment, order or {*149} process of any court or upon the foreclosure of any mortgage or pursuant to any law of this state or of the United States, or in the enforcement of any contract right or lien, nor to the sale by any individual of any article grown [or] produced by him."

Section 10: "No license under this act shall be required of any person for carrying on his business or calling in any city of this state having a population of 50,000, or over, when he has been duly licensed thereto by such city."

At the time of the passage of this act it had been held in State v. Wagener, 69 Minn. 206, 72 N.W. 67, 38 L.R.A. 677, 65 Am. St. 565, that the distinction attempted to be made by chapter 107, p. 192, Laws 1897, between peddling by any manufacturer, mechanic, nurseryman, farmer, and butcher, and the peddling of the same article by the purchaser from such parties, did not constitute a proper basis for classification. It had also been decided in the case of City of St. Paul v. Briggs, 85 Minn. 290, 88 N.W. 984, 89 Am. St. 554, that the common council of the city of St. Paul had no authority to prevent the agent of a wholesale dealer from selling and delivering goods to dealers only. And in State v. Jensen, 93 Minn. 88, 100 N.W. 644, it had been decided that an ordinance of the city of Minneapolis, requiring peddlers to take out a license, applied to farmers and producers growing and selling their own produce, as well as to peddlers who purchased their stock.

The constitutional amendment (section 18, art. 1) had also been adopted. It reads: "Any person may sell or peddle the products of the farm or garden occupied and cultivated by him without obtaining a license therefor."

Chapter 248, Laws 1909, was doubtless drawn with reference to these decisions and the amendment, and, while objections heretofore under consideration may have been cured, new features were introduced, which present a new phase of the subject of classification. The subject-matter of the act is divided into three heads: Hawkers and peddlers, transient merchants, and permanent merchants. As stated in City of St. Paul v. Briggs, supra, a peddler is one who carries his merchandise with him, traveling from place to place and from house to house, exposing his good {*150} for sale and selling them. The 1909 act declares a person to be a hawker or peddler who travels from house to house for the purpose of selling by sample, or for future delivery. An actual sale is not necessary. It is not clear, from the language of section 1, that it was intended to do away with the itinerant element of the peddling business, and to make the law apply to all persons who take orders from house to house, including merchants who have fixed places of business. If no change was made in this respect, then section 1 defines a hawker or peddler as follows: (1) He has no fixed place of trade, but travels from place to place and from house to house. (2) He is a hawker or peddler, although he sells by sample, and does not carry his wares with him. (3) He is a hawker and peddler, even if he does not make an immediate sale, but enters into an executory contract for a future sale for future delivery. Accepting this construction, is the classification proper?

Permanent merchants are those who have a permanent place of business, and transient merchants are transitory or temporary traders who have no intention of locating permanently. This distinction is marked, and is determined by the manner in which the selling of goods is conducted. It is a matter of common knowledge that the practice of opening a temporary place of business for the purpose of selling goods under the excitement created by extraordinary advertising naturally tends to induce the ignorant and unwary to purchase goods of a questionable character and at exorbitant prices. That there should be some reasonable regulation of this sort of traffic has now become well recognized, and laws to that effect have been adopted in many of the states. The act of 1909 expressly prohibits transient merchants from conducting business in any village or city in the state; but there are no restrictions against locating and selling outside the corporate limits of such municipalities. A transient merchant may locate in the country, or adjacent to a

village or city, and without a license sell his goods in any quarter of the state, save cities and villages, by sample, or by taking orders for future delivery. He is not a hawker or peddler, because he has a fixed place of dealing, from which he conducts operations. So considered, the act discriminates against permanent merchants, who are {*151} restricted in the solicitation of orders from their customers to the territory designated.

But if we take the other view, and hold that section 1 does away with that well-established and peculiar characteristic of peddlers, viz., of having no fixed place of business, and that all merchants, transient and permanent, who solicit orders for future delivery, by sample or otherwise, are included within the term "hawkers and peddlers," then we are met with the objection that transient and itinerant merchants are discriminated against in favor of permanent merchants, because the latter are at liberty to pursue that method of extending business within certain limits without a license, whereas the former are absolutely prohibited. Undoubtedly the legislature may legitimately make a distinction between dealers who have no fixed place of business and those merchants who become identified with some particular locality as permanent citizens, and we are not prepared to condemn this act simply because it discriminates in favor of permanent merchants, even by granting them limited privileges to "peddle." However that may be, there should be no discrimination between permanent merchants.

Any interference with the competition which naturally exists among merchants in their effort to secure business is a doubtful policy, unless made necessary in the exercise of police control. In this instance the regulation of the method of soliciting business seems not to be the primary object. The state is divided into many divisions, in each of which the merchants located therein are at liberty to solicit trade for future delivery. But the doors are closed to all other merchants of the state. The basis of classification is residence within a prescribed division of the state, the immediate effect of which is to protect such resident merchants from competition from the outside, or to deny them the privilege of entering more promising territory than their own and adjacent counties. The object of this class of legislation is to regulate the business of selling goods from house to house -- peddling, as it is commonly known -- so that it will not become a public nuisance. Does this scheme tend to accomplish that result? To use the illustration employed at the argument: Is it any less a nuisance to the householders of Winona county, {*152} and adjoining counties, to be solicited for orders by a Winona house furnishing company, than to be similarly solicited by a Minneapolis furnishing company?

One of the fundamental rules controlling legislation of this character is that it must act uniformly upon all within the class. Nichols v. Walter, 37 Minn. 264, 270, 33 N.W. 800; Lavallee v. St. Paul, M. & M. Ry. Co., 40 Minn. 249, 252, 41 N.W. 974; State v. Ritt, 76 Minn. 531, 534, 79 N.W. 535; Murray v. Board of Commrs. of Ramsey County, 81 Minn. 359, 84 N.W. 103, 51 L.R.A. 828, 83 Am. St. 379; State v. Justus, 90 Minn. 474, 97 N.W. 124. This law does not act uniformly upon all merchants who solicit orders for future delivery. The division into counties is arbitrary. Merchants of one county may have a great advantage over those of another county, according to the advantages of location.

By the amendment (section 18, art. 1) farmers and gardeners are privileged to sell the products of the farms and gardens occupied by them. The provision in section 9 of the act under consideration exempts persons who sell articles grown or produced by them. The act is broader than the constitution. The exemption is conferred, not only on those who grow "produce" on farms and gardens, but also on those who produce any article. The natural meaning of this is that any article made or produced by any person may be sold without a license. This question was directly passed on in State v. Wagener, supra, and it was held to be an improper classification.

Thus far we have considered the license feature only of this act. It is entitled "An Act to tax the occupation of and to license hawkers, peddlers and transient merchants, and defining said occupations." While removing some of the former restrictions on the methods of taxation, the amendment to article 9 of the constitution (chapter 168, p. 216, Laws 1905) specifically prescribes that taxes shall be uniform upon the same class of subjects. The legislature is not required to provide for the taxation of occupations; but if such a course is pursued, and any occupation is selected for that purpose, then the burden must fall equally upon the members of the class. Mutual Benefit Life Ins. Co. v. County of Martin, 104 Minn. 179, 116 N.W. 572. The occupation or class designated by the act is that of {*153} peddling. Some peddlers are taxed, while others are exempt, and for the reasons above stated the law cannot be sustained as a tax measure, any more than as a police regulation.

This decision has been reached without regard to the provisions of section 10. Not being able to agree as to the scope and effect of that provision, and a consideration of the questions therein involved not being necessary to a decision, we refrain from a discussion thereof.

Affirmed.

O'BRIEN, J., being of counsel, took no part.

Dohs v. Holm (S. Ct. 1922) 189 N.W. 418, 152 Minn. 529 Page 531

By an amendment to the state Constitution adopted in 1920 and known as the **Babcock Amendment**, the legislature was authorized to provide for the taxation of motor vehicles, using the public streets and highways of the state, on a more onerous basis than other personal property. Pursuant to such authorization, **chapter 461, p. {*531} 708, Laws 1921**, was enacted. By virtue of this act, the respondent required appellant to pay a tax upon his automobile.

State v. Peterson (S. Ct. 1924) 198 N.W. 1011, 159 Minn. 269 Page 271

"Every motor vehicle shall be deemed to be one using the public streets and highways and hence as such subject to taxation under this act, if such motor vehicle has, prior to the date set for registration {*271} thereof, used such public streets or highways, or shall actually use them, or if it shall come into the possession of an owner other than as a manufacturer, dealer, warehouseman, mortgagee or pledgee."

State v. Peterson (S. Ct. 1924) 198 N.W. 1011, 159 Minn. 269 Page 271

Taxation of a certain class of property is one of the subjects covered by the Babcock amendment. The tax authorized is in lieu of all other taxes and is based on the value of the property as ascertained by the secretary of state, by whom the tax is computed. Fairley v. City of Duluth, 150 Minn. 374, 185 N.W. 390; Dohs v. Holm, 152 Minn. 529, 189 N.W. 418.

State v. Peterson (S. Ct. 1924) 198 N.W. 1011, 159 Minn. 269 Page 271

For the purpose of taxation, the legislature has created two classes of motor vehicles, placing those using the public highways in the first class, and all others in the second class. Those in the first class are taxed on the basis fixed by section 3 of the act; those in the second, on the same basis as personal property in general. Section 20 of the act provides for the collection of the tax by a proceeding in the district court upon notice to the taxpayer, who may answer and defend.

State v. Peterson (S. Ct. 1924) 198 N.W. 1011, 159 Minn. 269 Page 271

Neither the Constitution nor the act contemplates a privilege tax. The right to use the public highways is not taxed. **The owner's property right in a motor vehicle is taxed.** If respondent's contention is sustained, motor vehicles are shifted from one class to the other according to the use to which they are put. If driven on the public highways, they are taxable under the 1921 act; if not, they are taxable under chapter 11, G.S. 1913.

Ramaley v. City of St. Paul (S. Ct. 1948) 33 N.W.2d 19, 226 Minn. 406 Page 409
The distinction between an occupation tax upon a business and a police power license fee is that the former is exacted by reason of the fact that the business is carried on, and the latter is exacted as a condition precedent to the right or privilege to carry it on. In the former case, the person may rightfully commence and carry on the business without paying the tax, and in the latter he cannot do so without paying the license fee. Adler v. Whitbeck, 44 Ohio St. 539, 9 N.E. 672; see, 4 Cooley (4 ed.) Taxation, § 1784. Both as to form and substance, the ordinance indicates an exercise of the taxing power for the primary purpose of revenue.

Ramaley v. City of St. Paul (S. Ct. 1948) 33 N.W.2d 19, 226 Minn. 406 Page 409
1-2. It is clear that the city of St. Paul is here possessed of two separate and distinct powers, namely, the police power for the regulation and licensing of the liquor traffic and the power of taxation. The latter power arises from section 201 of the St. Paul city charter, and pursuant thereto the occupation tax ordinance was enacted. n2 This ordinance by its express words purports to impose a tax burden upon any liquor store. Its language indicates a revenue purpose. In the light of this language, we start with the same presumption that applies to a statute, namely, that the lawmaking body does not intend a result that is illegal. Where a municipal ordinance is adopted which would be lawful if intended for one purpose and unlawful if for another, the presumption is that a lawful purpose was intended, unless the contrary clearly appears. In re Diehl, 8 Cal. App. 51, 96 P. 98; Schmidt v. Indianapolis, 168 Ind. 631, 80 N.E. 632, 14 L.R.A.(N.S.) 787, 120 A.S.R. 385; 38 Am. Jur., Municipal Corporations, § 323; see, Governmental Research Bureau, Inc. v. Borgen, 224 Minn. 313, 28 N.W.2d 760; M.S.A. 645.17(3). {*409} Here, there is nothing to suggest a purpose contrary to the lawful one of taxation for revenue. Nothing suggests an exercise of the police power for the licensing or regulation of the liquor business. The ordinance establishes no standards of conduct or character for those engaged therein. Payment of the occupation tax confers no right or privilege to engage in the liquor traffic, and it neither enlarges nor changes any privilege already possessed. Payment is not a condition precedent to the right to do business. Failure to pay the tax, unlike a failure to pay a license fee imposed under the police power, does not make it unlawful to continue in the business. 4 Dillon (5 ed.) Municipal Corporations, § 1408. The only consequence of nonpayment is a ten percent penalty. It is characteristic of a true occupation tax that it may be imposed on the doing or carrying on of a certain business irrespective of whether the business is lawfully conducted or whether it can be or is lawfully licensed. Adler v. Whitbeck, 44 Ohio St. 539, 9 N.E. 672; Youngblood v. Sexton, 32 Mich. 406, 20 Am. R. 654. In other words, as here, there is no relation between the payment or nonpayment of the tax and the acquirement, possession, or retention of the privilege to engage in the business. Here, the privilege or right to operate could be acquired only by payment of a license fee under an entirely different ordinance. Impt **The distinction between an occupation tax upon a business and a police power license fee is that the former is exacted by reason of the fact that the business is carried on, and the latter is exacted as a condition precedent to the right or privilege to carry it on. In the former case,**

the person may rightfully commence and carry on the business without paying the tax, and in the latter he cannot do so without paying the license fee. Adler v. Whitbeck, 44 Ohio St. 539, 9 N.E. 672; see, 4 Cooley (4 ed.) Taxation, § 1784. Both as to form and substance, the ordinance indicates an exercise of the taxing power for the primary purpose of revenue.

Ramaley v. City of St. Paul (S. Ct. 1948) 33 N.W.2d 19, 226 Minn. 406 Page 411

{*411} 3. The occupation tax ordinance is clearly an exercise of the power of taxation under the St. Paul city charter and is a valid imposition upon plaintiffs' business unless § 340.11, subd. 12(d), which limits the maximum license fee to $ 250, also applies as a limitation upon the levy of an occupation tax. If § 340.11, subd. 12(d), is a limitation upon the taxing power, it would control, in that Minn. Const. art. 4, § 36, expressly preserves the right of the legislature to enact general laws which are paramount to home rule charters. Monaghan v. Armatage, 218 Minn. 108, 15 N.W.2d 241. **The statute specifies a maximum license fee of $ 250. Although the term "license fee" is usually applied in connection with an exercise of the police power, it is at times used to describe a tax or charge for revenue purposes.** It is apparent, however, that the phrase "maximum license fee," in the light of the statute as a whole, is used as part of a police power regulation and was not intended to apply as a limitation upon the taxing power. In fact, no reference is made to taxation. The entire statute, with all its related sections, is classified under police power regulations which are obviously designed for the primary purpose of regulating the liquor traffic. A maximum license fee of $ 250 for a city of the first class is, as to amount, not unreasonable with regard to the cost of police supervision. A charge or fee to defray the cost of police power regulation need not be so restricted in amount as to eliminate a reasonable revenue which is purely incidental to the issuance of a license. Crescent Oil Co. v. City of Minneapolis, 177 Minn. 539, 225 N.W. 904; 4 Dunnell, Dig. & Supp. § 6800. In protecting the public welfare, the nature of the business may justify, purely from a police power standpoint, a license fee large enough to operate as a restraint upon the number of persons who might otherwise engage therein. 4 Dunnell, Dig. & Supp. § 6800. Significantly, the "off sale" license fee is substantially lower than that prescribed for "on sale" dealers, which indicates that the lower limit was chosen because of the lesser police problems presented by the "off sale" business as compared to that of the "on sale." The language of the statute, as well as the amount of the {*412} license fee, is consistent with and indicative of a police power purpose, with revenue a purely incidental matter.

CONSTITUTIONAL LAW, 4.04 --Power to license occupations

The legislature may make any business requiring police regulation pay the expense of regulating and controlling it, and this may be done by exacting license or inspection fees. The amount of the fees is, within reasonable limits, for the legislature to decide. 542 **A license fee under the police power may not be imposed for revenue purposes,** but it is not fatal that such license fee may incidentally yield some return in excess of the amount necessary to reimburse the city for its police regulatory service. 543 The power to regulate and license is not a power to license for purposes of revenue and thus to tax, but unless the amount is manifestly unreasonable, in view of its purpose as a regulation, the court will not adjudge it a tax. 544 Inspection fees must be reasonable in amount and designed to cover the expenses of the inspection and not to raise revenue. A law will not be declared unconstitutional on account of the amount of an inspection fee unless the amount is so large as to show bad faith in the law. Courts will not interfere immediately upon it being made to appear that the amount collected is beyond what is needed for inspection expenses, because of the presumption that the legislature will reduce the fee to a proper amount. 545 The service for which a city may be reimbursed by a license fee must be reasonably related to the police power function of inspection, supervision, and regulation. 546

CONSTITUTIONAL LAW, 7.13 Taxation

The rule governing economic regulation has been applied to determine if a tax is a violation of due process; due process demands only that (1) the act serve to promote a public purpose, (2) it is not an unreasonable, arbitrary, or capricious interference, and (3) the means chosen bear a rational relation to the public purpose sought to be served. 1302 Due process of law does not require that all forms of property be assessed by the same method. 1303 An excessive assessment, however, may be so arbitrary as to be a denial of due process. 1304

LICENSING EMPLOYMENTS, 1.02 Constitutionality; validity

License charges may be imposed for regulation, revenue, or both. Wiggins Ferry Co v. City of St Louis, 107 U.S. 365 (1883).

MOTOR VEHICLES, 11.09 Parking violations

A city has the authority to regulate parking, but not to tax parking. It has the power to purchase parking meters to be paid for only from receipts of the meters. 1180 Hendricks v. City of Minneapolis (1940) 207 Minn. 151, 290 N.W. 428. A fee of five cents for parking for a limited time is not a tax on parking but a valid parking regulation in the absence of a showing that the receipts would continuously and by a substantial amount exceed the cost of parking meters, maintenance, and regulation. Hendricks v. City of Minneapolis (1940) 207 Minn. 151, 290 N.W. 428.

MUNICIPAL CORPORATIONS, 5.02 License fees

A power to license is not a power to tax, but the fact that a municipality derives revenue incidentally from a reasonable exercise of the police power in regulating a business is no objection to an ordinance. Unless a license fee is manifestly unreasonable, in view of its purpose as a regulation, a court will not adjudge it a tax.

City of St. Paul v. Traeger (1878) 25 Minn. 248; City of Mankato v. Fowler (1884) 32 Minn. 364, 20 N.W. 361; State v. Jensen (1904) 93 Minn. 88, 100 N.W. 644; Barron v. City of Minneapolis (1942) 212 Minn. 566, 4 N.W.2d 622 (in construing and determining validity of city licensing ordinance, court must bear in mind that there is distinction between power to license as police regulation and same power when conferred for revenue purposes, since narrower construction must be adopted if it is police regulation than in case of grant by charter to council of discretionary authority with view to public revenue); Minneapolis Street Ry. v. City of Minneapolis (1949) 229 Minn. 502, 40 N.W.2d 353, appeal dismissed (1950) 339 U.S. 907 (license fee under police power may not be imposed for revenue purposes, but it is not fatal that such license fee may incidentally yield some return in excess of amount necessary to reimburse city for its police regulatory service; Brooks-Coleman Act did not prevent future police regulation; act defines field of local control and not manner of its exercise); Minneapolis Street Ry. v. City of Minneapolis (1952) 236 Minn. 109, 52 N.W.2d 120. See Crescent Oil Co. v. City of Minneapolis (1928) 175 Minn. 276, 221 N.W. 6; Crescent Oil Co. v. City of Minneapolis (1929) 177 Minn.539, 225 N.W. 904; Orr v. City of Rochester (1935) 193 Minn. 371, 258 N.W. 569; Hendricks v. City of Minneapolis (1940) 207 Minn. 151, 290 N.W. 428; § 5.02(b) this topic.

MUNICIPAL CORPORATIONS, 3.01 Nature and scope of powers

Municipal corporations have no inherent power of taxation and consequently possess only the power of taxation granted to them by the constitution and statutes. 398 The authority to regulate does not include the authority to tax. 399 Since taxation for municipal purposes is purely a matter of municipal concern, it is a subject which may be dealt with in a home rule charter. 400 In construing such charter tax provisions, they are to be given a fair and reasonable construction in order to effectuate the legislative intent. 401 In any case, taxes may be levied,

or public money spent, only for a public purpose. 402

MUNICIPAL CORPORATIONS, 5.00 Nature and scope of power

Authority to regulate does not include authority to tax. In determining whether a regulation is an exercise of the police power or of the taxing power, the declarations of the ordinance are relevant but not conclusive. For example, it does not appear that the fee to be charged for parking regulated by meters so much exceeds the cost of installation, maintenance, and regulation as to result in a tax and condemn the whole project as for revenue rather than regulation. 765

MUNICIPAL CORPORATIONS, 5.02 License fees

The service for which a city may be reimbursed by a license fee must be reasonably related to the police power functions of inspection, supervision, and regulation. 841 Whenever a municipality is authorized to regulate a subject and to require those who do any act to obtain a license or permit, it may charge the person procuring the same a reasonable fee to cover the labor and expense of issuing such license or permit. Such a fee is not a tax. 842 The requirement of an electrician's license for which the prerequisites are only the possession of a state master electrician's license and the payment of a small fee is not a reasonable municipal regulation and does not fall within the powers granted by the statute relating to the specific powers of a city council. 843

City of Duluth v. Northland Greyhound Lines (S. Ct. 1952) 52 N.W.2d 774, 236 Minn. 260 Page 269

"The general principles to be applied are well established. Class legislation is forbidden by Minn. Const. art. 1, § 2, and art. 4, § 33, as well as by U.S. Const. Amend. XIV. 1 Dunnell, Minn. Dig. (2 ed. & 1932 Supp.) § 1673, and cases cited. The problem arises when a law selects particular individuals from a class and imposes on them special burdens from which others of the same class are exempt. State ex rel. Madigan v. Wagener, 74 Minn. 518, 77 N.W. 424,42 L.R.A. 749, 73 A.S.R. 369; State v. Luscher, 157 Minn. 192, 195 N.W. 914; State v. Broden, 181 Minn. 341,232 N.W. 517. **To operate uniformly, a law must bring within its influence all who are in the same condition and treat them alike. State v. Dirnberger, 152 Minn. 44, 187 N.W. 972. Legislative enactments which discriminate against some and favor others are prohibited unless they affect alike all persons similarly situated and the classification is not arbitrary. State v. LeFebvre, 174 Minn. 248, 219 N.W. 167; In re Application of Humphrey, 178 Minn. 331, 227 N.W. 179; In re Application of Grantham, 178 Minn. 335, 227 N.W. 180.** If a classification is made on a reasonable basis and is applicable without discrimination to all similarly situated, it is valid. Park v. City of Duluth, 134 Minn. 296, 159 N.W. 627. If the law presumably strikes at the evil which the legislature proposes to eradicate, it is not to be overthrown because there are other instances to which it might have been applied. State v. Nordstrom, 169 Minn. 214, {*269} 210 N.W. 1001; Bosley v. McLaughlin, 236 U.S. 385, 35 S. Ct. 345, 59 L. ed. 632; Blaisdell v. Home Bldg. & L. Assn.189 Minn. 422, 249 N.W. 334, 86 A.L.R. 1507. The fact that a statute discriminates in favor of a certain class does not make it arbitrary if the discrimination is founded upon a reasonable distinction or if any reasonable state of facts can be conceived to sustain it. State Board of Tax Commrs. v. Jackson, 283 U.S. 527, 537, 51 S. Ct. 540, 75 L. ed. 1248, 73 A.L.R. 1464, 75 A.L.R. 1536; Rast v. Van Deman & Lewis Co. 240 U.S. 342, 36 S. Ct. 370, 60 L. ed. 679, L.R.A. 1917A, 421, Ann. Cas. 1917B, 455. If the selection is neither capricious nor arbitrary and rests upon some reasonable consideration of difference or policy, there is no denial of equal protection of the law. Brown-Forman Co. v. Commonwealth of Kentucky, 217 U.S. 563, 30 S. Ct. 578, 54 L. ed. 883. The rights of all persons must rest upon the same rule under similar circumstances, and classification must be based on some difference which bears a reasonable and just relation to the act in respect to which the classification is proposed, and can never be made arbitrarily and without any such basis. Louisville G. & E. Co. v. Coleman, 277 U.S. 32, 37, 48 S. Ct. 423, 72 L. ed. 770, quoted in National Tea Co. v. State, 205

Minn. 443, 286 N.W. 360."

Johnson v. Evans (S. Ct. 1919) 170 N.W. 220, 141 Minn. 356 Page 356

1. **Defendant owned and kept upon his premises a five passenger automobile for business purposes, and also for the comfort and pleasure of the members of his family**, and his minor son was authorized and permitted to operate and use it for either purpose. While the son was so using the car, under defendant's permission, his negligent and careless operation thereof caused injury to plaintiff, who was riding therein as his guest. It is held (a) that, though using the car for his own personal pleasure and that of his friends, the son was the servant of defendant, within the meaning of the law, and defendant is liable for his negligent misconduct in operating the same; (b) the evidence supports the verdict in finding the son guilty of negligence, and in exonerating plaintiff from the charge of contributory negligence.

AMERICAN RY. EXPRESS V. HOLM (S. Ct. 1926) 211 N.W. 467, 169 Minn. 323 Page 323

AMERICAN RAILWAY EXPRESS COMPANY
vs.
MIKE HOLM
No. 25,720
SUPREME COURT OF MINNESOTA
211 N.W. 467, 169 Minn. 323
December 10, 1926

Plaintiff appealed from a judgment of the district court for Ramsey county, Bechhoefer, J. Reversed.

SYLLABUS

Motor vehicles belonging to corporations paying gross earnings tax not subject to registration tax.

Motor vehicles owned and used by corporations, paying a gross earnings tax, in the operation of their business, are not subject to the tax imposed by G.S. 1923, § § 2672-2720.

Motor Vehicles, 28 Cyc. p. 33 n. 73.

Taxation, 37 Cyc. p. 891 n. 38; p. 892 n. 43.

See notes in 19 A.L.R. 459, 23 A.L.R. 418; 4 R.C.L. Supp. 143; 5 R.C.L. Supp. 128.

COUNSEL

Davis, Severance & Morgan, for appellant.

Clifford L. Hilton, Attorney General, James E. Markham, Deputy Attorney General, and G. A. Youngquist, Assistant Attorney General, for respondent.
211 N.W. 467, 169 Minn. 323 Page 324 AMERICAN RY. EXPRESS V. HOLM (S. Ct. 1926)

AUTHOR: WILSON

OPINION

{*324} WILSON, C.J.

211 N.W. 467, 169 Minn. 323 Page 324 AMERICAN RY. EXPRESS V. HOLM (S. Ct. 1926)

Appeal from a judgment entered pursuant to an order sustaining a demurrer to a petition and alternative writ of mandamus upon the ground that the facts therein stated do not constitute a cause of action. The petition sought to compel the registrar of motor vehicles to approve applications for registration of a number of automobiles and to assign numbers and issue registration certificates without the payment of the usual tax.

211 N.W. 467, 169 Minn. 323 Page 324 AMERICAN RY. EXPRESS V. HOLM (S. Ct. 1926)

The record presents the inquiry as to whether a public service corporation, required by statute to pay a gross earnings tax, is also required to pay a tax upon motor vehicles owned and employed by it in the conduct of its business as a condition to the right to use such vehicles upon state highways.

211 N.W. 467, 169 Minn. 323 Page 324 AMERICAN RY. EXPRESS V. HOLM (S. Ct. 1926)

Prior to the adoption in November, 1920, of article 16 of our Constitution state money could not be used in the construction of highways. Cooke v. Iverson, 108 Minn. 388, 122 N.W. 251, 52 L.R.A. (N.S.) 415. Section 3 of said art. 16 authorizes the legislature to provide by law for the taxation of motor vehicles using the public streets and highways on a more onerous basis than other personal property, provided however that any such tax on motor vehicles shall be in lieu of all other taxes thereon, except wheelage taxes which may be imposed by municipalities. Provision is made for the exemption of motor vehicles owned by nonresidents and used transiently or temporarily on our highways.

211 N.W. 467, 169 Minn. 323 Page 325 AMERICAN RY. EXPRESS V. HOLM (S. Ct. 1926)

Under such authority the legislature enacted G.S. 1923, § § 2672-2720. The amendments in 1925 are not here important. It is provided by § 2675 that no motor vehicles, except those owned and used solely in the transaction of official business by foreign powers, Federal {*325} government, the state or political subdivisions thereof, as mentioned in § 2673, may use the highways until they shall have been registered and the taxes thereon paid. The law makes no provision for the registration of, or the furnishing of number plates for, motor vehicles not subject to taxation except those owned by the state and its political subdivisions. By § 2676 it requires every owner of a motor vehicle except those exempted by § § 2673 and 2685 to register; and § § 2677, 2678 say that upon payment of the tax the registration certificate and number plates shall issue. The law does not expressly mention motor vehicles owned and used by corporations paying a gross earnings tax. Its language is such that it must mean all motor vehicles except those specifically exempted. Such conclusion finds support in the fact that § 3, art. 16, of the Constitution requires that the proceeds of such tax shall be devoted exclusively to highway purposes. The expression of certain ones as exempt excludes all others. One who seeks shelter under an exemption must present a clear case as the law is to be construed in favor of the public. Camas Stage Co. v. Kozer,104 Ore. 600, 209 Pac. 95, 25 A.L.R. 27; Portland v. Kozer, 108 Ore. 375, 217 Pac. 833; Los Angeles Ry. Corp. v. Los Angeles County F. C. Dist. Cal. App., 248 Pac. 532; Pac. Gas & Elec. Co. v. Roberts, 168 Cal. 420, 143 Pac. 700. **This is because the exemption is in derogation of the general rule and in no way infringes upon the rule that where a statute is capable of two constructions and the intent of the legislature is in doubt, such doubt must be resolved in favor of the taxpayer.** State ex rel. W.U. Tel. Co. v. Minn. Tax Comm.132 Minn. 93, 155 N.W. 1061; State ex rel. Int. I. Min. Co. v. Armson, 166 Minn. 230, 207 N.W. 727.

211 N.W. 467, 169 Minn. 323 Page 326 AMERICAN RY. EXPRESS V. HOLM (S. Ct. 1926)

Appellant pays the gross earnings tax under G.S. 1923, § 2268, which says that it "shall be in full and in lieu of all taxes and assessments upon its

property." This legislation rests on constitutional authority. Appellant now says that this law has not been repealed by the constitutional amendment, art. 16, nor by the enactment of the law authorized thereby. This claim rests on the familiar rules of construction, viz: **(1) That repeals by implication are not favored; {*326} and (2) that particular provisions are not destroyed by subsequent general enactments.** The state answers this claim by saying that the lieu provision of the gross earnings tax law is destroyed by the Constitution which allows no exemption, as well as by the legislative act which does not exempt cars in the class of appellant. It also asserts that the Constitution and statutes are not general provisions of law but are indeed as specific and particular as the gross earnings statute, if not more so.

211 N.W. 467, 169 Minn. 323 Page 326 AMERICAN RY. EXPRESS V. HOLM (S. Ct. 1926)

If the gross earnings tax was a constitutional instead of a legislative enactment appellant's position would be more persuasive. Pac. Gas & Elec. Co. v. Roberts, supra. But it has been held that a statute exempting municipal property from taxation does not relieve the municipality from the necessity of obtaining a license to operate motor vehicles on the public highways. State v. Preston, 103 Ore. 631, 206 Pac. 304, 23 A.L.R. 414. Where automobiles are owned by a municipality and by statutory enactment are exempt from taxation the legislature may by a general law impose license fees upon every owner of motor vehicles as a condition precedent to the use of the highways and in the absence of a specific exception the motor vehicles of the municipality will be subject to the operation of the latter law. Tarver v. City of Albany, 160 Ga. 251, 127 S.E. 856. These cases illustrate how an exemption has been withdrawn. Likewise was an exemption withdrawn when L. 1919, p. 755, c. 533, was ratified by a vote of the people in that property of railroad companies was taken from the lieu provision of the railroad gross earnings tax and made subject to special assessments. Dun. Dig. § 8927; State ex rel. W.M. Co. v. Minn. Tax Comm. 117 Minn. 159, 161, 134 N.W. 643; Minn. Transfer Ry. Co. v. City of St. Paul, 165 Minn. 8, 205 N.W. 609, 207 N.W. 320. **An exemption is a privilege. Appellant is not the recipient of any privilege.** It pays a tax which is "in lieu of all other taxes." By paying the gross earnings tax it pays that tax which the legislature has determined is the just rate. Its unit of use and operation includes the automobiles which are the basis of this action.

211 N.W. 467, 169 Minn. 323 Page 327 AMERICAN RY. EXPRESS V. HOLM (S. Ct. 1926)

The state now asks us to construe art. 16 and the subsequent legislative enactment pursuant thereto as an amendment to the gross {*327} earnings tax law, the effect of which would be to remove the automobiles owned by appellant from the application of the gross earnings law. The state's counsel ask us to say that the effect of the motor vehicle registration law is to lift motor vehicles from the operation of the gross earnings law, i.e., to completely separate them from the operation of that law and to set them over into the exclusive operation of the motor vehicle law. In other words, we are asked to construe G.S. 1923, § § 2672-2720, as amending the gross earnings tax law by adding an exception to the property covered thereby by inferentially saying "except tax on motor vehicles which such corporation owns and uses in such business." **We cannot but feel that if we should do this we would be going beyond the scope of our prerogative. This would be an invasion of legislative power and we believe that if the legislature so intended they would have used language that would not have permitted any doubt as to such meaning.** They doubtless had the power to so amend the gross earnings law. It remains for them to say whether such amendment should be made.

AMERICAN RY. EXPRESS V. HOLM (S. Ct. 1926) 211 N.W. 467, 169 Minn. 323 Page 328

The state stresses Hendrick v. Maryland, 235 U.S. 610,35 Sup. Ct. 140, 59 L. ed. 385, and Kane v. N.J. 242 U.S. 160, 37 Sup. Ct. 30, 61 L. ed. 222, **but we think the license fee therein involved was treated in the nature of a privilege tax only**

and not a property tax. Our motor vehicle registration law requires the payment of a tax. Fairley v. City of Duluth, 150 Minn. 374, 185 N.W. 390, 32 A.L.R. 1258; Dohs v. Holm, 152 Minn. 529, 531, 189 N.W. 418; State v. Peterson, 159 Minn. 269, 198 N.W. 1011; State v. Oligney, 162 Minn. 302, 202 N.W. 893. **This court is definitely on record holding that it is both a property and a privilege tax.** Jefferson Highway Trans. Co. v. City of St. Cloud, 155 Minn. 463, 464, 193 N.W. 960; State v. Peterson, supra; State v. Oligney, supra; Raymond v. Holm, 165 Minn. 215, 206 N.W. 166; McReavy v. Holm, 166 Minn. 22, 206 N.W. 942. **The tax is indivisible and there is no way to say what proportion thereof is a property tax nor what proportion is a privilege tax.** To say that the owner of the car must therefore pay the whole thereof in order to be entitled to the privilege of the highways {*328} is to construe the law the same as if it was wholly a privilege tax which is not permissible. It includes a property tax.

211 N.W. 467, 169 Minn. 323 Page 328 AMERICAN RY. EXPRESS V. HOLM (S. Ct. 1926)

Article 16, § 3, state Constitution, provides that such tax imposed pursuant thereto "shall be in lieu of all other taxes thereon." **The gross earnings tax being a property tax still stands as against these motor vehicles.** The legislature has not removed it. Hence the registration tax, by the very terms of the Constitution authorizing its enactment, cannot become effective as against an existing valid law, which has not been repealed, providing for a property tax. **The registration statute and the gross earnings statute are in conflict. There are two reasons why the former must yield to the latter. First, the constitutional authority to pass the registration tax applies or exists only where the tax so provided is "in lieu of all other taxes."** Here the tax is attempted to be imposed without relief from the burden of the gross earnings tax. Second, art. 9, § 1, of our state Constitution says that taxes shall be uniform upon the same class of subjects. **The legislative power of classification is not unrestricted. Classification must rest upon essential difference of nature, situation, circumstance or characteristics.** This distinction as between appellant's motor vehicles and those owned by others who do not pay a gross earnings tax is not real but subjects appellant's property, towit, its motor vehicles, to double taxation which under the circumstances destroys the constitutional uniformity.

211 N.W. 467, 169 Minn. 323 Page 328 AMERICAN RY. EXPRESS V. HOLM (S. Ct. 1926)

Appellant is entitled to have its motor vehicles registered, certificates of registration issued, and number plates furnished by the registrar. Reversed and writ will issue.

Town of Kinghurst v. International Lumber Co. (S. Ct. 1928) 219 N.W. 172, 174 Minn. 305 Page 312

No one would expect the company to be put to any expense in connection with the matter. Though the company's business may carry with it elements of local public benefit, the primary purpose of this law is for the individual benefit of the company and to make it possible for it to realize upon its timber holdings. This is purely a private matter, though the public is usually interested in the success of local private business, especially when it carries elements necessarily beneficial to the public. **To learn the intent of the legislature we must read the law in the light of the object in view. Every presumption is in favor of the constitutionality of the law. Unless a statute is unconstitutional beyond a reasonable doubt it must be sustained. If it is susceptible of two different constructions one of which will render it constitutional and the other unconstitutional, the former construction must be adopted.** State ex rel. Hildebrandt v. Fitzgerald, 117 Minn. 192, 134 N.W. 728; State ex rel. Wilcox v. Ryder, 126 Minn. 95, 147 N.W. 953, 5 A.L.R. 1449; State ex rel. Simpson v. County of St. Louis, 117 Minn. 42, 134 N.W. 299; Lommen v. Minneapolis Gaslight Co.65 Minn. 196, 68 N.W. 53, 33 A.L.R. 437, 60 A.S.R. 450; Curryer v. Merrill, 25 Minn.

1, 33 Am. R. 450; State ex rel. Arpin v. George, 123 Minn. 59, 142 N.W. 945; State ex rel. Olsen v. Board of Control, 85 Minn. 165, 88 N.W. 533; McReavy v. Holm, 166 Minn. 22, 206 N.W. 942.

JOHN E. McREAVY AND ANOTHER
vs.
MIKE HOLM.
No. 25,210.
SUPREME COURT OF MINNESOTA
206 N.W. 942, 166 Minn. 22
January 15, 1926.

Action in the district court for Hennepin county. Plaintiffs appealed from an order, Montgomery, J., sustaining defendant's demurrer to the complaint. Affirmed.

SYLLABUS

Classification of motor trucks for taxation.

1. It is within the exclusive province of the legislature to determine what distinction is necessary to warrant the placing of motor trucks into different classes for the purpose of taxation. Such classification, when made by that body, is binding upon the courts unless clearly arbitrary.

Classification of motor trucks by legislature binding on courts, unless arbitrary.

2. The placing of motor vehicles used for **transporting** dairy and agricultural products from the place of production to the point of shipment, sale or consumption, into one class, and motor trucks used for hire or in the regular or habitual collection or delivery of things owned by the carrier or upon which the carrier performs work or service in cleaning, cleaning or otherwise improving the same, into a second class, and trucks, trailers and semi-trailers carrying things other than **passengers** for hire from one city or village to another, or used for the purpose of carrying on a general **transportation** business for hire, into a third class, amounts to a legislative finding that there was a sufficient difference in the use made of the public highways to justify such classification and the courts cannot say that there is no basis of fact for the classification under the evidence.

Act of 1925 not unconstitutional.

3. L. 1925, c. 299, which classifies motor trucks for purpose of taxation is not invalid under section 3 of article 16 of the state Constitution.

Demurrer to complaint sustained.

4. The complaint failed to state a cause of action and the demurrer thereto was properly sustained.

Constitutional Law, 12 C.J. pp. 882 n. 68; 891 n. 77.

Taxation, 37 Cyc. pp. 746 n. 77; 1274 n. 75.

COUNSEL

G. A. Will, for appellants.

Clifford L. Hilton, Attorney General, James E. Markham, Deputy Attorney General, and Ernest C. Carman, Assistant Attorney General, for respondent.

AUTHOR: QUINN

OPINION

{*23} QUINN, J.

Appeal from an order sustaining a demurrer to a complaint which asks for an order restraining the defendant, as registrar of motor vehicles, from enforcing the provisions of L. 1925, p. 376, c. 299, {*24} which classifies motor trucks for purposes of taxation, upon the ground that the classification so provided is arbitrary, unjust and unreasonable and therefore invalid under section 3 of article 16 of the state Constitution which is as follows:

"The legislature is hereby authorized to provide, by law, for the taxation of motor vehicles, using the public streets and highways of the state, on a more onerous basis than other personal property; provided, however, that any such tax on motor vehicles shall be in lieu of all other taxes thereon, except wheelage taxes."

Section 1 of chapter 299, among other things provides as follows:

"Class T shall include all trucks used for **transporting** agricultural and dairy products from the place of production to the point of shipment, sale, or consumption, and shall pay a tax of 2.4% on the base value.

"Class X shall include all trucks used either for hire or in the regular or habitual collection or delivery of things owned by the carrier or upon which the carrier performs work or services in cleaning, cleansing, or otherwise improving the same, and shall pay a tax of 5% of the base value.

"Class Y shall include all trucks, trailers and semitrailers carrying things other than **passengers** for hire from one city or village to one or more cities or villages, or used for the purpose of carrying on a general **transportation** business for hire, and shall pay a tax of 10% on the base value."

The tax contemplated by the above act is not only a property tax based upon the value of the article, but it is a tax in lieu of all other taxes except wheelage taxes. The use of the public highways by such vehicles is one of the material elements entering into the classifying of such vehicles for the purpose of taxation.

206 N.W. 942, 166 Minn. 22 Page 25 MCREAVY V. HOLM (S. Ct. 1926)

It is settled by the decisions in this state that it is within the exclusive province of the legislature to consider and determine what distinction is necessary to warrant the placing of motor trucks into different classes for the purpose of taxation. Such classification, when made by that body, is final and binding upon the courts unless {*25} clearly arbitrary. The legislature is presumed to have full information upon such matters, and in passing upon the same the courts cannot say that the legislature did not find sufficient difference in the use of the highways by **trucks engaged in transporting dairy and agricultural products from the place of production and those used either for hire or in the regular collection or delivery of things owned by the carrier**, or upon which the carrier performs work or service, such as laundry wagons or delivery trucks, or between either of such lines so used and those carrying articles or freight from one village or city to another for hire. **As stated the legislature is presumed to have had full information concerning matters in respect to which it legislates**, and under the rules governing courts we

cannot say it did not find sufficient difference in the use of the highway to warrant the classification complained of. We cannot hold that the differences are so wanting in substance as to render the classification arbitrary and invalid. Raymond v. Holm, 165 Minn. 215, 206 N.W. 166.

The following cases bear upon the general proposition: State v. Peterson, 159 Minn. 269, 198 N.W. 1011; State v. Oligney, 162 Minn. 302, 202 N.W. 893; Jefferson H.T. Co. v. St. Cloud, 155 Minn. 463, 193 N.W. 960; Dohs v. Holm, 152 Minn. 529, 189 N.W. 418; Park v. Duluth, 134 Minn. 296, 159 N.W. 627.

206 N.W. 942, 166 Minn. 22 Page 26 MCREAVY V. HOLM (S. Ct. 1926)

Class T covers motor trucks used for hauling dairy and agricultural products from the place of production -- the farm -- to the point of shipment, sale, consumption or factory, and the carrying of supplies to the farm. It does not cover or include those engaged in hauling such products from points where they have been collected for reshipment. To bring trucks into Class T the hauling must be to or from the farm or place of production and not from a distributing or retransportation point. Trucks engaged in the latter sort of hauling belong in another class provided for in the act. **The distinction is apparent. Loads to and from the farm are necessarily lighter, move slower, and consequently less wear and tear to the surface of the roadbed than results from trucks ordinarily used in connection with mercantile industries as delivery trucks in villages and cities, or those hauling freight for hire on a regular route where {*26} heavy loads and cheap rates are the criterion without regard to the use made of the highways.** In hauling from the farm, much of the highways used are unsurfaced. But comparatively few farms abut upon trunk lines, while delivery trucks and scheduled drays move very largely over paved highways.

206 N.W. 942, 166 Minn. 22 Page 26 MCREAVY V. HOLM (S. Ct. 1926)

All much matters should be and are considered by the legislature in determining upon the classification of such vehicles for the purpose of taxation. It is within the exclusive province of that body to weigh and determine the effect of all such matters in placing property in one class or another, and such determination is binding upon the courts, unless it clearly appears from the act that the classification is unreasonable and arbitrary. Unless it appears beyond a reasonable doubt that the legislative body acted arbitrarily and without sufficient information, the act will not be held invalid by the courts. In the present case we are not able to say that there was not sufficient difference shown to justify the act. We do not think that the difference is so wanting in substance as to render the classification arbitrary and invalid. Raymond v. Holm, supra. The contrast between the use of the highway, by the ordinary so-called delivery trucks and trucks used as drays for hauling freight from one town to another, is so well understood as to require no extended discussion here.

Affirmed.

WICKMAN V. HOLM (S. Ct. 1926) 206 N.W. 705, 166 Minn. 26 Page 26

C. E. WICKMAN
vs.
MIKE HOLM.
No. 25,213.
SUPREME COURT OF MINNESOTA
206 N.W. 705, 166 Minn. 26
January 15, 1926.

Upon the relation of C. E. Wickman the district court for Ramsey county granted its alternative writ of mandamus to compel Mike Holm, as registrar of motor vehicles, to issue to relator motor vehicle registration certificates for the year 1925. The writ was discharged, Hanft, J., and relator appealed. Reversed and

remanded.

SYLLABUS

Registration of motor busses running between Duluth and Superior.

Motor busses, **carrying passengers** for hire from the business center of the city of Superior, Wisconsin, to the business center of the city of Duluth, Minnesota, are not subject to a tax of 10 per cent of value under G.S. 1923, § § 2672-2678.

Motor Vehicles, 28 Cyc. p. 33 n. 72.

COUNSEL

Washburn, Bailey & Mitchell, for relator.

Clifford L. Hilton, Attorney General, and Ernest C. Carman, Assistant Attorney General, for respondent.

AUTHOR: QUINN

OPINION

{*27} QUINN, J.

206 N.W. 705, 166 Minn. 26 Page 27 WICKMAN V. HOLM (S. Ct. 1926)

The territory comprising the cities of Duluth, Minnesota, and Superior, Wisconsin, is contiguous, the St. Louis river forming the boundary between the two cities as well as the boundary line between the two states. There is an interstate bridge over the river which connects the two cities, the southern approach to this bridge being in the city of Superior, and the northern approach in the city of Duluth. Motor vehicles operating between the two cities pass over this bridge, and going north follow a route wholly within the city of Duluth until it reaches the business center of the city. **The petitioner was and is a resident of the city of Duluth. Defendant Mike Holm is the registrar of motor vehicles in the state of Minnesota, and as such is charged with the duty of collecting motor vehicle taxes and the issuing of registration certificates to the owners thereof, under the provisions of L. 1923, p. 596, c. 418, particularly section 6 thereof. (G.S. 1923, § § 2672-2678.)**

206 N.W. 705, 166 Minn. 26 Page 28 WICKMAN V. HOLM (S. Ct. 1926)

Applicant owned 5 motor vehicles used solely for the purpose of carrying passengers for hire between points within the two cities above named. He held licenses to so operate the same from the state of Wisconsin and from the two cities. On April 11, 1923, **he made application to the defendant, in due form, for the registration of such vehicles in the state of Minnesota, and at the same time paid to him the sum of $724.36, the same being 2 3/4 per cent of the value of the vehicles.** The defendant refused to register the vehicles unless appellant pay a tax of 10 per cent of the value. This action was then brought and mandamus issued to compel the registration. {*28} The trial court sustained the registrar and this appeal followed.

206 N.W. 705, 166 Minn. 26 Page 28 WICKMAN V. HOLM (S. Ct. 1926)

In such carrying of passengers, the vehicles were and are operated exclusively over and along one route between the business centers of the two cities and a charge of 25 cents each way is made for each passenger. In proceeding north from Superior, the vehicles cross the bridge and continue north on one course or line to the business center of Duluth, the end of the trip. The vehicles do not use

the Minnesota highways at any point outside of the city of Duluth. The right of the state to lay a tax against the vehicles, upon the same basis as other property similarly used, is not questioned in this proceeding.

206 N.W. 705, 166 Minn. 26 Page 28 WICKMAN V. HOLM (S. Ct. 1926)

The act provides for the registration of motor vehicles generally and for a tax of 2 3/4 per cent of the value thereon. That the value of the vehicle, coupled with the use of the highways of the state thereby, was steadily adhered to by the legislature, is apparent from a reading of the entire act. **The act provides that all passenger motor vehicles, such as busses, shall pay a tax of 2 3/4 per cent of value, except those which are not operated wholly within the limits of the same city, village or borough, which shall pay a tax of 10 per cent of value. The proceeds of all such taxes shall be covered into the state treasury and credited to a fund for the construction and maintenance of the state highways. It is provided that, upon payment of such tax, registration certificate and license number plate shall issue to the owner which enables him to legally operate the vehicle. It is manifest that the legislative intent was to deal with such vehicles and their use of the highways of this state, without regard to whether they use the highways of another state or not, the main purpose of the act being to fix a proper tax, commensurate with the use of the highways of this state by such vehicle.**

206 N.W. 705, 166 Minn. 26 Page 29 WICKMAN V. HOLM (S. Ct. 1926)

We are of the opinion that the registrar used the wrong basis for the calculation of the tax. These busses operated between the cities of Duluth and Superior; Superior is no part of Minnesota. So far as Minnesota is concerned, these busses were operated wholly within the city of Duluth, using only the highways of that city. Under L. 1923, p. 598, c. 418, § 3, these vehicles were subject to a {*29} tax of 2 3/4 per cent only, the same rate applicable to motor vehicles of the same character operated wholly within the limits of the same city.

206 N.W. 705, 166 Minn. 26 Page 29 WICKMAN V. HOLM (S. Ct. 1926)

We are of the opinion and hold that the vehicles in question were not engaged in carrying passengers for hire between points not wholly within the limits of the same city, within the meaning of the act and therefore were not subject to the 10 per cent tax and that the registration should have been made.

Reversed and remanded.

RAMALEY V. CITY OF ST. PAUL (S. Ct. 1948) 33 N.W.2d 19, 226 Minn. 406 Page 411

To find that § 340.11 limits the taxation power of the city requires a reading into the statute of something that is not there. A tax limitation or a tax exemption is not to be established by implication or presumption. A tax limitation is nothing more than a qualified or restricted form of tax exemption. **Any presumption that the payment of a license fee carries with it an exemption from taxation can only arise from a failure to observe the fundamental distinction between a license fee that is paid for the privilege or right of doing business at all as distinguished from a tax that is imposed because of the fact that the business is being operated.** Exemptions from taxation will not be presumed, but must be established by clear and express language, and all presumptions are against an exemption. St. Peter's Church v. County of Scott, 12 Minn. 280 (395); State ex rel. Wisconsin C.R. & I. Bureau v. City of Milwaukee, 249 Wis. 71, 23 N.W.2d 501; North Platte Lodge v. Board of Equalization, 125 Neb. 841, 252 N.W. 313, 92 A.L.R. 658. **An exemption from taxation is a privilege of such high order and is so rarely granted that it can be established or extended only by, and according to the reasonable and natural import of, clear and explicit language and not by implication or presumption.** See, St. Peter's Church v. County of Scott, 12 Minn. 280 (395); State v. Carleton College,154 Minn. 280, 191 N.W. 400; American Railway Express Co. v. Holm, 169 Minn. 323, 211 N.W. 467; State v. Board of Foreign

Missions, 221 Minn. 536, 22 N.W.2d 642. Neither the language nor the obvious purpose of § 340.11 justifies an interpretation that it constitutes a limitation upon the power of the city of St. Paul to levy an occupation tax upon plaintiffs' "off sale" liquor business in addition to, and independently of, the license fee exacted pursuant to the police power.

M.S. § 168.011. Definitions.

Subdivision 1. Words, terms, and phrases. Unless the language or context clearly indicates that a different meaning is intended, the following words, terms and phrases, for the purposes of this chapter, shall be given the meanings subjoined to them.

Subd. 2. Application for registration; listing for taxation. "Application for registration" shall have the same meaning as "listing for taxation," and when a motor vehicle is registered it is also listed.

Subd. 3. Highway. A "highway" is any public thoroughfare for vehicles, including streets in cities.

Subd. 4. Motor vehicle. (a) "Motor vehicle" means any self-propelled vehicle not operated exclusively upon railroad tracks and any vehicle propelled or drawn by a self-propelled vehicle and includes vehicles known as trackless trolleys which are propelled by electric power obtained from overhead trolley wires but not operated upon rails, except snowmobiles, manufactured homes, and park trailers.

(b) "Motor vehicle" also includes an all-terrain vehicle, as defined in section 84.92, subdivision 8, which (1) has at least four wheels, (2) is owned and operated by a physically disabled person, and (3) displays both physically disabled license plates and a physically disabled certificate issued under section 169.345, subdivision 3.

(c) Motor vehicle does not include an all-terrain vehicle as defined in section 84.92, subdivision 8; except (1) an all-terrain vehicle described in paragraph (b), or (2) an all-terrain vehicle licensed as a motor vehicle before August 1, 1985, in which case the owner may continue to license it as a motor vehicle until it is conveyed or otherwise transferred to another owner, is destroyed, or fails to comply with the registration and licensing requirements of this chapter.

Subd. 5. Owner. "Owner" means any person, firm, association, or corporation owning or renting a motor vehicle, or having the exclusive use thereof, under a lease or otherwise, for a period of greater than 30 days.

Subd. 5a. Registered owner. "Registered owner" means any person, firm, association, or corporation, other than a secured party, having title to a motor vehicle. If a passenger automobile, as defined in subdivision 7, is under lease for a term of 180 days or more, the lessee is deemed to be the registered owner, for purposes of registration only, provided that the application for renewal of the registration of a passenger automobile described in this subdivision shall be sent to the lessor.

Subd. 6. Tax, fee. "Tax" or "fee" means the annual tax imposed on motor vehicles in lieu of all other taxes thereon, except wheelage taxes, so-called, which may be imposed by any city and except gross earnings taxes paid by companies subject or made subject thereto. **Such annual tax shall be deemed both a property tax and a highway use tax and shall be on the basis of the calendar year.**

Subd. 7. Passenger automobile. "Passenger automobile" means any motor vehicle designed and used for the carrying of not more than **15 persons** including the driver. "Passenger automobile" does not include motorcycles, motor scooters, and buses described in subdivision 9, paragraph (a), clause (2). For purposes of taxation only, "passenger automobile" includes pickup trucks and vans, other than commuter vans as defined in section 168.126.

Subd. 8. Manufactured home; park trailer; travel trailer.(a) "Manufactured home" has the meaning given it in section 327.31, subdivision 6.

(b) "Park trailer" means a trailer that:

(1) exceeds 8-1/2 feet in width in travel mode but is no larger than 400 square feet when the collapsible components are fully extended or at maximum horizontal width; and

(2) is used as temporary living quarters.

"Park trailer" does not include a manufactured home.

(c) "Travel trailer" means a trailer, mounted on wheels, that:

(1) is designed to provide temporary living quarters during recreation, camping, or travel;

(2) does not require a special highway movement permit based on its size or weight when towed by a motor vehicle; and

(3) complies with sections 169.80, subdivision 2, and 169.81, subdivision 2.

Subd. 9. Bus; intercity bus.(a) "Bus" means (1) every motor vehicle designed for carrying more than 15 passengers including the driver and used for transporting persons, and (2) every motor vehicle that is (i) designed for carrying more than ten passengers including the driver, (ii) used for transporting persons, and (iii) owned by a nonprofit organization and not operated for hire or for commercial purposes.

(b) "Intercity bus" means any bus operating as a common passenger carrier over regular routes and between fixed termini, but excluding all buses operating wholly within the limits of one city, or wholly within two or more contiguous cities, or between contiguous cities and a terminus outside the corporate limits of such cities, and not more than 20 miles distant measured along the fixed route from such corporate limits.

Subd. 10. Truck."Truck" means any motor vehicle designed and used for carrying things other than **passengers**, except pickup trucks and vans included within the definition of passenger automobile in subdivision 7.

Subd. 11. Tractor."Tractor" means any motor vehicle designed or used for drawing other vehicles but having no provision for carrying loads independently.

Subd. 12. Truck-tractor."Truck-tractor" means:

(a) a motor vehicle designed and used primarily for drawing other vehicles and not constructed to carry a load other than a part of the weight of the vehicle and load drawn; and

(b) a motor vehicle designed and used primarily for drawing other vehicles used exclusively for **transporting motor vehicles** and capable of carrying motor vehicles on its own structure.

Subd. 13. Trailer."Trailer" means any vehicle designed for carrying property or passenger on its own structure and for being drawn by a motor vehicle but shall not include a trailer drawn by a truck-tractor semitrailer combination, or an auxiliary axle on a motor vehicle which carries a portion of the weight of the motor vehicle to which it is attached.

Subd. 14. Semitrailer."Semitrailer" means a vehicle of the trailer type so designed and used in conjunction with a truck-tractor that a considerable part of its own weight or that of its load rests upon and is carried by the truck-tractor and shall include a trailer drawn by a truck-tractor semitrailer combination.

Subd. 15. Unloaded weight."Unloaded weight" means the actual weight of the vehicle fully equipped without a load.

Subd. 16. Gross weight."Gross weight" means the actual unloaded weight of the vehicle, * * * The term gross weight applied to school buses means the weight of the vehicle fully equipped with all fuel tanks full of fuel, **plus the weight of the passengers and their baggage computed at the rate of 100 pounds per passenger seating capacity,** including that for the driver. The term gross weight applied to other buses means the weight of the vehicle fully equipped with all fuel tanks full of fuel, **plus the weight of passengers and their baggage computed at the rate of 150 pounds per passenger seating capacity,** including that for the driver.

For bus seats designed for more than one passenger, but which are not divided so as to allot **individual seats for the passengers that occupy them,** allow two feet of its length per passenger to determine seating capacity. The term gross weight

applied to a truck, truck-tractor or a truck used as a truck-tractor used exclusively by the owner thereof for **transporting unfinished forest products or used by the owner thereof to transport agricultural**, **horticultural**, **dairy** and other farm products including livestock produced or finished by the owner of the truck and any other personal property owned by the farmer to whom the license for such truck is issued, from the farm to market, and to **transport property** and supplies to the farm of the owner, as described in subdivision 17, shall be the actual weight of the truck, truck-tractor or truck used as a truck-tractor or the combined weight of the truck-tractor and semitrailer plus the weight of the maximum load which the applicant has elected to carry on such vehicle or combined vehicles and shall be licensed and taxed as provided by section 168.013, subdivision 1c. The term gross weight applied to a truck-tractor or a truck used as a truck-tractor used exclusively by the owner, or by a for-hire carrier hauling exclusively for one owner, for towing an equipment dolly shall be the actual weight of the truck-tractor or truck used as a truck-tractor plus the weight of such part of the equipment dolly and its load as may rest upon the truck-tractor or truck used as a truck-tractor, and shall be licensed separately and taxed as provided by section 168.013, subdivision 1e, and the equipment dolly shall be licensed separately and taxed as provided in section 168.013, subdivision 1d, which is applicable for the balance of the weight of the equipment dolly and the balance of the maximum load the applicant has elected to carry on such combined vehicles. The term "equipment dolly" as used in this subdivision means a heavy semitrailer used solely by the owner, or by a for-hire carrier hauling exclusively for one owner, to transport the owner's construction machinery, equipment, implements and other objects used on a construction project, but not to be incorporated in or to become a part of a completed project. The term gross weight applied to a tow truck or towing vehicle defined in section 169.01, subdivision 52, means the weight of the tow truck or towing vehicle fully equipped for service, including the weight of the crane, winch and other equipment to control the movement of a towed vehicle, but does not include the weight of a wrecked or disabled vehicle towed or drawn by the tow truck or towing vehicle.

Subd. 17. Farm truck."Farm truck" means all single unit trucks, truck-tractors, tractors, semitrailers, and trailers used by the owner thereof **to transport agricultural**, **horticultural**, **dairy**, **and other farm products**, including livestock, produced or finished by the owner of the truck, and any other personal property owned by the farmer to whom the license for the truck is issued, from the farm to market, and to transport property and supplies to the farm of the owner. Trucks, truck-tractors, tractors, semitrailers, and trailers registered as "farm trucks" may be used by the owner thereof to occasionally **transport unprocessed and raw farm products**, not produced by the owner of the truck, from the place of production to market when the transportation constitutes the first haul of the products, and may be used by the owner thereof, either farmer or logger who harvests and hauls forest products only, **to transport logs**, **pulpwood**, **lumber**, **chips**, **railroad ties and other raw and unfinished forest products** from the place of production to an assembly yard or railhead when the transportation constitutes the first haul thereof, provided that the owner and operator of the vehicle transporting planed lumber shall have in immediate possession a statement signed by the producer of the lumber designating the governmental subdivision, section and township where the lumber was produced and that this haul, indicating the date, is the first haul thereof. The licensed vehicles may also be used by the owner thereof to transport, to and from timber harvesting areas, equipment and appurtenances incidental to timber harvesting, and gravel and other road building materials for timber haul roads.

"Farm trucks" shall also include only single unit trucks, which, because of their construction, cannot be used for any other purpose and are used exclusively to **transport milk and cream enroute from farm to an assembly** point or place for final manufacture, and for transporting milk and cream from an assembly point to a place for final processing or manufacture. This section shall not be construed to mean that the owner or operator of the truck cannot carry on usual accommodation services for patrons on regular return trips, such as butter, cream, cheese, and

other dairy supplies.

Subd. 18. Registrar."Registrar" means the registrar of motor vehicles designated in this chapter.

Subd. 19. Sworn statement."Sworn statement" means any statement required by or made pursuant to the provisions of this chapter, made under oath administered by an officer authorized to administer oaths.

Subd. 20. First year of life."First year of life" means the year of model designation of the vehicle, or, if there be no year of model designation, it shall mean the year of manufacture.

Subd. 21. Dealer."Dealer" means any person, firm, or corporation regularly engaged in the business of manufacturing, or selling, purchasing, and generally dealing in new and unused motor vehicles having an established place of business for the sale, trade, and display of new and unused motor vehicles and having in possession new and unused motor vehicles for the purposes of sale or trade. "Dealer" also includes any person, firm or corporation regularly engaged in the business of manufacturing or selling, purchasing, and generally dealing in new and unused motor vehicle bodies, chassis mounted or not, and having an established place of business for the sale, trade and display of such new and unused motor vehicle bodies, and having in possession new and unused motor vehicle bodies for the purposes of sale or trade.

Subd. 22. Special mobile equipment."Special mobile equipment" means every vehicle not designed or used primarily for the **transportation of persons or property** and only incidentally operated or moved over a highway, including but not limited to: ditch digging apparatus, moving dollies, pump hoists and other water well drilling equipment registered under chapter 103I, and other machinery such as asphalt spreaders, bituminous mixers, bucket loaders, tractors other than truck-tractors, ditchers, leveling graders, finishing machines, motor graders, road rollers, scarifiers, earth moving carryalls, scrapers, power shovels, drag lines, self-propelled cranes, and earth moving equipment. **The term does not include travel trailers, dump trucks, truck mounted transit mixers, truck mounted feed grinders, or other motor vehicles designed for the transportation of persons or property to which machinery has been attached.**

Subd. 23. Repealed, 1989 c 140 s 14

Subd. 24. Repealed, 1973 c 218 s 9

Subd. 25. Recreational equipment.(a) "Recreational equipment" means travel trailers including those which telescope or fold down, chassis mounted campers, house cars, motor homes, tent trailers, slip in campers, and converted buses that provide temporary human living quarters. A vehicle is considered to provide temporary living quarters if it:

(1) is not used as the residence of the owner or occupant;

(2) is used for temporary living quarters by the owner or occupant while engaged in recreational or vacation activities; and

(3) is self-propelled or towed on the public streets or highways incidental to the recreational or vacation activities.

(b) For the purposes of this subdivision, a motor home means a unit designed to provide temporary living quarters, built into as an integral part of, or permanently attached to, a self-propelled motor vehicle chassis or van. A motor home must contain permanently installed independent life support systems which meet the American National Standards Institute standard number A119.2 for recreational vehicles and provide at least four of the following facilities, two of which must be from the systems listed in clauses (1), (5), and (6): (1) cooking facility with liquid propane gas supply, (2) refrigerator, (3) self-contained toilet or a toilet connected to a plumbing system with connection for external water disposal, (4) heating or air conditioning separate from the vehicle engine, (5) a potable water supply system including a sink with faucet either self-contained or with connections for an external source, and (6) separate 110-125 volt electrical power supply. For purposes of this subdivision, "permanently installed" means built into or attached as an integral part of a chassis or van, and designed not to be removed except for repair or replacement. A system which is readily removable or held in

place by clamps or tie downs is not permanently installed.

Motor homes include but are not limited to, the following:

(1) Type A Motor Home - a raw chassis upon which is built a driver's compartment and an entire body that provides temporary living quarters as defined in this paragraph;

(2) Type B Motor Home - a van-type vehicle that conforms to the motor home definition in this paragraph and has been completed or altered by the final stage manufacturer; and

(3) Type C Motor Home - an incomplete vehicle upon which is permanently attached a body designed to provide temporary living quarters as defined in this paragraph.

(c) Slip in campers are mounted into a pickup truck in the pickup box, either by bolting through the floor of the pickup box or by firmly clamping to the side of the pickup box. The vehicle must be registered as a passenger automobile.

Subd. 26. Motorcycle."Motorcycle" means every motor vehicle having a seat or saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground, including motor scooters and bicycles with motor attached, other than those vehicles defined as motorized bicycles in subdivision 27, but excluding a tractor.

Subd. 27. Motorized bicycle."Motorized bicycle" means a bicycle that is propelled by a motor of a piston displacement capacity of 50 cubic centimeters or less, and a maximum of two brake horsepower, which is capable of a maximum speed of not more than 30 miles per hour on a flat surface with not more than one percent grade in any direction when the motor is engaged.

Subd. 28. Van. "Van" means any vehicle of box-like design with no barrier or separation between the operator's area and the remainder of the cargo-carrying area, and with a manufacturer's nominal rated carrying capacity of three-fourths ton or less.

Subd. 29. Pickup trucks."Pickup truck" means any truck with a manufacturer's nominal rated carrying capacity of three-fourths ton or less and commonly known as a pickup truck.

Subd. 30. Distributor."Distributor" means a person, firm, or corporation which has a bona fide contract or franchise with a manufacturer to distribute the new motor vehicles of that manufacturer to licensed new motor vehicle dealers, but does not include a dealer.

Subd. 31. First-stage manufacturer."First-stage manufacturer" means a person, firm, or corporation which manufactures, assembles, and sells new motor vehicles for resale in this state.

Subd. 32. Final-stage manufacturer."Final-stage manufacturer" means a person, firm, or corporation which performs manufacturing operations on an incomplete motor vehicle or a van-type motor vehicle so that it becomes a type A, B, or C motor home.

Subd. 33. Van converter or modifier."Van converter or modifier" means a person, firm, or corporation engaged in the business of modifying, completing or converting van-type vehicles into multipurpose passenger vehicles which are not motor homes as defined in subdivision 25.

Subd. 34. Fleet."Fleet" means a combination of 100 or more vehicles and trailers owned by a person solely for the use of that person or employees of the person and registered in this state under section 168.127. It does not include vehicles licensed under section 168.187.

Subd. 35. Limousine. For purposes of motor vehicle registration only, "limousine" means an unmarked luxury passenger automobile that is not a van or station wagon and has a seating capacity of not more than 12 persons, excluding the driver.

Subd. 36. Personal transportation service vehicle."Personal transportation service vehicle" is a passenger vehicle that has a seating capacity of up to six persons excluding the driver, or a van or station wagon with a seating capacity of up to 12 persons excluding the driver, that provides **personal transportation service** as defined in section 221.011, subdivision 34.

History.-- 1949 c 694 s 1; 1951 c 574 s 1,2; 1953 c 275 s 1; 1955 c 352 s 1; 1955 c 600 s 1; 1957 c 175 s 1; 1959 c 178 s 1; 1959 c 258 s 1; 1959 c 562 s 1; 1959 c 627 s 1; 1961 c 340 s 1; 1963 c 597 s 1; 1963 c 637 s 1; 1965 c 108 s 1,2; 1965 c 364 s 1; 1967 c 876 s 1; 1969 c 824 s 1,2; 1971 c 754 s 1; 1971 c 797 s 1; 1973 c 123 art 5 s 7; 1973 c 218 s 1,2; 1973 c 546 s 1-3; 1974 c 273 s 9; 1975 c 29 s 1; 1976 c 343 s 2; 1977 c 214 s 1,2; 1979 c 213 s 1; 1981 c 363 s 2-6; 1981 c 365 s 9; 3Sp1981 c 1 art 2 s 1-4; 1983 c 198 s 1; 1984 c 549 s 1,2; 1985 c 63 s 1-5; 1985 c 291 s 2-4; 1986 c 444; 1986 c 453 s 1; 1986 c 454 s 10; 1987 c 269 s 3; 1988 c 636 s 1,2; 1988 c 647 s 1; 1989 c 140 s 4-5; 1989 c 307 s 1; 1989 c 318 s 4; 1989 c 342 s 1-4; 1990 c 385 s 1; 1990 c 416 s 1; 1990 c 497 s 1; 1990 c 565 s 26,27; 1991 c 112 s 5; 1991 c 284 s 2; 1992 c 578 s 2; 1993 c 117 s 3; 1993 c 323 s 5; 1994 c 510 art 1 s 1; 1994 c 536 s 1; 1994 c 635 art 1 s 41; 1995 c 46 s 1

Note.--NOTE: For taxation of manufactured homes, see section 273.13, subdivision 3.

Note.--NOTE: The amendments to subdivision 8 by Laws 1994, chapter 510, article 1, section 1, are effective July 1, 1995. See Laws 1994, chapter 510, article 1, section 14.

Cases References.

M.S. § 168.013 Rate of tax
Subdivision 1. Imposition. Motor vehicles, except as set forth in section 168.012, using the public streets or highways in the state, and park trailers taxed under subdivision 1j, shall be taxed in lieu of all other taxes thereon, except wheelage taxes, so-called, which may be imposed by any city as provided by law, and except gross earnings taxes paid by companies subject or made subject thereto, and shall be privileged to use the public streets and highways, on the basis and at the rate for each calendar year as hereinafter provided.

M.S. § 168.013 Rate of tax
Subd. 1a. Passenger automobiles; hearses. (a) On passenger automobiles as defined in section 168.011, subdivision 7, and hearses, except as otherwise provided, the tax shall be $ 10 plus an additional tax equal to 1.25 percent of the base value.

(b) Subject to the classification provisions herein, "base value" means the manufacturer's suggested retail price of the vehicle including destination charge using list price information published by the manufacturer or determined by the registrar if no suggested retail price exists, and shall not include the cost of each accessory or item of optional equipment separately added to the vehicle and the suggested retail price.
§ 168.013 Rate of tax
(c) If the manufacturer's list price information contains a single vehicle identification number followed by various descriptions and suggested retail prices, the registrar shall select from those listings only the lowest price for determining base value.
§ 168.013 Rate of tax
(d) If unable to determine the base value because the vehicle is specially constructed, or for any other reason, the registrar may establish such value upon the cost price to the purchaser or owner as evidenced by a certificate of cost but not including Minnesota sales or use tax or any local sales or other local tax.
§ 168.013 Rate of tax
(e) The registrar shall classify every vehicle in its proper base value class as follows:
§ 168.013 Rate of tax

FROM TO
§ 168.013 Rate of tax
$ 0 $ 199.99
§ 168.013 Rate of tax
200 399.99
§ 168.013 Rate of tax
and thereafter a series of classes successively set in brackets having a spread of $ 200 consisting of such number of classes as will permit classification of all vehicles.
§ 168.013 Rate of tax
(f) The base value for purposes of this section shall be the middle point between the extremes of its class.
§ 168.013 Rate of tax
(g) The registrar shall establish the base value, when new, of every passenger automobile and hearse registered prior to the effective date of Extra Session Laws 1971, chapter 31, using list price information published by the manufacturer or any nationally recognized firm or association compiling such data for the automotive industry. If unable to ascertain the base value of any registered vehicle in the foregoing manner, the registrar may use any other available source or method. The tax on all previously registered vehicles shall be computed upon the base value thus determined taking into account the depreciation provisions of paragraph (h).
§ 168.013 Rate of tax
(h) Except as provided in paragraph (i), the annual additional tax computed upon the base value as provided herein, during the first and second years of vehicle life shall be computed upon 100 percent of the base value; for the third and fourth years, 90 percent of such value; for the fifth and sixth years, 75 percent of such value; for the seventh year, 60 percent of such value; for the eighth year, 40 percent of such value; for the ninth year, 30 percent of such value; for the tenth year, ten percent of such value; for the 11th and each succeeding year, the sum of $ 25.
§ 168.013 Rate of tax
In no event shall the annual additional tax be less than $ 25.
§ 168.013 Rate of tax
(i) The annual additional tax under paragraph (h) on a motor vehicle on which the first annual tax was paid before January 1, 1990, must not exceed the tax that was paid on that vehicle the year before.
§ 168.013 Rate of tax
Subd. 1b. Motorcycles.On motorcycles the tax is $ 10, which includes the surtax provided for in subdivision 14.
§ 168.013 Rate of tax
Subd. 1c. Farm trucks.(1) On farm trucks having a gross weight of not more than 57,000 pounds, the tax shall be based on total gross weight and shall be 45 percent of the Minnesota base rate prescribed by subdivision 1e during each of the first eight years of vehicle life, but in no event less than $ 35, and during the ninth and succeeding years of vehicle life the tax shall be 27 percent of the Minnesota base rate prescribed by subdivision 1e, but in no event less than $ 21.
§ 168.013 Rate of tax
(2) On farm trucks having a gross weight of more than 57,000 pounds, the tax shall be 60 percent of the Minnesota base rate during each of the first eight years of vehicle life and 36 percent of the Minnesota base rate during the ninth and succeeding years.
§ 168.013 Rate of tax
Subd. 1d. Trailers.On trailers the annual tax is based on total gross weight and is 30 percent of the Minnesota base rate prescribed in subdivision 1e, when the gross weight is 15,000 pounds or less, and when the gross weight of a trailer is more than 15,000 pounds, the tax for the first eight years of vehicle life is 100 percent of the tax imposed in the Minnesota base rate schedule, and during the ninth and succeeding years of vehicle life the tax is 75 percent of the Minnesota base rate prescribed by subdivision 1e, but in no event less than $ 5, provided,

that the tax on trailers with a total gross weight of 3,000 pounds or less is payable biennially.
§ 168.013 Rate of tax
Farm trailers with a gross weight in excess of 10,000 pounds and as described in section 168.011, subdivision 17, are taxed as farm trucks as prescribed in subdivision 1c.
§ 168.013 Rate of tax
Subd. 1e. Trucks; tractors; combinations; exceptions.On trucks and tractors except those in this chapter defined as farm trucks, on truck-tractor and semitrailer combinations except those defined as farm combinations, and on commercial zone vehicles, the tax based on total gross weight shall be graduated according to the Minnesota base rate schedule prescribed in this subdivision, but in no event less than $ 120.
§ 168.013 Rate of tax
Minnesota Base Rate Schedule
§ 168.013 Rate of tax
Scheduled taxes include five percent
§ 168.013 Rate of tax
surtax provided for in subdivision 14
§ 168.013 Rate of tax
TOTAL GROSS WEIGHT
§ 168.013 Rate of tax
IN POUNDS TAX
§ 168.013 Rate of tax
A 0 - 1,500 $ 15
§ 168.013 Rate of tax
B 1,501 - 3,000 20
§ 168.013 Rate of tax
C 3,001 - 4,500 25
§ 168.013 Rate of tax
D 4,501 - 6,000 35
§ 168.013 Rate of tax
E 6,001 - 9,000 45
§ 168.013 Rate of tax
F 9,001 - 12,000 70
§ 168.013 Rate of tax
G 12,001 - 15,000 105
§ 168.013 Rate of tax
H 15,001 - 18,000 145
§ 168.013 Rate of tax
I 18,001 - 21,000 190
§ 168.013 Rate of tax
J 21,001 - 26,000 270
§ 168.013 Rate of tax
K 26,001 - 33,000 360
§ 168.013 Rate of tax
L 33,001 - 39,000 475
§ 168.013 Rate of tax
M 39,001 - 45,000 595
§ 168.013 Rate of tax
N 45,001 - 51,000 715
§ 168.013 Rate of tax
O 51,001 - 57,000 865
§ 168.013 Rate of tax
P 57,001 - 63,000 1015
§ 168.013 Rate of tax
Q 63,001 - 69,000 1185
§ 168.013 Rate of tax
R 69,001 - 73,280 1325

§ 168.013 Rate of tax
S 73,281 - 78,000 1595
§ 168.013 Rate of tax
T 78,001 - 81,000 1760
§ 168.013 Rate of tax
For purposes of the Minnesota base rate schedule, for vehicles with six or more axles in the "S" and "T" categories, the base rates are $ 1,520 and $ 1,620 respectively.
§ 168.013 Rate of tax
For each vehicle with a gross weight in excess of 81,000 pounds an additional tax of $ 50 is imposed for each ton or fraction thereof in excess of 81,000 pounds, subject to subdivision 12.
§ 168.013 Rate of tax
Truck-tractors except those herein defined as farm and commercial zone vehicles shall be taxed in accord with the foregoing gross weight tax schedule on the basis of the combined gross weight of the truck-tractor and any semitrailer or semitrailers which the applicant proposes to combine with the truck-tractor.
§ 168.013 Rate of tax
Commercial zone trucks include only trucks, truck-tractors, and semitrailer combinations which are:
§ 168.013 Rate of tax
Impt (1) used by an authorized local cartage carrier operating under a permit issued under section 221.296 and whose **gross transportation revenue consists of at least 60 percent obtained solely from local cartage carriage**, and are operated solely within an area composed of two contiguous cities of the first class and municipalities contiguous thereto as defined by section 221.011, subdivision 17; or,
§ 168.013 Rate of tax
(2) operated by an interstate carrier registered under section 221.60, or by an authorized local cartage carrier or other carrier receiving operating authority under chapter 221, and operated solely within a zone exempt from regulation by the interstate commerce commission pursuant to United States Code, title 49, section 10526(b).
§ 168.013 Rate of tax
The license plates issued for commercial zone vehicles shall be plainly marked. A person operating a commercial zone vehicle outside the zone or area in which its operation is authorized is guilty of a misdemeanor and, in addition to the penalty therefor, shall have the registration of the vehicle as a commercial zone vehicle revoked by the registrar and shall be required to reregister the vehicle at 100 percent of the full annual tax prescribed in the Minnesota base rate schedule, and no part of this tax shall be refunded during the balance of the registration year.
§ 168.013 Rate of tax
On commercial zone trucks the tax shall be based on the total gross weight of the vehicle and during each of the first eight years of vehicle life shall be 75 percent of the Minnesota base rate schedule. During the ninth and succeeding years of vehicle life the tax shall be 50 percent of the Minnesota base rate schedule.
§ 168.013 Rate of tax
On trucks, truck-tractors and semitrailer combinations, except those defined as farm trucks and farm combinations, and except for those commercial zone vehicles specifically provided for in this subdivision, the tax for each of the first eight years of vehicle life shall be 100 percent of the tax imposed in the Minnesota base rate schedule, and during the ninth and succeeding years of vehicle life, the tax shall be 75 percent of the Minnesota base rate prescribed by this subdivision.
§ 168.013 Rate of tax
Subd. 1f. Buses; commuter vans.On all intercity buses, the tax during each the first two years of vehicle life shall be based on the gross weight of the vehicle and graduated according to the following schedule:
§ 168.013 Rate of tax
Gross Weight of Vehicle Tax

§ 168.013 Rate of tax
Under 6,000 lbs. ..... $ 125
§ 168.013 Rate of tax
6,000 to 8,000 lbs., incl. 125
§ 168.013 Rate of tax
8,001 to 10,000 lbs., incl. 125
§ 168.013 Rate of tax
10,001 to 12,000 lbs., incl. 150
§ 168.013 Rate of tax
12,001 to 14,000 lbs., incl. 190
§ 168.013 Rate of tax
14,001 to 16,000 lbs., incl. 210
§ 168.013 Rate of tax
16,001 to 18,000 lbs., incl. 225
§ 168.013 Rate of tax
18,001 to 20,000 lbs., incl. 260
§ 168.013 Rate of tax
20,001 to 22,000 lbs., incl. 300
§ 168.013 Rate of tax
22,001 to 24,000 lbs., incl. 350
§ 168.013 Rate of tax
24,001 to 26,000 lbs., incl. 400
§ 168.013 Rate of tax
26,001 to 28,000 lbs., incl. 450
§ 168.013 Rate of tax
28,001 to 30,000 lbs., incl. 500
§ 168.013 Rate of tax
30,001 and over 550
§ 168.013 Rate of tax

During each of the third and fourth years of vehicle life, the tax shall be 75 percent of the foregoing scheduled tax; during the fifth year of vehicle life, the tax shall be 50 percent of the foregoing scheduled tax; during the sixth year of vehicle life, the tax shall be 37-1/2 percent of the foregoing scheduled tax; and during the seventh and each succeeding year of vehicle life, the tax shall be 25 percent of the foregoing scheduled tax; provided that the annual tax paid in any year of its life for an intercity bus shall be not less than $ 175 for a vehicle of over 25 passenger seating capacity and not less than $ 125 for a vehicle of 25 passenger and less seating capacity.

§ 168.013 Rate of tax

Impt On all intracity buses operated by an **auto transportation company in the business of transporting persons for compensation as a common carrier** and operating within the limits of cities having populations in excess of 200,000 inhabitants, the tax during each year of the vehicle life of each such bus shall be $ 40; on all of such intracity buses operated in cities having a population of less than 200,000 and more than 70,000 inhabitants, the tax during each year of vehicle life of each bus shall be $ 10; and on all of such intracity buses operating in cities having a population of less than 70,000 inhabitants, the tax during each year of vehicle life of each bus shall be $ 2.

§ 168.013 Rate of tax

On all other buses and commuter vans, as defined in section 168.126, the tax during each of the first three years of the vehicle life shall be based on the gross weight of the vehicle and graduated according to the following schedule: Where the gross weight of the vehicle is 6,000 pounds or less, $ 25. Where the gross weight of the vehicle is more than 6,000 pounds, and not more than 8,000 pounds, the tax shall be $ 25 plus an additional tax of $ 5 per ton for the ton or major portion in excess of 6,000 pounds. Where the gross weight of the vehicle is more than 8,000 pounds, and not more than 20,000 pounds, the tax shall be $ 30 plus an additional tax of $ 10 per ton for each ton or major portion in excess of 8,000 pounds. Where the gross weight of the vehicle is more than 20,000 pounds and not

more than 24,000 pounds, the tax shall be $ 90 plus an additional tax of $ 15 per ton for each ton or major portion in excess of 20,000 pounds. Where the gross weight of the vehicle is more than 24,000 pounds and not more than 28,000 pounds, the tax shall be $ 120 plus an additional tax of $ 25 per ton for each ton or major portion in excess of 24,000 pounds. Where the gross weight of the vehicle is more than 28,000 pounds, the tax shall be $ 170 plus an additional tax of $ 30 per ton for each ton or major portion in excess of 28,000 pounds.

§ 168.013 Rate of tax

During the fourth and succeeding years of vehicle life, the tax shall be 80 percent of the foregoing scheduled tax but in no event less than $ 20 per vehicle.

§ 168.013 Rate of tax

Subd. 1g. Recreational vehicles.Self-propelled recreational vehicles shall be separately licensed and taxed annually on the basis of total gross weight and the tax shall be graduated according to the Minnesota base rate schedule prescribed in subdivision 1e, but in no event less than $ 20, except as otherwise provided in this subdivision.

§ 168.013 Rate of tax

For all self-propelled recreational vehicles, the tax for the ninth and succeeding years of vehicle life shall be 75 percent of the tax imposed in the Minnesota base rate schedule.

§ 168.013 Rate of tax

Towed recreational vehicles shall be separately licensed and taxed annually on the basis of total gross weight at 30 percent of the Minnesota base rate prescribed in subdivision 1e but in no event less than $ 5.

§ 168.013 Rate of tax

Notwithstanding any law to the contrary, all trailers and semitrailers taxed pursuant to this section shall be exempt from any wheelage tax now or hereafter imposed by any political subdivision or political subdivisions.

§ 168.013 Rate of tax

Subd. 1h. Motorized bicycles.On motorized bicycles the tax is $ 6, which includes the surtax provided for in subdivision 14.

§ 168.013 Rate of tax

Subd. 1i. Repealed, 1985 c 291 s 27

§ 168.013 Rate of tax

Subd. 1j. Park trailers.Except as provided in section 168.012, subdivision 9, park trailers shall be taxed annually on the basis of total gross weight at 30 percent of the Minnesota base rate prescribed in subdivision 1e, but in no event less than $ 5.

§ 168.013 Rate of tax

Subd. 1k. Commuter van.A commuter van, as defined in section 168.126, must be separately licensed and taxed annually on the basis of total gross weight and the tax must be graduated according to the schedule prescribed in subdivision 1f.

§ 168.013 Rate of tax

Subd. 2. Prorated fees.When a motor vehicle first becomes subject to taxation during the registration period for which the tax is paid, the tax shall be for the remainder of the period prorated on a monthly basis, 1/12 of the annual tax for each calendar month or fraction thereof; provided, however, that for a vehicle having an annual tax of $ 10 or less there shall be no reduction until on and after September 1 when the annual tax shall be reduced one-half.

§ 168.013 Rate of tax

Subd. 3. Application; cancellation; excessive gross weights forbidden.The applicant for all licenses based on gross weight shall state in writing upon oath, the unloaded weight of the motor vehicle, trailer or semitrailer and the maximum load the applicant proposes to carry thereon, the sum of which shall constitute the gross weight upon which the license tax shall be paid, but in no case shall the declared gross weight upon which the tax is paid be less than 1-1/4 times the declared unloaded weight of the motor vehicle, trailer or semitrailer to be registered, except recreational vehicles taxed under subdivision 1g, school buses taxed under subdivision 18 and tow trucks or towing vehicles defined in section

169.01, subdivision 52. The gross weight of a tow truck or towing vehicle is the actual weight of the tow truck or towing vehicle fully equipped, but does not include the weight of a wrecked or disabled vehicle towed or drawn by the tow truck or towing vehicle.

§ 168.013 Rate of tax

The gross weight of no motor vehicle, trailer or semitrailer shall exceed the gross weight upon which the license tax has been paid by more than four percent or 1,000 pounds, whichever is greater.

§ 168.013 Rate of tax

The gross weight of the motor vehicle, trailer or semitrailer for which the license tax is paid shall be indicated by a distinctive character on the license plate or plates except as provided in subdivision 12 and the plate or plates shall be kept clean and clearly visible at all times.

§ 168.013 Rate of tax

The owner, driver, or user of a motor vehicle, trailer or semitrailer upon conviction for transporting a gross weight in excess of the gross weight for which it was registered or for operating a vehicle with an axle weight exceeding the maximum lawful axle load weight shall be guilty of a misdemeanor and be subject to increased registration or reregistration according to the following schedule:

§ 168.013 Rate of tax

(1) The owner, driver or user of a motor vehicle, trailer or semitrailer upon conviction for transporting a gross weight in excess of the gross weight for which it is registered by more than four percent or 1,000 pounds, whichever is greater, but less than 25 percent or for operating or using a motor vehicle, trailer or semitrailer with an axle weight exceeding the maximum lawful axle load as provided in section 169.825 by more than four percent or 1,000 pounds, whichever is greater, but less than 25 percent, in addition to any penalty imposed for the misdemeanor shall apply to the registrar to increase the authorized gross weight to be carried on the vehicle to a weight equal to or greater than the gross weight the owner, driver, or user was convicted of carrying, the increase computed for the balance of the calendar year on the basis of 1/12 of the annual tax for each month remaining in the calendar year beginning with the first day of the month in which the violation occurred. If the additional registration tax computed upon that weight, plus the tax already paid, amounts to more than the regular tax for the maximum gross weight permitted for the vehicle under section 169.825, that additional amount shall nevertheless be paid into the highway fund, but the additional tax thus paid shall not permit the vehicle to be operated with a gross weight in excess of the maximum legal weight as provided by section 169.825. Unless the owner within 30 days after a conviction shall apply to increase the authorized weight and pay the additional tax as provided in this section, the registrar shall revoke the registration on the vehicle and demand the return of the registration card and plates issued on that registration.

§ 168.013 Rate of tax

(2) The owner or driver or user of a motor vehicle, trailer or semitrailer upon conviction for transporting a gross weight in excess of the gross weight for which the motor vehicle, trailer or semitrailer was registered by 25 percent or more, or for operating or using a vehicle or trailer with an axle weight exceeding the maximum lawful axle load as provided in section 169.825 by 25 percent or more, in addition to any penalty imposed for the misdemeanor, shall have the reciprocity privileges on the vehicle involved if the vehicle is being operated under reciprocity canceled by the registrar, or if the vehicle is not being operated under reciprocity, the certificate of registration on the vehicle operated shall be canceled by the registrar and the registrar shall demand the return of the registration certificate and registration plates. The registrar may not cancel the registration or reciprocity privileges for any vehicle found in violation of seasonal load restrictions imposed under section 169.87 unless the axle weight exceeds the year-round weight limit for the highway on which the violation occurred. The registrar may investigate any allegation of gross weight violations and demand that the operator show cause why all future operating privileges in the

state should not be revoked unless the additional tax assessed is paid.
§ 168.013 Rate of tax
(3) When the registration on a motor vehicle, trailer or semitrailer is revoked by the registrar according to provisions of this section, the vehicle shall not be operated on the highways of the state until it is registered or reregistered, as the case may be, and new plates issued, and the registration fee shall be the annual tax for the total gross weight of the vehicle at the time of violation. The reregistration pursuant to this subdivision of any vehicle operating under reciprocity agreements pursuant to section 168.181 or 168.187 shall be at the full annual registration fee without regard to the percentage of vehicle miles traveled in this state.
§ 168.013 Rate of tax
Subd. 4. Gross earnings tax system.Motor vehicles using the public streets and highways of this state, and owned by companies paying taxes under gross earnings system of taxation, shall be registered and taxed as provided for the registration and taxation of motor vehicles by this chapter, notwithstanding the fact that earnings from such vehicles may be included in the earnings of such companies upon which such gross earnings taxes are computed, and all provisions of this chapter are hereby made applicable to the enforcement and collection of the tax herein provided for.
§ 168.013 Rate of tax
Subd. 5. Certain vehicles subject to personal property tax.Motor vehicles not subject to taxation as provided in section 168.012, but subject to taxation as personal property within the state under section 273.36 or 273.37, subdivision 1, have a class rate as provided in section 273.13, subdivision 24, provided, that if the person against whom any tax has been levied on the ad valorem basis because of any motor vehicle shall, during the calendar year for which such tax is levied, be also taxed under the provisions of this chapter, then and in that event, upon proper showing, the commissioner of revenue shall grant to the person against whom said ad valorem tax was levied, such reduction or abatement of net tax capacity or taxes as was occasioned by the so-called ad valorem tax imposed, and provided further that, if said ad valorem tax upon any motor vehicle has been assessed against a dealer in new and unused motor vehicles, and the tax imposed by this chapter for the required period is thereafter paid by the owner, then and in that event, upon proper showing, the commissioner of revenue, upon the application of said dealer, shall grant to such dealer against whom said ad valorem tax was levied such reduction or abatement of net tax capacity or taxes as was occasioned by the so-called ad valorem tax imposed. If such motor vehicle be registered and taxed under this chapter for a fractional part of the calendar year only, then such ad valorem tax shall be reduced in the percentage which such fractional part of the years bears to a full year.
§ 168.013 Rate of tax
Subd. 6. Listing by dealers.The owner of every motor vehicle not exempted by section 168.012 or 168.28, shall, so long as it is subject to taxation within the state, list and register the same and pay the tax herein provided annually; provided, however, that any dealer in motor vehicles, to whom dealer's plates have been issued as provided in this chapter, coming into the possession of any such motor vehicle to be held solely for the purpose of sale or demonstration or both, shall be entitled to withhold the tax becoming due on such vehicle for the following year if the vehicle is received before the current year registration expires and the transfer is filed with the registrar on or before such expiration date. When, thereafter, such vehicle is otherwise used or is sold, leased, or rented to another person, firm, corporation, or association, the whole tax for the year shall become payable immediately with all arrears.
§ 168.013 Rate of tax
Subd. 7. Agents.Any act required herein of a registered owner may be performed in the registered owner's behalf by a duly authorized agent. Any person having a lien upon, or claim to, any motor vehicle may pay any tax due thereon to prevent the penalty for delayed registration from accruing, but the registration

certificate and number plates shall not be issued until legal ownership is definitely determined.

§ 168.013 Rate of tax

Subd. 8. Proceeds to highway user tax distribution fund.The proceeds of the tax imposed on motor vehicles under this chapter shall be collected by the registrar of motor vehicles and paid into the state treasury and credited to the highway user tax distribution fund.

§ 168.013 Rate of tax

Subd. 9. Municipalities not to impose tax; exceptions.No city shall impose any tax or license fee or bond of any kind for the operation of any motor vehicle on its streets if the person or company owning or operating such vehicle holds a certificate or permit to operate such vehicle issued in accordance with the provisions of Minnesota Statutes 1945, Chapter 221, provided, that this section shall not apply to vehicles **transporting persons for hire** which are operated exclusively within any city or contiguous cities.

§ 168.013 Rate of tax

Subd. 10. Repealed, 1973 c 218 s 9

§ 168.013 Rate of tax

Subd. 11. Obsolete, 1951 c 123 s 2

§ 168.013 Rate of tax

Subd. 12. Gross weight, additional tax for excessive.Whenever an owner has registered a vehicle and paid the tax as provided in subdivisions 1 to 1g, on the basis of a selected gross weight of the vehicle and thereafter such owner desires to operate such vehicle with a greater gross weight than that for which the tax has been paid, such owner shall be permitted to reregister such vehicle by paying the additional tax due thereon for the remainder of the calendar year for which such vehicle has been reregistered, the additional tax computed pro rata by the month, 1/12 of the annual tax due for each month of the year remaining in the calendar year, beginning with the first day of the month in which such owner desires to operate the vehicle with the greater weight. In computing the additional tax as aforesaid, the owner shall be given credit for the unused portion of the tax previously paid computed pro rata by the month, 1/12 of the annual tax paid for each month of the year remaining in the calendar year beginning with the first day of the month in which such owner desires to operate the vehicle with the greater weight. An owner will be permitted one reduction of gross weight or change of registration per year, which will result in a refund. This refund will be prorated monthly beginning with the first day of the month after such owner applies to amend the registration. The application for amendment shall be accompanied by a fee of $ 3, and all fees shall be deposited in the highway user tax distribution fund. Provided, however, the owner of a vehicle may reregister the vehicle for a weight of more than 81,000 pounds for one or more 30-day periods. For each 30-day period, the additional tax shall be equal to 1/12 of the difference between the annual tax for the weight at which the vehicle is registered and reregistered. When a vehicle is reregistered in accordance with this provision, a distinctive windshield sticker provided by the commissioner of public safety shall be permanently displayed.

§ 168.013 Rate of tax

Subd. 13. Repealed, 1973 c 218 s 9

§ 168.013 Rate of tax

Subd. 14. Increase of tax rate.Beginning in and for the first calendar year following the issuance and sale of bonds of the state of Minnesota under the provisions of the Constitution of the State of Minnesota, article 14, section 4, and after July 1, 1957, under the provisions of the Constitution of the State of Minnesota, article 14, section 11, the proceeds of the sale of which are to be used in the construction of bridges and approaches thereto forming a part of the trunk highway system, all motor vehicle taxes imposed by section 168.013, subdivisions 1 to 1g shall be increased by 5 percent; such increased rate of tax shall remain in effect until and including the calendar year following the year in which all principal and interest on all of any such bonds shall be paid in full. Immediately upon the payment in full of all interest and principal on all of any such bonds,

the commissioner of finance shall certify that fact to the registrar of motor vehicles and the registrar shall, for the second calendar year and thereafter following receipt of such certification, cease to collect motor vehicle taxes at the increased rate prescribed by this subdivision.
§ 168.013 Rate of tax
Subd. 15. Adjustment of tax.Whenever the tax on any vehicle as computed under the provisions of this section is found to be indivisible by $ 1, the registrar is authorized to adjust such tax to the nearest even dollar.
§ 168.013 Rate of tax
Subd. 16. Repair and servicing permit.Upon the written application of the owner of a motor vehicle registered and taxed as a commercial zone truck, a truck tractor, a semitrailer, or any combination thereof in accordance with this section, the registrar may grant permission in writing to such owner to operate such vehicle to and from a repair shop or service station outside of its licensed zone of operation for the limited purpose of repair or servicing. The application and any permit issued under this subdivision shall state the location of the repair or servicing facility, together with such other information and subject to such conditions as the registrar may specify. Any motor vehicle operated under such a permit shall carry no load.
§ 168.013 Rate of tax
Subd. 17. Repealed, 1981 c 363 s 58
§ 168.013 Rate of tax
Subd. 18. School buses.Notwithstanding the provisions of subdivision 1, school buses used exclusively for the **transportation of students under contract with a school district**, or used in connection with transportation for nonprofit educational institutions, shall be taxed during each year of the vehicle life of such bus the amount of $ 25.
§ 168.013 Rate of tax
Subd. 19. Limited rental of farm trucks to governmental units.A motor vehicle licensed as a farm truck may be rented to any governmental unit for use in snow removal, flood, tornado, fire or other emergency or disaster situation without affecting its license status.
§ 168.013 Rate of tax
Subd. 20. Federal heavy vehicle use tax; proof of payment.No person may register a motor vehicle that, along with the trailers and semitrailers customarily used with the same type of motor vehicle, has a taxable gross weight of at least 55,000 pounds and is subject to the use tax imposed by the Internal Revenue Code of 1954, section 4481, unless proof of payment of the use tax, if required and in a form as may be prescribed by the secretary of the treasury, is presented.
§ 168.013 Rate of tax

History.-- 1949 c 694 s 3; 1951 c 123 s 1,2; 1951 c 575 s 1; 1951 c 576 s 1; 1953 c 58 s 1; 1953 c 374 s 1; 1953 c 737 s 1; 1955 c 352 s 2; 1955 c 605 s 1; 1955 c 749 s 1; 1957 c 60 s 1; 1957 c 176 s 1; 1957 c 875 s 1; 1957 c 961 s 1; 1959 c 154 s 1; 1961 c 282 s 1; 1963 c 119 s 1; 1965 c 94 s 1; 1965 c 108 s 3; 1965 c 147 s 1; 1965 c 202 s 1,2; 1967 c 332 s 1; 1969 c 9 s 31; 1969 c 24 s 1; 1969 c 824 s 3; 1969 c 1059 s 1; 1971 c 700 s 1; 1971 c 754 s 2; Ex 1971 c 31 art 5 s 1; 1973 c 54 s 1; 1973 c 123 art 5 s 7; 1973 c 218 s 3-6; 1973 c 260 s 1; 1973 c 492 s 14; 1973 c 582 s 3; 1974 c 406 s 28-31; 1975 c 339 s 8; 1976 c 2 s 172; 1976 c 39 s 2-4; 1977 c 108 s 1; 1977 c 214 s 3; 1977 c 248 s 1-3; 1977 c 347 s 26; 1979 c 213 s 2; 1980 c 427 s 1; 1981 c 321 s 1; 1981 c 357 s 51-54; 1981 c 363 s 7-17; 1Sp1981 c 4 art 4 s 61; 3Sp1981 c 1 art 2 s 5-7; 1982 c 424 s 41; 1983 c 198 s 2,3; 1983 c 371 s 1; 1984 c 549 s 3,4; 1985 c 291 s 8-11; 1985 c 299 s 8,9; 1986 c 398 art 13 s 1; 1986 c 444; 1986 c 454 s 12,13; 1Sp1986 c 3 art 2 s 11; 1987 c 383 s 1; 1988 c 647 s 2; 1988 c 719 art 5 s 84; 1989 c 268 s 5; 1989 c 329 art 13 s 20; 1989 c 342 s 7,8; 1Sp1989 c 1 art 2 s 11; 1990 c 426 art 1 s 21; 1990 c 480 art 7 s 2; 1990 c 556 s 2; 1991 c 112 s 5; 1994 c 536 s 3,4; 1995 c 264 art 2 s 2
§ 168.013 Rate of tax

Note.--NOTE: Subdivision 1j is repealed by Laws 1995, chapter 264, article 3, section 51, paragraph (a), effective beginning January 1, 1997. See Laws 1995, chapter 264, article 3, section 52.

M.S. § 168.013 Rate of tax

M.S. § 168.011 Definitions

Subd. 16. Gross weight."Gross weight" means the actual unloaded weight of the vehicle, either a truck or tractor, or the actual unloaded combined weight of a truck-tractor and semitrailer or semitrailers, or of the truck-tractor, semitrailer and one additional semitrailer, fully equipped for service, plus the weight of the maximum load which the applicant has elected to carry on such vehicle or combined vehicles. The term gross weight applied to a truck used for towing a trailer means the unloaded weight of the truck, fully equipped for service, plus the weight of the maximum load which the applicant has elected to carry on such truck, including the weight of such part of the trailer and its load as may rest upon the truck. The term gross weight applied to school buses means the weight of the vehicle fully equipped with all fuel tanks full of fuel, **plus the weight of the passengers and their baggage computed at the rate of 100 pounds per passenger seating capacity,** including that for the driver. The term gross weight applied to other buses means the weight of the vehicle fully equipped with all fuel tanks full of fuel, **plus the weight of passengers and their baggage** computed at the rate of 150 pounds per passenger seating capacity, including that for the driver. For bus seats designed for more than one passenger, but which are not divided so as to allot individual seats for the passengers that occupy them, allow two feet of its length per passenger to determine seating capacity. The term gross weight applied to a truck, truck-tractor or a truck used as a truck-tractor used exclusively by the owner thereof for transporting unfinished forest products or used by the owner thereof to **transport agricultural, horticultural, dairy and other farm products** including livestock produced or finished by the owner of the truck and any other personal property owned by the farmer to whom the license for such truck is issued, from the farm to market, and to transport property and supplies to the farm of the owner, as described in subdivision 17, shall be the actual weight of the truck, truck-tractor or truck used as a truck-tractor or the combined weight of the truck-tractor and semitrailer plus the weight of the maximum load which the applicant has elected to carry on such vehicle or combined vehicles and shall be licensed and taxed as provided by section 168.013, subdivision 1c. The term gross weight applied to a truck-tractor or a truck used as a truck-tractor used exclusively by the owner, or by a for-hire carrier hauling exclusively for one owner, for towing an equipment dolly shall be the actual weight of the truck-tractor or truck used as a truck-tractor plus the weight of such part of the equipment dolly and its load as may rest upon the truck-tractor or truck used as a truck-tractor, and shall be licensed separately and taxed as provided by section 168.013, subdivision 1e, and the equipment dolly shall be licensed separately and taxed as provided in section 168.013, subdivision 1d, which is applicable for the balance of the weight of the equipment dolly and the balance of the maximum load the applicant has elected to carry on such combined vehicles. The term "equipment dolly" as used in this subdivision means a heavy semitrailer used solely by the owner, or by a for-hire carrier hauling exclusively for one owner, to transport the owner's construction machinery, equipment, implements and other objects used on a construction project, but not to be incorporated in or to become a part of a completed project. The term gross weight applied to a tow truck or towing vehicle defined in section 169.01, subdivision 52, means the weight of the tow truck or towing vehicle fully equipped for service, including the weight of the crane, winch and other equipment to control the movement of a towed vehicle, but does not include the weight of a wrecked or disabled vehicle towed or drawn by the tow truck or towing vehicle.

M.S. § 168.011 Definitions

Subd. 17. Farm truck."Farm truck" means all single unit trucks, truck-tractors,

tractors, semitrailers, and trailers used by the owner thereof to **transport agricultural, horticultural, dairy, and other farm products**, including livestock, produced or finished by the owner of the truck, and any other personal property owned by the farmer to whom the license for the truck is issued, from the farm to market, and to **transport property and supplies to the farm of the owner.** Trucks, truck-tractors, tractors, semitrailers, and trailers registered as "farm trucks" may be used by the owner thereof to occasionally transport unprocessed and raw farm products, not produced by the owner of the truck, from the place of production to market when the transportation constitutes the first haul of the products, and may be used by the owner thereof, either farmer or logger who harvests and hauls forest products only, to transport logs, pulpwood, lumber, chips, railroad ties and other raw and unfinished forest products from the place of production to an assembly yard or railhead when the transportation constitutes the first haul thereof, provided that the owner and operator of the vehicle transporting planed lumber shall have in immediate possession a statement signed by the producer of the lumber designating the governmental subdivision, section and township where the lumber was produced and that this haul, indicating the date, is the first haul thereof. The licensed vehicles may also be used by the owner thereof to transport, to and from timber harvesting areas, equipment and appurtenances incidental to timber harvesting, and gravel and other road building materials for timber haul roads.

§ 168.012 Vehicles exempt from license fees

Subd. 4. Bunkhouses, supply cars, shop cars, and other similar camp equipment mounted on trailers and used by highway construction contractors exclusively at construction camp sites shall not be taxed as motor vehicles using the public streets and highways and shall be exempt from the provisions of this chapter.Such trailers with such mounted bunkhouses, supply cars, shop cars, and other similar camp equipment thereon shall be listed and taxed as personal property.

§ 168.012 Vehicles exempt from license fees

Subd. 5. Motor vehicles, which are used only for the purpose of carrying sawing machines; well drilling machines, pump hoists, and other equipment registered under chapter 103I; barn sprayers or corn shellers permanently attached to them, shall not be subject to the registration tax as herein provided, but shall be listed for taxation as personal property as provided by law.

§ 168.012 Vehicles exempt from license fees

Subd. 9. Manufactured homes and park trailers.Manufactured homes and park trailers shall not be taxed as motor vehicles using the public streets and highways and shall be exempt from the motor vehicle tax provisions of this chapter. Except as provided in section 273.125, manufactured homes and park trailers shall be taxed as personal property. The provisions of Minnesota Statutes 1957, section 272.02 or any other act providing for tax exemption shall be inapplicable to manufactured homes and park trailers, except such manufactured homes as are held by a licensed dealer and exempted as inventory. Travel trailers not conspicuously displaying current registration plates on the property tax assessment date shall be taxed as manufactured homes if occupied as human dwelling places.

§ 168.013 Rate of tax

Subd. 5. Certain vehicles subject to personal property tax.Motor vehicles not subject to taxation as provided in section 168.012, but subject to taxation as personal property within the state under section 273.36 or 273.37, subdivision 1, have a class rate as provided in section 273.13, subdivision 24, provided, that if the person against whom any tax has been levied on the ad valorem basis because of any motor vehicle shall, during the calendar year for which such tax is levied, be also taxed under the provisions of this chapter, then and in that event, upon proper showing, the commissioner of revenue shall grant to the person against whom said ad valorem tax was levied, such reduction or abatement of net tax capacity or taxes as was occasioned by the so-called ad valorem tax imposed, and provided further that, if said ad valorem tax upon any motor vehicle has been assessed against a dealer in new and unused motor vehicles, and the tax imposed by this chapter for the required period is thereafter paid by the owner, then and in that event, upon proper showing, the commissioner of revenue, upon the application of

said dealer, shall grant to such dealer against whom said ad valorem tax was levied such reduction or abatement of net tax capacity or taxes as was occasioned by the so-called ad valorem tax imposed. If such motor vehicle be registered and taxed under this chapter for a fractional part of the calendar year only, then such ad valorem tax shall be reduced in the percentage which such fractional part of the years bears to a full year.

§ 168.04 Military personnel; exemptions

(3) The vehicle is used only for personal transportation or for transportation of the owner or authorized agent's personal property; and

§ 168.04 Military personnel; exemptions

(2) That such vehicle is used only for personal transportation or for transportation of the owner or authorized agent's personal property;

§ 168.27 Motor vehicle dealers; violations, penalties

(9) "Isolated or occasional sales or leases" means the sale or lease of not more than five motor vehicles in a 12-month period, exclusive of pioneer or classic motor vehicles as defined in section 168.10, subdivisions 1a and 1b, or sales by a licensed auctioneer selling motor vehicles at an auction if, in the ordinary course of the auctioneer's business, the sale of motor vehicles is incidental to the sale of other real or personal property.

§ 168.27 Motor vehicle dealers; violations, penalties

Subd. 5a. Consignment sales.No person may solicit, accept, offer for sale, or sell motor vehicles for consignment sale unless licensed as a new or used motor vehicle dealer, a motor vehicle wholesaler, or a motor vehicle auctioneer. This requirement does not apply to a licensed auctioneer selling motor vehicles at an auction if, in the ordinary course of the auctioneer's business, the sale of motor vehicles is incidental to the sale of other real or personal property.

§ 168.28 Vehicles subject to tax; exceptions

Every motor vehicle (except those exempted in section 168.012, and except those which are being towed upon the streets and highways and which shall not be deemed to be using the streets and highways within the meaning of this section) shall be deemed to be one using the public streets and highways and hence as such subject to taxation under this act if such motor vehicle has since April 23, 1921, used such public streets or highways, or shall actually use them, or if it shall come into the possession of an owner other than as a manufacturer, dealer, warehouse operator, mortgagee or pledgee. New and unused motor vehicles in the possession of a dealer solely for the purpose of sale, and used or secondhand motor vehicles which have not theretofore used the public streets or highways of this state which are in the possession of a dealer solely for the purpose of sale and which are duly listed as herein provided, shall not be deemed to be vehicles using the public streets or highways. The driving or operating of a motor vehicle upon the public streets or highways of this state by a motor vehicle dealer or any employee of such motor vehicle dealer for demonstration purposes or for any purpose incident to the usual and customary conduct and operation of the business in which licensed under section 168.27 to engage, or solely for the purpose of moving it from points outside or within the state to the place of business or storage of a licensed dealer within the state or solely for the purpose of moving it from the place of business of a manufacturer, or licensed dealer within the state to the place of business or residence of a purchaser outside the state, shall not be deemed to be using the public streets or highways in the state within the meaning of this chapter or of the Constitution of the state of Minnesota, article XIV, and shall not be held to make the motor vehicle subject to taxation under this chapter as one using the public streets or highways, if during such driving or moving the dealer's plates herein provided for shall be duly displayed upon such vehicle. Any dealer or distributor may register a motor vehicle prior to its assessment or taxation as personal property, and pay the license fee and tax thereon for the full calendar year as one using the public streets and highways, and thereafter such vehicle shall be deemed to be one using the public streets and highways and shall not be subject to assessment or taxation as personal property during the calendar year for which it is so registered, whether or not such vehicle shall actually have used the

streets or highways.

STATE V. NORTHWEST AIRLINES (S. Ct. 1978) 269 N.W.2d 51

We must disagree. Northwest's interpretation would, in effect, convert the limited exemption in effect during the 1971 assessment year into a blanket exemption for almost all business personal property. The legislature did not grant this far broader exemption until it rewrote the exemption statute, n.3 effective beginning with the 1972 assessment year, to make virtually all business personal property exempt from taxation. This case concerns exemptions for the 1971 assessment year and thus is governed by the older, much narrower exemption. We have previously held that this exemption statute should be strictly construed. Abex Corporation v. Commr. of Taxation, 295 Minn. 445, 207 N.W.2d 37 (1973). Construing the statute in that fashion we find no basis for rejecting the trial court's findings and conclusions.

GRAVA V. COUNTY OF PINE (S. Ct. 1978) 268 N.W.2d 723

n9 Minn.St. 272.01, subd. 2, states: "When any real or personal property which for any reason is exempt from ad valorem taxes, and taxes in lieu thereof, is leased, loaned, or otherwise made available and used by a private individual, association or corporation in connection with a business conducted for profit; except where such use is by way of a concession in or relative to the use in whole or part of a public park, market, fair grounds, airport, port authority, municipal auditorium, municipal museum or municipal stadium there shall be imposed a tax, for the privilege of so using or possessing such real or personal property, in the same amount and to the same extent as though the lessee or user was the owner of such property. Taxes imposed by this subdivision shall be due and payable as in the case of personal property taxes and such taxes shall be assessed to such lessees or users of real or personal property, except that such taxes shall not become a lien against the property. When due such taxes shall constitute a debt due from the lessee or user to the state, township, city, county and school district for which the taxes were assessed and shall be collected in the same manner as personal property taxes."

Johnson v. Donovan (S. Ct. 1971) 188 N.W.2d 864, 290 Minn. 421 Page 428

Generally, the uniformity requirement means that all property within a class must be treated equally, not that all classes must be so treated. Thus, the mere failure to provide for depreciation of recreational vehicles although depreciation is afforded to other motor vehicles is not of itself a violation of the uniformity requirement, because the length of time such equipment is used does not necessarily establish a decreased value of it. In other words, age is not indicative of value, and an old bus may be purchased for a small price and then converted into a recreational {*428} vehicle having all the comforts of home, with the result that its value may be greatly enhanced although such increase in value is not reflected at all in the age of the vehicle.

Cherokee State Bank v. Wallace (S. Ct. 1938) 279 N.W. 410, 202 Minn. 582 Page 591

"The power to classify is primarily with the legislature, and its laws should not be declared invalid unless it clearly appears that they transgress the constitution. *** * * The classification must not be unreasonable, arbitrary, or, as is sometimes said, capricious. It must rest on some ground of difference having a fair and substantial relation to the object of the legislation so that all persons similarly circumstances shall be treated alike. * * * It must operate 'equally and uniformly upon all persons in similar circumstances.' * * *** Any classification is permissible which has a reasonable relation to some permitted end of governmental action." Reed v. Bjornson, 191 Minn. 254, 264-265, 253 N.W. 102, 107.

Reed v. Bjornson (S. Ct. 1934) 253 N.W. 102, 191 Minn. 254 Page 258

3. Our uniformity clause was the major restriction placed upon the legislature by the present art. 9, § 1, when adopted by the people in 1906. Prior to that time our constitution had required taxes to be as "nearly equal as may be and that all property upon which taxes are levied shall have a cash valuation and be equalized and uniform throughout the state." **The present art. 9, § 1, requiring taxes to be "uniform on the same class of subjects,"** was adopted under circumstances which conclusively show that it was the purpose of the people to relieve the legislature of the rather narrow restrictions theretofore placed upon that branch of the government by the constitution and to enlarge its powers in regard to taxation. As well said by Mr. Justice Sutherland in his dissenting opinion in Home B. & L. Assn. v. Blaisdell, 290 U.S. 398, 54 S. Ct. 231, 245, 78 L. ed. 255, 276, 88 A.L.R. 1481:

REED V. BJORNSON (S. Ct. 1934) 253 N.W. 102, 191 Minn. 254 Page 259

Reed v. Bjornson (S. Ct. 1934) 253 N.W. 102, 191 Minn. 254 Page 261

"And if the constituents of each class are affected alike, the rule of equality prescribed by the cases is satisfied. In other words, the law operates 'equally and uniformly upon all persons in similar circumstances.'" (Italics ours.)

Reed v. Bjornson (S. Ct. 1934) 253 N.W. 102, 191 Minn. 254 Page 263

"It is true that the Magoun, Billings, Knowlton, and Stebbins cases deal with graduated inheritance taxes, and it may be, as it is said, that the inheritance of property is not a right but is a privilege which the state may confer or withhold at its pleasure, and that, in conferring the privilege, it may attach such conditions thereto as it may see fit. **Nevertheless it will not do to say that they are not in point and controlling here, for the reason that it is beyond dispute, and was pointed out in the Magoun case that, when the state confers a privilege, it must 'not fail to treat "all alike under like circumstances and conditions, both in the privilege conferred and the liabilities imposed."'"**

Reed v. Bjornson (S. Ct. 1934) 253 N.W. 102, 191 Minn. 254 Page 264

Moreover, the Oregon court holds that the uniformity clause of their constitution applies to excise taxes and that such taxes must be imposed alike on all persons in substantially the same situation. Portland V. & S. Co. v. Hoss, 139 Or. 434, 447, 9 P. (2d) 122, 81 A.L.R. 1136. Therefore their income tax, no matter what its nature, had to be uniform in its application. It was so held to be. We regard the Oregon cases as directly in point here.

Reed v. Bjornson (S. Ct. 1934) 253 N.W. 102, 191 Minn. 254 Page 267

We are in accord with the Oregon court in regarding income as a proper subject for selection as a source of taxation and the graduation of the tax as a legitimate exercise of the legislature's power to classify. It operates equally and uniformly upon all in like circumstances. We conclude that the graduated feature of our law does not invalidate it either under our constitution or under the equal protection or due process clauses of the fourteenth amendment. Classification being justified, its details are for the legislature. We cannot interfere unless the method adopted brings a result "clearly fanciful and arbitrary." Raymond v. Holm, 165 Minn. 215, 218,206 N.W. 166.

State Ex Rel. City of New Prague v. County of Scott (S. Ct. 1935) 261 N.W. 863, 195 Minn. 111 Page 117

It is held in many cases that where there is a classification as to territorial divisions or as to the business, profession, or industry treated of in the law, and such classification is based on proper distinctions, and the law applies equally to all within the class, then there is no class legislation and the law is general in application and valid. **But art. 9, § 1, of the constitution,**

requires taxes to be uniform upon the same class of subjects, that is, upon the same classes of property or rights, within the territorial limits of the taxing authority. Even as to laws not related to taxation, a law cannot, by classification based on territorial divisions or other grounds, discriminate between persons within the class and persons outside the class who are in the same situation or condition. As said in Johnson v. St. P. & D.R. Co. 43 Minn. 222, 224, 45 N.W. 156, 157, 8 L.R.A. 419, **opinion by Justice Mitchell:** "It has been sometimes loosely stated that special legislation is not class, 'if all persons brought under its influence are treated alike under the same conditions.' But this is only half the truth. Not only must it treat alike, under the same conditions, all who are brought 'within its influence,' but in its classification it must bring within its influence all who are under the same conditions."

In State v. Luscher 157 Minn. 192, 194, 195 N.W. 914, 915, the court said:

"**While a statute may be limited in its operation to a specified class**, to be valid it must apply alike to all who are within that class and must not exclude from its operation any who are under the same conditions and in the same situation as those to whom it applies."

ADARAND CONSTRUCTORS, INC. v PENA, 515 US ____, p. ____, 132 L Ed 2d 158, pp. 192 - 193

"Invidious discrimination is an engine of oppression, subjugating a disfavored group to enhance or maintain the power of the majority. * * * Remedial race-based preferences reflect the opposite impulse: a desire to foster equality in society. No sensible conception of the Government's constitutional obligation to "govern impartially," Hampton v Mow Sun Wong, 426 US 88, 100, 48 L Ed 2d 495, 96 S Ct 1895 (1976), should ignore this distinction.

FOOTNOTES, ADARAND CONSTRUCTORS, INC. v PENA, 515 US ____, 132 L Ed 2d 158

FOOTNOTE 8 We have rejected this proposition outside of the affirmative-action context as well. In Hampton v Mow Sun Wong, 426 US 88, 100, 48 L Ed 2d 495, 96 S Ct 1895 (1976), we held:

"The federal sovereign, like the States, must govern impartially. The concept of equal justice under law is served by the Fifth Amendment's guarantee of due process, as well as by the Equal Protection Clause of the Fourteenth Amendment.

UNITED STATES v WILLIAMS, 504 US ____, p. ____, 118 L Ed 2d 352, pp. 374 - 375

This, of course, is not an exhaustive list of the kinds of improper tactics that overzealous or misguided prosecutors have adopted in judicial proceedings. The reported cases of this Court alone contain examples of the knowing use of perjured testimony, Mooney v Holohan, 294 US 103, 79 L Ed 791, 55 S Ct 340, 98 ALR 406 (1935), the suppression of evidence favorable to an accused person, Brady v Maryland, 373 US 83, 87-88, 10 L Ed 2d 215, 83 S Ct 1194 (1963), and misstatements of the law in argument to the jury, Caldwell v Mississippi, 472 US 320, 336, 86 L Ed 2d 231, 105 S Ct 2633 (1985), to name just a few.

Nor has prosecutorial misconduct been limited to judicial proceedings: the reported cases indicate that it has sometimes infected grand jury proceedings as well. The cases contain examples of prosecutors presenting perjured testimony, United States v Basurto, 497 F2d 781, 786 (CA9 1974), questioning a witness outside the presence of the grand jury and then failing to inform the grand jury that the testimony was exculpatory, United States v Phillips Petroleum, Inc., 435 F Supp 610, 615-617 (ND Okla 1977), failing to inform the grand jury of its authority to subpoena witnesses, United States v Samango, 607 F2d 877, 884 (CA9 1979), operating under a conflict of interest, United States v Gold, 470 F Supp 1336, 1346-1351 (ND Ill 1979), misstating the law, United States v Roberts, 481 F Supp 1385, 1389, and

n 10 (CD Cal 1980),<fn 8> and misstating the facts on cross-examination of a witness, United States v Lawson, 502 F Supp 158, 162, and nn 6-7 (Md 1980).

Justice Sutherland's identification of the basic reason why that sort of misconduct is intolerable merits repetition:

"The United States Attorney is the representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done. As such, he is in a peculiar and very definite sense the servant of the law, the twofold aim of which is that guilt shall not escape or innocence suffer. He may prosecute with earnestness and vigor--indeed, he should do so. But, while he may strike hard blows, he is not at liberty <*pg.375> to strike foul ones. It is as much his duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one." Berger v United States, 295 US, at 88, 79 L Ed 1314, 55 S Ct 629.

FOOTNOTES, RICHMOND v CROSON CO., 488 US 469, 102 L Ed 2d 854

FOOTNOTE 5 "There is only one Equal Protection Clause. It requires every State to govern impartially. It does not direct the courts to apply one standard of review in some cases and a different standard in other cases." Craig v Boren, 429 US 190, 211-212, 50 L Ed 2d 397, 97 S Ct 451 (1976) (Stevens, J., concurring).

FOOTNOTES, RICHMOND v CROSON CO., 488 US 469, 102 L Ed 2d 854

FOOTNOTE 6 "I have always asked myself whether I could find a 'rational basis' for the classification at issue. The term 'rational,' of course, includes a requirement that an impartial lawmaker could logically believe that the classification would serve a legitimate public purpose that transcends the harm to the members of the disadvantaged class. Thus, the word 'rational'--for me at least--includes elements of legitimacy and neutrality that must always characterize the performance of the sovereign's duty to govern impartially.

. . . . .

"In every equal protection case, we have to ask certain basic questions. What class is harmed by the legislation, and has it been subjected to a 'tradition of disfavor' by our laws? What is the public purpose that is being served by the law? What is the characteristic of the disadvantaged class that justifies the disparate treatment? In most cases the answer to these questions will tell us whether the statute has a 'rational basis.' " Cleburne v Cleburne Living Center, Inc., 473 US at 452-453, 87 L Ed 2d 313, 105 S Ct 3249 (Stevens, J., concurring).

LYNG v CASTILLO, 477 US 635, p. 635, 91 L Ed 2d 527, p. 530

Constitutional Law § 515—Fifth Amendment—due process—equal protection

2a, 2b. The federal sovereign, like the states, must govern impartially; the concept of equal justice under the law is served by the Fifth Amendment's guaranty of due process, as well as by the equal protection clause of the Fourteenth Amendment.

LYNG v CASTILLO, 477 US 635, 91 L Ed 2d 527

FOOTNOTE 2 [2b] "The federal sovereign, like the States, must govern impartially. The concept of equal justice under law is served by the Fifth Amendment's guarantee of due process, as well as by the Equal Protection Clause of the Fourteenth Amendment." Hampton v Mow Sun Wong, 426 US 88, 100, 48 L Ed 2d 495, 96 S Ct 1895 (1976). Accord, e.g., United States Dept. of Agriculture v Moreno, 413 US 528, 533, n 5, 37 L Ed 2d 782, 93 S Ct 2821 (1973); Bolling v Sharpe, 347 US

497, 499, 98 L Ed 884, 74 S Ct 693 (1954).

UNITED STATES v YOUNG, 470 US 1, pp. 25 - 28, 84 L Ed 2d 1, pp. 19 - 20

To begin with, while the Court correctly observes that both sides are subject to ethical rules of rhetorical conduct, it fails completely to acknowledge that we have long emphasized that a representative of the United States Government is held to a higher standard of behavior:

"The United States Attorney is the representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done. ...

"... Consequently, improper suggestions, insinuations and, especially, assertions of personal knowledge are apt to carry much weight against the accused when they should properly carry none." Berger v United States, 295 US 78, 88, 79 L Ed 1314, 55 S Ct 629 (1935). [470 US 26]

Accord, Viereck v United States, 318 US 236, 248, 87 L Ed 734, 63 S Ct 561 (1943). Cf. ABA Model Rules of Professional Conduct, Rule 3.8 comment (1984) ("A prosecutor has the responsibility of a minister of justice and not simply that of an advocate"); ABA Model Code of Professional Responsibility EC 7-13 (1980) (prosecutor owes a "special duty"); ABA Standard for Criminal Justice 3-5.8, p 3.88 (2d ed 1980). I believe the Court trivializes these high standards by suggesting that a violation may be overlooked merely because the prosecutor decided sua sponte that he had to "right the scale."<fn 4>

Moreover, the Court's suggestion that lower courts should evaluate prosecutorial misconduct to determine whether it was "reasonabl[e]" and "necessary to 'right the scale,' " ante, at 12, 14, 84 L Ed 2d, at 10, 12, is palpably inconsistent with the Court's conclusion that such misconduct "constitute[s] error." Ante, at 14, 84 L Ed 2d, at 11; see also ante, at 11, 14, 16-20, 84 L Ed 2d, at 10, 11, 13-15. As the Court observes, prosecutorial rhetoric of the sort in this case has "no place in the administration of justice and should neither be permitted nor rewarded." Ante, at 9, 84 L Ed 2d, at 8. Such errors in appropriate cases might be determined to be harmless, but it is a contradiction in terms to suggest they might be "reasonabl[e]" or "necessary to 'right the scale.' " Ante, at 12, 14, 84 L Ed 2d, at 10, 12.

There was certainly nothing "reasonabl[e]" in this case about the prosecutor's responses to the concededly improper defense arguments. The defense counsel's most serious assertion was that the prosecutor did <*pg.20> not believe Young had [470 US 27] intended to defraud Apco.<fn 5> The prosecutor's initial statement that he personally believed that Young had indeed intended to defraud Apco, while itself error, see ante, at 16-18, 84 L Ed 2d, at 13-14, might be characterized as falling within the bounds of restrained reply.<fn 6> But the prosecutor was not content to leave matters there. First, he repeatedly emphasized his personal opinion that Young was guilty of fraud.<fn 7> Second, he made predictions about the continuing effects of Young's conduct based on his prosecutorial "experience in these matters."<fn 8> Third, he warned the jurors that they would not be "doing your job as jurors" if they failed to convict Young.<fn 9> [470 US 28]

GANNETT CO. v DEPASQUALE, 443 US 368, p. 368, 61 L Ed 2d 608, p. 613

District and Prosecuting Attorneys § 1—role as servant of law

14a, 14b. A prosecutor is the representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all, and whose interest, therefore, in a

criminal prosecution is not that it shall win a case, but that justice shall be done; as such, a prosecutor is the servant of the law.

FOOTNOTES, GANNETT CO. v DEPASQUALE, 443 US 368, 61 L Ed 2d 608

FOOTNOTE 12

[14b] [15b] [16b] The Court has recognized that a prosecutor "is the representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done. As such, he is in a peculiar and very definite sense the servant of the law ...." Berger v United States, 295 US 78, 88, 79 L Ed 1314, 55 S Ct 629. The responsibility of the prosecutor as a representative of the public surely encompasses a duty to protect the societal interest in an open trial. But this responsibility also requires him to be sensitive to the due process rights of a defendant to a fair trial. A fortiori, the trial judge has the same dual obligation.

If citizens are bound to know the law, "they [are] bound to know it as we have expounded it." Kring v Missouri, 107 US 221, 235, 27 L Ed 506, 2 <*pg.366> S Ct 443.

There is only one Equal Protection Clause. It requires every State to govern impartially. It does not direct the [429 US 212] courts to apply one standard of review in some cases and a different standard in other cases. Whatever criticism may be leveled at a judicial opinion implying that there are at least three such standards applies with the same force to a double standard.

CRAIG v BOREN, 429 US 190, pp. 211 - 214, 50 L Ed 2d 397, pp. 416 - 417

There is only one Equal Protection Clause. It requires every State to govern impartially. It does not direct the [429 US 212] courts to apply one standard of review in some cases and a different standard in other cases. Whatever criticism may be leveled at a judicial opinion implying that there are at least three such standards applies with the same force to a double standard.

Decisions of Supreme Court of United States are controlling as to validity of state statutes under Federal Constitution. Hard v State (1934) 228 Ala 517, 154 So 77.; Gates v Bank of Commerce & Trust Co. (1931) 185 Ark 502, 47 SW2d 806.; Zahn's Ex'r v State Tax Com. (1932) 243 Ky 167, 47 SW2d 925.

Decisions of United States Supreme Court are conclusive on state courts. Thompson v Atlantic C. L. R. Co. (1946) 200 Ga 856, 38 SE2d 774, affd 332 US 168, 91 L Ed 1977, 67 S Ct 1584, 173 ALR 1.; Walker v Gilman (1946) 25 Wash 2d 557, 171 P2d 797.

Decisions of Supreme Court of United States determining validity of state statutes under Fourteenth Amendment or of acts of Congress under Fifth Amendment constitute supreme law of land. Re Opinion of Justices (1933) 86 NH 597, 166 A 640.; Badger v Crockett (1927) 70 Utah 265, 259 P 921.

Construction of Constitution and statutes of United States by United States Supreme Court is controlling on all courts of Union whether state or federal. People ex rel. Leach v Baldwin (1930) 341 Ill 604, 174 NE 51.

Atlantic Coast Line R. Co. v. Phillips, 332 US 168, pp. 171 - 173, 91 L Ed 1977, pp. 1980 - 1981

Dunnell Digest HIGHWAYS, 3.00 Generally
The right to use a highway for purposes of travel does not give a person permission to use it in every fashion which suits his convenience. **The right to use a highway extends only to its use for communication or travel;** there is no right merely to be on a highway. **Hanson v. Hall,** 202 Minn. 381, 279 N.W. 227 (1938)

Dunnell Digest HIGHWAYS, 10.02 Civil liability
A person intentionally obstructing a street in violation of a statute is civilly liable to another who sustains harm therefrom separate and distinct from the **wrong suffered by the public from the interference with its right to travel.** Flaherty v. Great N Ry, 218 Minn. 488, 16 N.W.2d 553 (1944) (rule applicable to railroad crossing cases and renders railroad civilly liable for injury proximately resulting from such obstruction). An obstruction of a highway is a public nuisance and remediable as such. See Northfork Twp v. Joffer, 353 N.W.2d 216 (Minn. Ct. App. 1984).

Dunnell Digest MOTOR VEHICLES, 4.01 Regulation generally
The right to use public streets and highways in a city for commercial purposes and for carrying passengers and freight for hire over regular routes is a privilege that the city may regulate and require to be conducted under a franchise or license. City of St. Paul v. Twin City Motor Bus Co. (1933) 189 Minn. 612, 250 N.W. 572

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Carrier: A transporter of passangers or fraight one who undertakes to **transport persons or property** from place to place. 13 Am Jur 2d Car § 1.
Transport: Verb; As required of a carrier; - to deliver at the final destination. 14 Am Jur 2d Car § 691. **Transportation:** The carriage of persons or property from one point to another.

Subd 29. Street or highway.
"Street or highway" means the entire width between boundary lines of any way or place when any part thereof is open to the use of the public, **as a matter of right,** for the purposes of vehicular traffic.

"The phrase **"open to the public as a matter of right"** has been held to mean a street or highway given to the public for a public use and one **which every citizen has a right to use." (Cihal v. Carver (1948), 334 Ill.App. 234, 238, 79 N.E.2d 82).**