

**OPINION  
45-202**

August 1, 1945 (OPINION)

MOTOR TRUCKS

RE: Minimum Weight - Over-Weight - License

This will acknowledge your letter of July 30, in which you ask the opinion of this office concerning two questions, listed separately, as follows:

1. Do trucks who wish to operate at a weight above the fee schedule provided in the law that was effective January 1, 1945, have to pay the difference between that weight upon which they obtained their registration certificate on January 1, 1945, and the weight on which they now operate, if they operate on a weight in excess of the weight applicable on January 1, 1945, as provided by chapter 246, of the 1945 Session Laws?
2. Do the minimum weights set up within the terms of paragraph 2 of chapter 246, of the 1945 Session Laws, and being an amendment of section 39-1205, of the 1943 Revised Code, govern as to such restrictions, without regard to the gross weight limit of 60,000 pounds.

I will endeavor to answer these two questions in the order in which they have been listed.

Prior to the enactment of chapter 248, of the 1945 Session Laws, the licenses fee schedule on all commercial and noncommercial trucks was contained in section 39-0424, of the North Dakota Revised Code of 1943, and on vehicles operated within municipalities or transporting agricultural products, in section 39-0453, of the North Dakota Revised Code of 1943. These two sections were amended and reenacted by chapters 247 and 248, of the 1945 Session Laws. The license period was from January 1 to January 1. If I understand your first question correctly, the motor vehicles licensed under both sections of the Revised Code of 1943, have been licensed to January 1, 1946, on the maximum gross weight in pounds as set forth in the sections hereinbefore referred to. Chapter 248 changed the license fees on all commercial and noncommercial vehicles by this addition to the law: "Over 40,000 pounds at \$45.00 for each additional ton (2000 lbs. or fraction thereof)."

I understand that under the terms of chapter 246, of the 1945 Session Laws the maximum gross weight is 60,000 pounds. If any motor vehicle licensed under the terms of section 39-0424, of the 1943 Revised Code, now engages in hauling a load of a gross weight greater than 40,000 pounds, it is subject to the terms of chapter 248 by payment of an additional \$45.00 fee for each additional ton (2000 lbs. or fraction thereof).

A license is a privilege granted by the state to a business and the licensee may within the terms of the license carry on the acts or

business conferred by the license. It is merely a permit or a privilege to do what would otherwise be unlawful and is not a contract between the authority, federal, state or municipal, granting it, and the person to whom it is granted; neither is it property or a property right, nor does it create a vested right. See 37 C. J. page 168, paragraph 4.

A licensed business or person, however, is subject to reasonable regulations and restrictions as may be necessary for the protection of the public in general. Apparently, the legislature felt that those licensed to do commercial or noncommercial hauling, if they carried a load in excess of 40,000 pounds, should pay a greater license fee than that which was provided by the 1943 Code. The license which the holder purchased on January 1, 1945, conferred only a right to engage in hauling within the terms of the statute as it then existed, and authorized such person, partnership or corporation to haul a load not in excess of 40,000 pounds. If any person, partnership or corporation so licensed and engaged in commercial or noncommercial hauling now hauls a load in excess of 40,000 pounds, then chapter 248, of the 1945 Session Laws, would be applicable and such carrier would be liable for the additional fee under that statute, which became effective July 1, 1945.

It is the opinion of this office that any carrier now carrying a load in excess of 40,000 pounds gross weight is subject to an additional fee as of July 1, 1945, up to the limit of the gross weight permissible under chapter 246, of the 1945 Session Laws.

Now as to the second question, the 1945 law amended the previous gross limitation law on trucks and set up in its place what is known as the formula base and weight limitations on trucks as follows:

18,000 lbs. for a single axle, 15,000 lbs. for dual axles whose spacing is over 40" and under 8', a wheel load not to exceed one half the axle load nor a tire load to exceed 550 lbs. per inch width of tire, and further stating that under no conditions shall the gross weight on any combination of axles whose distance apart is 18' or less exceed that determined by the formula  $650 (L + 40)$  nor for a combination of axles whose distance apart is greater than 18' the gross weight shall not exceed that as determined by the formula  $750 (L + 40)$ .

These formulas are all used as a basis for the determination of the restrictions imposed by chapter 246, of the 1945 Session Laws. While it is true that the gross weight is 60,000 pounds, as determined by the formula  $750 (L + 40)$ , it was the evident intention of the legislature that the restrictions imposed by the weight limitations contained in paragraph 2 of chapter 246, of the 1945 Session Laws, being an amendment of section 39-1205, of the 1943 Revised Code, should prevail, for it is entirely clear that there was no object to set upon restrictions as to weight limitations as contained within the amended section 39-1205, if the gross weight of 60,000 pounds was to prevail.

It is, therefore, the opinion of this office that if any carrier hauls a load which does not conform to the weight limitations as expressed in paragraph 2 of chapter 246 of the 1945 Session Laws, he

is violating the statute, and that the restrictions therein contained prevail. All licensed carriers must, therefore, be governed from July 1, 1945, by the weight limitations and restrictions contained in paragraph 2 of chapter 246, and it is the opinion of this office that from and after July 1, 1945, the state highway department should enforce these restrictions. The restrictions are reasonable and are imposed for the general protection of the public and the preservation of the highway system of our state.

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Attorney General