

the statutory requirement of citizenship for licensure as an attorney was declared unconstitutional.

The purpose of the dental practice act is to protect the health and welfare of the people of this state by insuring that dental practitioners meet all minimum requirements pertaining to education and practice. The very language of the statute itself granting temporary licenses to aliens who have declared their intention of becoming a citizen and that upon obtaining citizen status would be granted a permanent license without having to take another examination, bears credence to the position that there is not a rational basis for distinguishing between citizens and aliens in the practice of dentistry.

Accordingly, it is my opinion that the requirement of section 5 of 1939 PA 122, as amended, *supra*, is unconstitutional as a denial of equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States. Under a familiar rule of statutory construction³ the invalidity of this provision will not effect the other valid provisions of the act.

FRANK J. KELLEY,
Attorney General.

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MOTOR VEHICLES – Weight tax on pick-up truck

A pick-up truck weighing less than 4,500 pounds is subject to a vehicle tax of 55 cents per 100 pounds or \$12.00, whichever is greater, even though equipped with a fifth-wheel device.

Opinion No. 4793

September 25, 1973.

Honorable DeForrest Strang
State Representative
The Capitol
Lansing, Michigan 48901

You have requested an opinion on the following:

1. Is a pick-up truck of less than 4,500 lbs. pulling a trailer required to register under the elected gross vehicle weight provisions of Section 801(k) of the Michigan Vehicle Code?
2. Has sufficient design change been made when a fifth-wheel device is erected in the middle of the cargo box of a pick-up truck to require its registration under Section 801(k) of the Michigan Vehicle Code?

In determining the answers to these questions, it is important to ascertain the meaning of subsections (k) and (p) of § 801 of the Michigan Vehicle Code, MCLA 257.801; MSA 9.2501, which read as follows:

“The secretary of state shall collect the following specific taxes at the time of registering a vehicle. . . .

* * *

³ *Baldwin v North Shore Estates Association*, 384 Mich 42 (1970); MCLA 8.5; MSA 2.216.

“(k) For each truck weighing 8,000 pounds or less towing a trailer or any other combination of vehicles and for each truck weighing 8,001 pounds or more, road tractor or truck tractor, except as hereinbefore provided, according to the following schedule of elected gross weights:

“Elected gross weight	Fee
0-24,000 pounds	\$ 180.00

.....

* * *

“(p) For each pick-up truck weighing not over 4,500 pounds, 55 cents per 100 pounds empty weight or \$12.00 whichever is greater.”

The answer to the first question is controlled by the intent of the legislature in adding subsection (p). This subsection was added to the Michigan Vehicle Code, § 801, MCLA 257.801; MSA 9.2501, by 1957 PA 90, which for the first time classified “pick-up trucks” for distinct tax treatment. Before this addition, pick-up trucks were not classified independently from other trucks and the tax rate was determined by following the schedule under the general classification of “trucks”.

The Michigan Vehicle Code does not define “pick-up truck” or otherwise indicate the intended scope of subsection (p). Webster defines pick-up truck in the Third New International Dictionary, 1964 Edition, as “a light truck having an open body with low sides and tailboard mounted usually on a passenger car chassis.” This definition was repeated in *Gaumnitz v Indemnity Ins Co of North America*, 2 Cal App 2d 134; 37 P2d 712 (1934), and again in *Farmers Ins Exchange v Frederick*, 244 Cal App 2d, 776, 784; 53 Cal R 457 (1966), where the Court, interpreting an exemption clause in an insurance policy, found the term “truck” to refer to a vehicle designed to carry heavy inanimate loads of materials or produce, as distinguished from a “pick-up cab” or truck which the Court found is constructed and intended to convey only light loads. It is apparent that the legislature intended to give the pick-up truck a reduced tax rate and that such vehicles weighing less than 4,500 pounds are subject to the fee, as stated in subsection (p), of \$.55 per 100 pounds, but not less than \$12.00.

In order to use the rate of taxation found in subsection (k) of MCLA 257.801; MSA 9.2501, a pick-up truck and fifth-wheel combination must be found to be a “truck tractor” within the definition given under § 77 of the Michigan Vehicle Code, MCLA 257.77; MSA 9.1877, which states:

“‘Truck tractor’ means every motor vehicle designed and used primarily for drawing other vehicles, and not so constructed as to carry a load other than a part of the weight of the vehicle and load so drawn.” (Emphasis added)

As can be seen from the above definition, to qualify as a truck tractor the design change would have to be such that by the addition of a fifth-wheel device to the bed of the pick-up truck no other loads could be carried. However, after examination of such a fifth-wheel attached to the bed of the truck, this is not the case. Such a device occupies only

a small part of the bed of the pick-up and when a trailer is not attached there is ample room to carry other loads. Thus, it cannot be concluded that a pick-up truck, by virtue of the addition of the fifth-wheel, becomes a truck tractor. Despite the change in the design, the pick-up truck remains so constructed so as to permit it to carry a load other than a part of the weight of the vehicle and load so drawn. This does not permit taxation to be determined from § 801 (k). Therefore, the answer to the first question is in the negative.

Consequently, your second question must also be answered in the negative as the design change is not sufficient to require registration under § 801(k). All pick-up trucks under 4,500 pounds are entitled to be taxed under MCLA 257.801; MSA 9.2501, subsection (p).

FRANK J. KELLEY,
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CONSTITUTIONAL LAW: Titles to Statutes

STATE RACING COMMISSIONER: Allocation of harness racing dates 1973 PA 129, §17, which imposes a duty on the racing commissioner to allocate harness racing dates as a part of an act making appropriations for the department of agriculture is unconstitutional as violative of Const. 1963, art. 4, §24.

Opinion No. 4801

October 9, 1973.

Representative Clifford H. Smart
House of Representatives
Capitol Building
Lansing, Michigan

This is in reply to your recent letter requesting my opinion on the following questions:

"1. Does Act 129, PA 1973 violate Art. IV, Sec. 24 of the Michigan Constitution in view of the fact that the original purpose of H.B. 4146 was to appropriate funds for the Department of Agriculture for fiscal 1973-74 and section 17 appears to embrace a different object not expressed in the title?

"2. Is not section 17 an amendment of the State Racing Act of 1959 (Act 27, P.A. 1959)? This being so, is not Act 129, P.A. 1973 a violation of Article IV, Section 25 of the Michigan Constitution because the amendment was made by reference only and not in compliance with the law as set forth in *Alan v Wayne County*, 388 Mich. 210 at 275?

"3. Is Act 129, P.A. 1973 invalid because section 17 was added in a conference report when the subject matter was not a matter of difference between the House and Senate and the rules of each house providing that a conference report should be confined to matters of difference between the houses?