

Chapter 767

Motor Carriers

Chapter 767

NOTES OF DECISIONS

Former similar provisions, the Motor Transportation Act, were constitutional. *Anderson v. Thomas*, (1933) 144 Or 572, 26 P2d 60.

Former similar provisions were the sole source of the commissioner's authority, conferring upon him no personal discretion. *Pierce Freight Lines v. Flagg*, (1945) 177 Or 1, 159 P2d 162.

FURTHER CITATIONS: *Anderson v. Heltzel*, (1952) 197 Or 23, 251 P2d 482; *Southern Pac. Co. v. Heltzel*, (1954) 201 Or 1, 262 P2d 605; *Berry Trans., Inc. v. Heltzel*, (1954) 202 Or 161, 272 P2d 965; *State v. O.K. Transfer Co.*, (1958) 215 Or 8, 330 P2d 510; *State v. Koenig*, (1959) 218 Or 86, 342 P2d 139; *Bend-Portland Truck Serv., Inc. v. Pub. Util. Commr.*, (1960) 221 Or 514, 351 P2d 1117; *Rogers Constr. Co. v. Hill*, (1963) 235 Or 352, 384 P2d 219; *Arrow Trans. Co. v. Hill*, (1963) 236 Or 174, 387 P2d 559; *Mt. Hood Stages, Inc. v. Hill*, (1966) 243 Or 283, 413 P2d 392.

ATTY. GEN. OPINIONS: Application to farmer incidentally selling lumber from his timber, 1948-50, p 65; computation of use tax when load exceeds legal weight, 1948-50, p 303; obliteration of school bus markings when motor vehicle is not used for school purposes, 1948-50, p 310; computation of tax on motor vehicles of carrier operating within a city and also beyond the three-mile limit, 1950-52, p 262; commissioner's jurisdiction to review rates fixed by city ordinance to be charged by motor carriers in transporting passengers, 1956-58, p 223; chapter as taxing and regulatory law, 1958-60, p 34; construing sand and gravel trucks as applied to trailer equipped with hopper-type mechanism, 1958-60, p 375; permit requirements as applied to a manufacturer's truck tractors when transporting its semitrailers to dealers, 1958-60, p 403; commissioner's jurisdiction over carrier operating on private roads and public highways, 1958-60, p 406; commissioner's jurisdiction over vehicles transporting agricultural spray materials and empty fertilizer applicators over public highways, 1960-62, p 68; union high school charging private school for transporting school children, 1962-64, p 36; taxation of common and contract carriage performed by or for irrigation and drainage districts, 1962-64, p 158; applicability of chapter to Board of Control-parent contracts to transport mentally retarded to day-care centers, 1964-66, p 326; application to transportation by a farmer of scrap metal accumulated as an incident to farm operation, 1964-66, p 353; validity of omnibus legislation proposing budget cuts, 1966-68, p 402; regulation of bus line operating within or outside of mass transit district, (1970) Vol 35, p 383; application to mass transit district operations, (1971) Vol 35, p 672.

LAW REVIEW CITATIONS: 39 OLR 143; 1 WLJ 203.

767.005

NOTES OF DECISIONS

Notwithstanding assumption by lessee of liability for safe carriage, lessor may be so far in control of the movement that his status will be that of a common or contract carrier. *State v. O.K. Transfer Co.*, (1958) 215 Or 8, 330 P2d 510.

The fact the drivers are chosen or employed by the vehicle owner may be alone sufficient to remove the transaction from a true "U-drive" status and denominate it one of public carrier service. *Id.*

When lessor furnishes equipment accompanied by its own drivers, it raises a rebuttable presumption of control of the movement by the lessor, and this presumption continues in the absence of a clear showing that the lessee shipper had exclusive right and privilege of control. *Id.*

With reference to leased truck operations, whether the operation is that of the carrier or whether it is a private carriage performed by the shipper is essentially determined by who has the right to control, direct and dominate the performance. *Id.*

FURTHER CITATIONS: *Portland Van & Storage Co. v. Hoss*, (1932) 139 Or 434, 9 P2d 122, 81 ALR 1136; *Brown v. Bonesteele*, (1959) 218 Or 313, 344 P2d 928; *Mitchell Bros. Truck Lines v. Hill*, (1961) 227 Or 474, 363 P2d 49; *Arrow Trans. Co. v. Hill*, (1963) 236 Or 174, 387 P2d 559; *Bohemia Lbr. Co. v. Haley*, (1969) 252 Or 349, 449 P2d 443; *Portland Stages, Inc. v. Portland*, (1969) 252 Or 633, 450 P2d 764.

ATTY. GEN. OPINIONS: Computation of use tax when load exceeds legal weight, 1948-50, p 303; tariffs filed under state law as not applying to motor carriers transporting property for the United States, 1958-60, p 339; use of state-owned cars to transport patients for hire from Portland area to Dammasch State Hospital, 1958-60, p 385; permit requirements as applied to a manufacturer's truck tractors when transporting its semitrailers to dealers, 1958-60, p 403; commissioner's jurisdiction over persons operating as common, contract or private carriers primarily on private thoroughfares, 1958-60, p 406; commissioner's jurisdiction over vehicles transporting agricultural spray materials and empty fertilizer applicators on public highway, 1960-62, p 68; application to hauling gravel by or for drainage and irrigation district, 1962-64, p 158; application to mass transit district operations, (1971) Vol 35, p 672.

767.010

NOTES OF DECISIONS

Notwithstanding assumption by lessee of liability for safe carriage, lessor may be so far in control of the movement that his status will be that of a common or contract carrier. *State v. O.K. Transfer Co.*, (1958) 215 Or 8, 330 P2d 510.

The fact the drivers are chosen or employed by the vehicle owner may be alone sufficient to remove the transaction from a true "U-drive" status and denominate it one of public carrier service. *Id.*

When lessor furnishes equipment accompanied by its own

drivers, it raises a rebuttable presumption of control of the movement by lessor, and this presumption continues in the absence of a clear showing that lessee shipper had exclusive right and privilege of control. *Id.*

With reference to leased truck operations, whether the operation is that of the carrier or whether it is a private carriage performed by the shipper is essentially determined by who has the right to control, direct and dominate the performance. *Id.*

The definition of motor vehicles is intended to apply only to those vehicles having a connection with the transportation of persons or property. *Rogers Constr. Co. v. Hill*, (1963) 235 Or 352, 384 P2d 219.

Plaintiff's vehicles were within the meaning of this section. *White Bros. Constr. Co. v. Oregon State Police*, (1967) 246 Or 106, 424 P2d 221.

FURTHER CITATIONS: *Brown v. Bonesteele*, (1959) 218 Or 313, 344 P2d 928.

ATTY. GEN. OPINIONS: Computation of tax on motor vehicles of carrier operating within a city and also beyond the three-mile limit, 1950-52, p 262; exemption of station wagon used to transport students, 1952-54, p 173; effect of operating motor vehicle outside city beyond three-mile limit, 1952-54, p 244; construing sand and gravel trucks as applied to trailer equipped with hopper-type mechanism, 1958-60, p 375; permit requirements as applied to a manufacturer's truck tractors when transporting its semitrailers to dealers, 1958-60, p 403; commissioner's jurisdiction over persons operating as common, contract or private carriers primarily on private thoroughfares, 1958-60, p 406; commissioner's jurisdiction over vehicles transporting agricultural spray materials and empty fertilizer applicators on public highway, 1960-62, p 68; application to truckers hauling gravel for drainage district, 1962-64, p 158; applicability of chapter to Board of Control-parent contracts to transport mentally retarded to day-care centers, 1964-66, p 326; construing motor vehicles as applied to proposed use of highway funds, (1970) Vol 35, p 198.

767.015

CASE CITATIONS: *Rogers Constr. Co. v. Hill*, (1963) 235 Or 352, 384 P2d 219.

ATTY. GEN. OPINIONS: Application to farmer incidentally selling lumber from his timber, 1948-50, p 65; exemption of station wagon used to transport students, 1952-54, p 173; transporting rodeo or racing horses or cattle as private carriers, 1956-58, p 131; permit requirements as applied to a manufacturer's truck tractors when transporting its semitrailers to dealers, 1958-60, p 403; commissioner's jurisdiction over persons operating as common, contract or private carriers primarily on private thoroughfares, 1958-60, p 406; interstate toll bridge as public highway, 1960-62, p 3; commissioner's jurisdiction over vehicles transporting agricultural spray materials and empty fertilizer applicators on public highway, 1960-62, p 68; application to truckers hauling gravel for drainage district, 1962-64, p 158; application to mass transit district operations, (1971) Vol 35, p 672.

767.020

NOTES OF DECISIONS

A former similar declaration of purpose and policy was entitled to the gravest consideration. *Anderson v. Thomas*, (1933) 144 Or 572, 26 P2d 60.

Prior to the 1969 amendment to this section, the purpose of the law was the protection of highways and general public thereupon. *Interstate Indem. Co. v. Simpson*, (1957) 155 F Supp. 855.

One of the purposes for the permit system is to make certain that only qualified persons conduct motor carrier operations. *Kramer v. Haley*, (1968) 250 Or 87, 439 P2d 571.

FURTHER CITATIONS: *Rogers Constr. Co. v. Hill*, (1963) 235 Or 352, 384 P2d 219; *Arrow Trans. Co. v. Hill*, (1963) 236 Or 174, 387 P2d 559; *Mt. Hood Stages, Inc. v. Hill*, (1966) 243 Or 283, 413 P2d 392.

ATTY. GEN. OPINIONS: Effect of death of one partner on permit issued in partnership name, effect of death of permit holder, 1958-60, p 349.

LAW REVIEW CITATIONS: 43 OLR 278-280.

767.025

CASE CITATIONS: *Rogers Constr. Co. v. Hill*, (1963) 235 Or 352, 384 P2d 219.

ATTY. GEN. OPINIONS: Application to farmer incidentally selling lumber from his timber, 1948-50, p 65; exemption of station wagon used to transport students, 1952-54, p 173; tariffs filed under state law as not applying to motor carriers transporting property for the United States, 1958-60, p 339; use of state-owned cars to transport patients for hire from Portland area to Dammasch State Hospital, 1958-60, p 385; charging private school for transportation of school children, 1962-64, p 36; irrigation and drainage districts as municipalities, 1962-64, p 158; applicability of chapter to Board of Control-parent contracts to transport mentally retarded to day-care centers, 1964-66, p 326; application to mass transit district operation, (1971) Vol 35, p 672.

767.030

ATTY. GEN. OPINIONS: Authority of cooperative to transport supplies to and from market for members, 1938-40, p 697; license needed by farmer who occasionally uses his truck to haul lumber, 1948-50, p 65; exemption of station wagon used to transport students, 1952-54, p 173; transporting livestock in trucks bearing special farm license in connection with the operating of a farm, 1956-58, p 131; application to farm truck hauling for a drainage district, 1962-64, p 158; application of subsection (1) (a) to transportation of scrap metal from farm to dealer, 1964-66, p 353.

767.035

NOTES OF DECISIONS

Subsection (1) was not an unconstitutional delegation of legislative power to the city council. *Portland Stages, Inc. v. City of Portland*, (1969) 252 Or 633, 450 P2d 764.

Subsection (1) does not conflict with subsection (2) of ORS 221.420. *Id.*

FURTHER CITATIONS: *Berry Trans., Inc. v. Heltzel*, (1954) 202 Or 161, 272 P2d 965; *Bohemia Lbr. Co. v. Haley*, (1969) 252 Or 349, 449 P2d 443.

ATTY. GEN. OPINIONS: Application of section to transportation of passengers in and around cities, 1952-54, p 244; authority over public motor carriers, 1956-58, p 223; construction of this section in relation to regulation and taxation of persons and motor vehicles under this chapter, 1958-60, p 34; commissioner's jurisdiction over persons operating as common, contract or private carriers primarily on private thoroughfares, 1958-60, p 406; commissioner's jurisdiction over vehicles transporting agricultural spray materials and empty fertilizer applicators on public highway, 1960-62, p 68; "implements of husbandry" defined, 1960-62, p 68; defining "forest products," 1960-62, p 299;

exceptions when using Bureau of Land Management road, 1966-68, p 412; application to mass transit district operations, (1971) Vol 35, p 672.

767.105

NOTES OF DECISIONS

The business of renting vehicles does not so affect the public interest as to sustain the validity of regulations permitting creation of monopolies. *Hertz Corp. v. Heltzel*, (1959) 217 Or 205, 341 P2d 1063.

Plaintiff's vehicles were within the meaning of this section. *White Bros. Constr. Co. v. Oregon State Police*, (1967) 246 Or 106, 424 P2d 221.

FURTHER CITATIONS: *Berry Trans., Inc. v. Heltzel*, (1954) 202 Or 161, 272 P2d 965; *Kramer and Smith v. Haley*, (1968) 250 Or 92, 439 P2d 573.

ATTY. GEN. OPINIONS: Computation of use tax when load exceeds legal weight, 1948-50, p 303; empty semitrailer, pulled by truck tractor and intended for sale in another state, as motor vehicle engaged in transportation, 1958-60, p 403; commissioner's jurisdiction over persons operating as common, contract or private carriers primarily on private thoroughfares, 1958-60, p 406; commissioner's jurisdiction over vehicles transporting agricultural spray materials and empty fertilizer applicators on public highway, 1960-62, p 68; application to truckers hauling gravel for drainage district, 1962-64, p 158.

LAW REVIEW CITATIONS: 43 OLR 278-280.

767.110

CASE CITATIONS: *Portland Pendleton Motor Trans. Co. v. Heltzel*, (1953) 197 Or 644, 255 P2d 124.

ATTY. GEN. OPINIONS: Operative date of 1951 amendment, 1952-54, p 53.

767.120

LAW REVIEW CITATIONS: 1 WLJ 207.

767.130

NOTES OF DECISIONS

"Intentional" violation is an intentional doing of an act which violates the statute with the intent to act illegally. *Horger v. Flagg*, (1949) 185 Or 109, 202 P2d 526.

Repeated violation of an Act does not of necessity render the actor a habitual violator. Id.

ATTY. GEN. OPINIONS: Effect of death of one partner on permit issued in partnership name, effect of death of permit holder, 1958-60, p 349.

767.135

NOTES OF DECISIONS

"Public interest" rather than "public convenience and necessity" is the criterion for granting permits. *Arrow Trans. Co. v. Hill*, (1963) 236 Or 174, 387 P2d 559; *Mt. Hood Stages, Inc. v. Hill*, (1966) 243 Or 283, 413 P2d 392; *Mt. Hood Stages, Inc. v. Haley*, (1970) 4 Or App 385, 478 P2d 645, Sup Ct review denied.

The commissioner's findings are binding on the court, in the event of judicial review, if supported by cogent, competent, material and substantial evidence. *Borich Transfer Co. v. Haley*, (1970) 2 Or App 606, 469 P2d 638, Sup Ct review

denied; *Mt. Hood Stages, Inc. v. Haley*, (1970) 4 Or App 385, 478 P2d 645, Sup Ct review denied.

The purpose of requiring the commissioner to ascertain the qualifications of an applicant before issuing him a license was to avoid duplication of equipment and prevent ruinous competition. *Warren v. Bean*, (1941) 167 Or 116, 115 P2d 167.

The business of renting vehicles does not so affect the public interest as to sustain the validity of regulations permitting creation of monopolies. *Hertz Corp. v. Heltzel*, (1959) 217 Or 205, 341 P2d 1063.

Commissioner under the circumstances properly denied transfer of privilege to carry bulk petroleum products. *Bend-Portland Truck Serv., Inc. v. Pub. Util. Commr.*, (1960) 221 Or 514, 351 P2d 1117.

Applicants' burden of showing that the issuance of a permit to them would be in the public interest does not require proof that their continued competition would not impair the ability of protestants to adequately serve the public. *Arrow Trans. Co. v. Hill*, (1963) 236 Or 174, 387 P2d 559.

There is a doctrine neither for nor against permitting a carrier to follow the traffic. Id.

This section does not require a permit to be granted in the absence of a finding that the permit would impair the ability of an existing carrier to continue its service. *Mt. Hood Stages, Inc. v. Haley*, (1970) 4 Or App 385, 478 P2d 645, Sup Ct review denied.

The commissioner did not act arbitrarily in granting a permit to motor carrier to operate as a common carrier where the territory was already served by other carriers, and that order was not based solely on abnormal conditions. *Pierce Freight Lines v. Flagg*, (1945) 177 Or 1, 159 P2d 162.

The commissioner's finding that plaintiffs were not financially responsible nor adequately equipped to serve, and that their operation would be contrary to public interest, required him to deny their application for a license. *Warren v. Bean*, (1941) 167 Or 116, 115 P2d 167.

An applicant seeking to set aside an order denying a license was required to show by clear and satisfactory evidence that the order was unsupported by substantial evidence, arbitrary, or unreasonable. Id.

Denial of a license application did not tend to create a monopoly, where evidence showed that there were many intrastate carriers operating at small profit or at a loss, and that there was already too much competition. Id.

It was a question for the commissioner whether a permit should be granted to an intrastate motor carrier, and his conclusions should not be disturbed unless unsupported by substantial evidence. Id.

FURTHER CITATIONS: *Anderson v. Thomas*, (1933) 144 Or 572, 26 P2d 60; *Berry Trans., Inc. v. Heltzel*, (1954) 202 Or 161, 272 P2d 965; *State v. O.K. Transfer Co.*, (1958) 215 Or 8, 330 P2d 510; *Mt. Hood Stages, Inc. v. Haley*, (1969) 253 Or 28, 453 P2d 435; *State v. McMaster*, (1971) 259 Or 291, 486 P2d 567.

ATTY. GEN. OPINIONS: Effect of death of one partner on permit issued in partnership name, effect of death of permit holder, 1958-60, p 349; construing sand and gravel trucks as applied to trailer equipped with hopper-type mechanism, 1958-60, p 375.

LAW REVIEW CITATIONS: 39 OLR 143; 43 OLR 278-280; 1 WLJ 208, 210, 212, 213.

767.145

CASE CITATIONS: *Berry Trans., Inc. v. Heltzel*, (1954) 202 Or 161, 272 P2d 965.

ATTY. GEN. OPINIONS: Application to multiple vehicle combination hauling sand and gravel, 1958-60, p 375; application to truckers hauling gravel for drainage district, 1962-64, p 158.

767.150

ATTY. GEN. OPINIONS: Application to truckers hauling gravel for drainage district, 1962-64, p 158.

767.165

NOTES OF DECISIONS

Reversible error was not committed in submitting an instruction to the jury based upon recommendations made by State Highway Commission which were thought to be regulations of the State Industrial Accident Commission [now Workmen's Compensation Board]. *Hon v. Moore Tbr. Prod., Inc.*, (1959) 215 Or 628, 337 P2d 321.

ATTY. GEN. OPINIONS: Construing "log, pole or piling" as applied to peeler cores, 1960-62, p 71; application of regulation to county roads, 1960-62, p 251; canceling privilege to haul logs for hauling on weekends, 1964-66, p 112.

767.175

CASE CITATIONS: *State v. O.K. Transfer Co.*, (1958) 215 Or 8, 330 P2d 510.

ATTY. GEN. OPINIONS: Computation of use tax when load exceeds legal weight, 1948-50, p 303; permit requirements as applied to a manufacturer's truck tractors when transporting its semitrailers to dealers, 1958-60, p 403.

767.180

ATTY. GEN. OPINIONS: Construing sand and gravel trucks as applied to trailer equipped with hopper-type mechanism, 1958-60, p 375.

767.185

NOTES OF DECISIONS

Upon change from unincorporated to corporate status, the commissioner could delete a privilege granted under the prior permit upon a finding that the privilege had never been exercised and others could adequately provide the service in the region. *Bend-Portland Truck Serv., Inc. v. Pub. Util. Commr.*, (1960) 221 Or 514, 351 P2d 1117.

The commissioner did not abuse his discretion by finding that the applicant had failed to meet the burden of proving that the transfer of the entire permit would be in the public interest. *Borich Transfer Co. v. Haley*, (1970) 2 Or App 606, 469 P2d 638, Sup Ct review denied.

For all practical purposes, granting of a transfer is governed by the same standards as the granting of a new permit. *Id.*

ATTY. GEN. OPINIONS: Effect of death of one partner on permit issued in partnership name, effect of death of permit holder, 1958-60, p 349.

767.190

NOTES OF DECISIONS

Under former provisions, the commissioner had authority to keep competition under control, and it was his duty so to do. *Pierce Freight Lines v. Flagg*, (1945) 177 Or 1, 159 P2d 162.

Circuit court for Marion County has exclusive venue of

suit to enjoin enforcement of commissioner's order. *Ander-son v. Heltzel*, (1952) 197 Or 23, 251 P2d 482.

Unauthorized change of operation from contract to private carrier is cause for discriminatory action by commissioner. *Interstate Indem. Co. v. Simpson*, (1957) 155 F Supp 855.

Under a former statute, plaintiff's "anywhere-for-hire" permit was revoked where it was shown that he was operating as a fixed termini carrier without a permit. *Horger v. Flagg*, (1948) 185 Or 109, 201 P2d 515.

Operator could not avoid cancellation of permit for non-use by operating in violation thereof. *Wheeler v. Haley*, (1967) 248 Or 343, 434 P2d 335.

Statements regarding ownership, possession and control of equipment were false and sufficient basis for cancellation of the permit. *Kramer v. Haley*, (1968) 250 Or 87, 439 P2d 571.

FURTHER CITATIONS: *State v. O.K. Transfer Co.*, (1958) 215 Or 8, 330 P2d 510.

ATTY. GEN. OPINIONS: Effect of death of one partner on permit issued in partnership name, effect of death of permit holder, 1958-60, p 349.

LAW REVIEW CITATIONS: 1 WLJ 210, 211.

767.195

NOTES OF DECISIONS

The requirement of a bond is not for the benefit of the motor carrier but for adequate protection of the interests of the public. *Duffy v. Ore. Auto. Ins. Co.*, (1933) 142 Or 698, 21 P2d 211.

Both contract and private carriers are required to obtain liability insurance of the same prescribed amount. *Interstate Indem. Co. v. Simpson*, (1957) 155 F Supp 855.

Insurance policy required by this section may be reformed to reflect intention of parties, but reformation cannot affect rights of third parties which accrued while indorsement obligating insurer to pay claims against insured without defense as to policy violations by insured was still in effect. *Id.*

Insurer whose policy had indorsement required for state permit was not relieved of liability because insured, holder of a private carrier's permit, was not operating as a private carrier at time of accident. *Id.*

FURTHER CITATIONS: *Horger v. Flagg*, (1948) 185 Or 109, 201 P2d 515; *State v. O.K. Transfer Co.*, (1958) 215 Or 8, 330 P2d 510; *Hertz Corp. v. Heltzel*, (1959) 217 Or 205, 341 P2d 1063; *Gowin v. Heider*, (1963) 237 Or 266, 386 P2d 1.

ATTY. GEN. OPINIONS: Applicability of chapter to Board of Control-parent contracts to transport mentally retarded to day-care centers, 1964-66, p 326.

767.205

NOTES OF DECISIONS

Insurance policy required by ORS 767.195 may be reformed to reflect intention of parties, but reformation cannot affect rights of third parties which accrued while an indorsement obligating insurer to pay claims against insured without defense as to policy violations by insured was still in effect. *Interstate Indem. Co. v. Simpson*, (1957) 155 F Supp 855.

Insurer whose policy had indorsement required for state permit was not relieved of liability because insured, holder of a private carrier's permit, was not operating as a private carrier at time of accident. *Id.*

767.315

NOTES OF DECISIONS

Under a former statute, the word "transportation" included waiting periods, and sums charged for such periods constituted a part of gross earnings. Consolidated Freightways, Inc. v. Flagg, (1947) 180 Or 442, 176 P2d 239, 177 P2d 422.

767.405

CASE CITATIONS: Brown v. Bonesteele, (1959) 218 Or 312, 344 P2d 928.

767.410

CASE CITATIONS: Berry Trans., Inc. v. Heltzel, (1954) 202 Or 161, 272 P2d 965.

ATTY. GEN. OPINIONS: Constitutionality of tariff provisions as applied to private carriers transporting property for United States, 1958-60, p 339.

767.415

CASE CITATIONS: Horger v. Flagg, (1948) 185 Or 109, 201 P2d 515; Berry Trans., Inc. v. Heltzel, (1954) 202 Or 161, 272 P2d 965.

767.420

CASE CITATIONS: Smith Canning & Freezing Co. v. Lloyd Krause, Inc., (1968) 398 F2d 128.

ATTY. GEN. OPINIONS: Construing "log, pole or piling" as applied to peeler cores, 1960-62, p 71.

767.430

ATTY. GEN. OPINIONS: Foreign show company as required to obtain permit before operating motor vehicles in transporting carnival equipment in this state, 1934-36, p 475.

767.445

NOTES OF DECISIONS

Violation of a rule or regulation issued by a public authority is negligence per se. Oregon Transfer Co. v. Tyee Constr. Co., (1960) 188 F Supp 647.

767.450

NOTES OF DECISIONS

Violation of a rule or regulation issued by a public authority is negligence per se. Oregon Transfer Co. v. Tyee Constr. Co., (1960) 188 F Supp 647.

767.470

NOTES OF DECISIONS

Unauthorized change of operation from contract to private carrier is cause for discriminatory action by commissioner. Interstate Indem. Co. v. Simpson, (1957) 155 F Supp 855.

The statute imposes a penalty and should be strictly construed in favor of the one against whom the imposition of the penalty is sought. Kramer and Smith v. Haley, (1968) 250 Or 92, 439 P2d 573.

"Every day's continuance" of a violation refers to operation of the business by motor carriers, not to each vehicle operated without a permit. Id.

FURTHER CITATIONS: State v. O.K. Transfer Co., (1958) 215 Or 8, 330 P2d 510.

ATTY. GEN. OPINIONS: Tariffs filed under state law as not applying to motor carriers transporting property for the United States, 1958-60, p 339.

LAW REVIEW CITATIONS: 1 WLJ 210.

767.605

CASE CITATIONS: Berry Trans., Inc. v. Heltzel, (1954) 202 Or 161, 272 P2d 965.

767.630

ATTY. GEN. OPINIONS: Authority of commissioner to compromise with motor carriers as to the amount of fees, charges or taxes due the state, 1936-38, p 341.

767.635

ATTY. GEN. OPINIONS: Validity of proposed use of tax funds to pay irrigation district lump-sum settlement of future assessments on land taken from district for highway purposes, 1960-62, p 201; when revenue is apportioned to cities and counties, 1960-62, p 338.

767.805 to 767.880

LAW REVIEW CITATIONS: 1 WLJ 205, 209.

767.815

CASE CITATIONS: Portland Pendleton Motor Trans. Co. v. Heltzel, (1953) 197 Or 644, 255 P2d 124; Hertz Corp. v. Heltzel, (1959) 217 Or 205, 341 P2d 1063; Mitchell Bros. Truck Lines v. Hill, (1961) 227 Or 474, 363 P2d 49; Rogers Constr. Co. v. Hill, (1963) 235 Or 352, 384 P2d 219.

ATTY. GEN. OPINIONS: Computation of use tax when load exceeds legal weight, 1948-50, p 303; operative date of 1951 amendment, 1952-54, p 53; delinquency date for additional taxes imposed under 1951 amendment, 1952-54, p 56; construing sand and gravel trucks as applied to trailer equipped with hopper-type mechanism, 1958-60, p 375; commissioner's jurisdiction over carrier operating on private roads and public highways, 1958-60, p 406; interstate toll bridge as public highway, 1960-62, p 3; construing "log, pole or piling" as applied to peeler cores, 1960-62, p 71; validity of proposed use of tax funds to pay irrigation district lump-sum settlement of future assessments on land taken from district for highway purposes, 1960-62, p 201; collecting delinquencies after discharge in bankruptcy, 1962-64, p 31; application to truckers hauling gravel for drainage district, 1962-64, p 158; application to mass transit district operations, (1971) Vol 35, p 672.

767.820

CASE CITATIONS: Portland Pendleton Motor Trans. Co. v. Heltzel, (1953) 197 Or 644, 255 P2d 124; Mitchell Bros. Truck Lines v. Hill, (1961) 227 Or 474, 363 P2d 49; Rogers Constr. Co. v. Hill, (1963) 235 Or 352, 384 P2d 219.

ATTY. GEN. OPINIONS: Tolerance weight as subject to user tax, 1948-50, p 415; computation of tax on motor vehicles of carrier operating within a city and also beyond the three-mile limit, 1950-52, p 262.

767.825

ATTY. GEN. OPINIONS: Portland Pendleton Motor Trans. Co. v. Heltzel, (1953) 197 Or 644, 255 P2d 124; application to multiple vehicle combination hauling sand and gravel, 1958-60, p 375; application to carriers transporting peeler cores, 1960-62, p 71.

767.830

CASE CITATIONS: Portland Pendleton Motor Trans. Co. v. Heltzel, (1953) 197 Or 644, 255 P2d 124.

ATTY. GEN. OPINIONS: Validity of proposal to permit counties to impose occupational tax on vehicles using county roads, 1950-52, p 116.

767.840**NOTES OF DECISIONS**

If a formula adopted is arbitrary or based on erroneous principles which will not reasonably reflect the tax due, the assessment is void. Mitchell Bros. Truck Lines v. Hill, (1961) 227 Or 474, 363 P2d 49.

If the taxpayer fails to keep proper records or exact information, the administrative agency may adopt a formula calculated to reach a reasonable result. Id.

FURTHER CITATIONS: State v. Koenig, (1959) 218 Or 86, 342 P2d 139.

ATTY. GEN. OPINIONS: Checking and auditing of monthly reports of motor carriers and collection of fees, 1932-34, p 303; authority of commissioner to compromise with motor carriers as to the amount of fees, charges or taxes due the state, 1936-38, p 341; imposition of penalties when carriers, through clerical errors or mistakes, failed to report and pay in full the tax, where such carriers have later paid the remainder of the fees due, 1936-38, p 493; delinquency date for additional taxes imposed under 1951 amendment, 1952-54, p 56; collecting delinquencies after discharge in bankruptcy, 1962-64, p 31.

767.850**NOTES OF DECISIONS**

Any form of notice substantially complying with the

statute and due process is sufficient. State v. Koenig, (1959) 218 Or 86, 342 P2d 139.

ATTY. GEN. OPINIONS: Collecting delinquencies after discharge in bankruptcy, 1962-64, p 31.

767.855**NOTES OF DECISIONS**

In the absence of a petition for reassessment, actions instituted for collection are not subject to collateral attack except for fraud or jurisdictional grounds. State v. Koenig, (1959) 218 Or 86, 342 P2d 139.

FURTHER CITATIONS: Mitchell Bros. Truck Lines v. Hill, (1961) 227 Or 474, 363 P2d 49.

LAW REVIEW CITATIONS: 1 WLJ 209.

767.860

CASE CITATIONS: State v. Koenig, (1959) 218 Or 86, 342 P2d 139.

767.865

ATTY. GEN. OPINIONS: Collecting delinquencies after discharge in bankruptcy, 1962-64, p 31.

767.990

CASE CITATIONS: State v. O.K. Transfer Co., (1958) 215 Or 8, 330 P2d 510.

ATTY. GEN. OPINIONS: Computation of tax on motor vehicles of carrier operating within a city and also beyond the three-mile limit, 1950-52, p 262; effect of operating motor vehicle outside city beyond three-mile limit, 1952-54, p 244; tariffs filed under state law as not applying to motor carriers transporting property for the United States, 1958-60, p 339; commissioner's jurisdiction over carrier operating on private roads and public highways, 1958-60, p 406; commissioner's jurisdiction over vehicles transporting agricultural spray materials and empty fertilizer applicators over public highways, 1960-62, p 68; taxation of common and contract carriage performed by or for irrigation and drainage districts, 1962-64, p 158.