

**OPINION
71-232**

August 11, 1971 (OPINION)

Mr. Charles Bosch

Motor Vehicle Registrar

RE: Motor Vehicles - Trailers - License Fees

This is in reply to your letter of July 28, 1971, with regard to the application of section 39-18-03, subsection 5, of the Supplement to the North Dakota Century Code by your department.

You point out that this statutory subdivision was amended by two chapters of the 1971 Session Laws, Chapter 380 and Chapter 381, which results in two different versions of this provision. In attempting to reconcile these provisions (according to the footnotes thereto) a third version is now printed in the 1971 Supplement to the North Dakota Century Code.

The three versions are as follows:

Chapter 380, 1971 Session Laws:

5. Where the length is twenty-four feet or more but less than twenty-nine feet, forty dollars."

Chapter 381, 1971 Session Laws:

5. Where the length is twenty-four feet or more, thirty-five dollars."

1971 Supplement to the North Dakota Century Code:

5. Where the length is twenty-four feet or more, but less than twenty-nine feet, thirty-five dollars."

The order of passage and gubernatorial approval of the two legislative versions is shown by bill status report, legislative journals and 1971 Session Laws to be as follows:

Chapter 380 (House Bill 1440) passed in Senate March 10, 1971, approved March 27, 1971.

Chapter 381 (Senate Bill 2458) passed in House March 16, 1971, approved March 29, 1971.

You mention that as Chapter 381 of the 1971 Session Laws was an emergency measure (Chapter 380 was not), you have applied the terms of subsection 5 of section 39-18-03 according to the terms of said Chapter 381 since the date of its approval, March 29, 1971.

Both Chapter 380 and 381 of the 1971 Session Laws contained precisely the following language immediately preceding the numbered subsections of which subsection 5 is a part:

The annual fees for such licensing shall be ten dollars for mobile homes and house trailers, and in accordance with the following schedule for travel trailers as defined by section 57-55-01:"

Prior to the passage of House Bill 1104, (Chapter 577 of the 1971 Session Laws) said section 57-55-01 provided in part:

* * * A 'travel trailer' is a vehicular, portable structure built on a chassis, designed to be used as a temporary dwelling for travel, recreational, and vacation uses, permanently equipped for towing and when factory equipped for the road, having a body width not exceeding eight feet and being of any length provided its gross weight does not exceed four thousand five hundred pounds, or being of any weight provided its body length does not exceed twenty-nine feet."

Prior to the passage of House Bill 1104, (Chapter 577 of the 1971 Session Laws) said section 57-55-01 provided in part:

* * * A 'travel trailer' is a vehicular, portable structure built on a chassis, designed to be used as a temporary dwelling for travel, recreational, and vacation uses, permanently equipped for towing and when factory equipped for the road, having a body width not exceeding eight feet and being of a length provided its gross weight does not exceed four thousand five hundred pounds, or being of any weight provided its body length does not exceed twenty-nine feet."

Prior to the passage of said House Bill 1104 said section 57-55-01 also provided for county auditor tax decal taxing of "nonselved-propelled mobile homes or trailer house," but not travel trailers as defined in definition heretofore quoted. The effect of said Chapter 577 is to delete the hereinbefore mentioned provisions for taxation ofonselved-propelled, mobile homes and trailer houses, exception for travel trailers, and insert in lieu thereof the following languages (tax provisions for mobile homes being transferred to section 57-55-01.1 by section 1 of said Chapter 577):

57-55-01. MOBILE HOME DEFINED. For the purposes of this chapter, 'mobile home' shall mean anyonselved-propelled vehicular structure built on a chassis, ordinarily designed for human living quarters, either on a temporary or permanent basis, and used as the residence or place of business of the owner or occupant."

Said Chapter 577 (House Bill 1104) was passed March 15, 1971, and approved on March 30, 1971. It also was not an emergency measure.

We note further that both House Bill 1440 and Senate Bill 2458 as originally introduced had the same language in subsection 5 as in the preexisting section 39-18-03, i. e., "Where the length is twenty-four feet or more but less than twenty-nine feet, forty dollars." The change here concerned was apparently introduced in the Senate as a result of conference committee report on the 15th of March, 1971, at page 1113 of the Senate Journal, by the language:

Page 2 line 16 before 'but' insert beginning triple parentheses and after 'feet' and before the comma insert ending triple parentheses."

having the effect, of course, of deleting the language "but less than twenty-nine feet." See also in this regard entry on page 1532 of the House Journal as to similar action taken March 16, 1971.

We note the footnote to the 1971 Supplement to this provision refers to section 1-02-09.1 of the 1969 Supplement to the of the North Dakota Century Code providing:

1-02-09.1. MULTIPLE AMENDMENTS TO THE SAME PROVISION, ONE WITHOUT REFERENCE TO THE OTHER. If amendments to the same statute are enacted at the same or different sessions of the Legislature, one amendment without reference to another, the amendment are to be harmonized, if possible, so that effect may be given to each. If the amendments are irreconcilable, the latest in date of enactment prevails."

We note also in this regard sections 1-02-08 and 1-02-09 of the of the North Dakota Century Code, as follows:

1-02-08. CONFLICTING PROVISIONS FOUND IN THE SAME STATUTE. Except as otherwise provided in section 1-02-07, whenever, in the same statute, several clauses are irreconcilable, the clause last in order of date or position shall prevail."

1-02-09. IRRECONCILABLE STATUTES PASSED DURING THE SAME SESSION. Whenever the provisions of two or more statutes passed during the same session of the legislative assembly are irreconcilable, the statute latest in date of final passage by the legislative assembly, irrespective of its effective date, shall prevail from the time it becomes effective."

In construing these statutes, we note that there is a conflict situation here. Either a vehicle otherwise a travel trailer, over twenty-nine feet in body length is a travel trailer, or it is not, for purposes of "taxation" under the provisions of section 39-18-03 of the 1971 Supplement to the of the North Dakota Century Code. Prior to the 1971 amendments to section 57-55-01, this may not have been of great moment, insofar as if not taxable as a travel trailer is presumably was taxable as a mobile home. Under current amendments to the statutes, however, it would appear that such a vehicle is not "taxable" as a travel trailer, not being a mobile home, is not taxable as a mobile home, unless it meets the definition of mobile home, which under current amendments it does not.

In the first instance we note that said section 39-18-03 limits the application of the schedule of fees to "travel trailers as defined by section 57-55-01." Insofar as subsequent to the 1971 amendments, section 57-55-01 no longer defines travel trailer, we must necessarily assume that such references is to said section 57-55-01 as it existed at the time of the introduction of this bill. Under such definition, a travel trailer must necessarily be limited to a vehicle whose body length does not exceed twenty-nine feet. Looking

to said Senate Bill 2458 as finally adopted, without further examination into the record of its passage, the language of subsection 5 would put a maximum length for the \$35.00 feet at 24 feet and would put a maximum length for a vehicle to be considered a travel trailer, at 29 feet, which would necessarily result in reading the language of subsection 5 to mean where the length is twenty-four feet or more but less than twenty-nine feet, thirty-five dollars is the fee.

The difficulty with ascribing such meaning to the enactment is that both the House and Senate journals show us that both houses of the legislature took action to delete the phrase "but less than twenty-nine feet" therefrom. Such deletion is, of course, within the meaning of the above quoted sections 1-02-08, 1-02-09, and 1-02-09.1 (aside from the emergency clause) the latest in date of final passage, the last in order of date, the last in order of position, latest in date of final passage, etc. Arguably, of course, the deletion of these words could have been simply for the purpose of shortening the bill, considering that the 29 foot limitation was already embodied in section 57-55-01, thought we think ascribing such a purpose to same would be attempting to render such amendments meaningless, in the circumstances.

Lastly, of course, we can look to the bills as finally adopted. House Bill 1104 containing the amendment to section 57-55-01 and thus the current provision of section 57-55-01 has no definition of "travel trailer." On such basis, the provision of the old law contained in the new section 39-18-03 "travel trailers as defined by section 57-55-01" is meaningless, by reason of the amendment of said section 57-55-01. On such basis, Chapter 381, subsection 5 must be taken literally according to its expressed terms, i. e., "Where the length is twenty-four feet or more, thirty-five dollars."

It is thus our conclusion that Chapter 381, subsection 5 of the 1971 Supplement to the of the North Dakota Century Code must be taken literally according to its terms and the \$35.00 fee will apply to any travel trailer over twenty-four feet in length, even though also over 29 feet in body length. It being later in time, both of passage of Senate and House bills and of approval by the governor's office, it will prevail over the possibly conflicting terms of Chapter 380 of the 1971 Session Laws.

HELGI JOHANNESON

Attorney General