

**OPINION
47-188**

October 17, 1947 (OPINION)

MOTOR VEHICLES

RE: Taxation of Trailer Houses

This will acknowledge the receipt of your letter addressed to Attorney General Nels G. Johnson under date of October 14, 1947. In your letter you say:

Considerable misunderstanding and controversy is developing incident to the assessment and taxation of house trailers. Many of these house trailers have been placed on more or less substantial foundations and are being used as residences in many localities over the state. Some assessors have assessed them as realty, others assessed them as personal property where the affixation has been of a more temporary character."

You say further:

I have advised several of the local assessors that where the license tag has not been obtained and applied and the trailer house has not been placed on a more or less permanent foundation, that it should be assessed as personal property, and, if the trailer house has been permanently established on a foundation, that it becomes a part of the realty and should be so assessed. I have suggested to them also that where these trailer houses have not been permanently affixed and are not licensed, the assessor should advise the state patrol to the end that they be properly licensed for the current year in which case no other tax will apply."

It is my opinion that the views which you have expressed to the assessors are substantially correct.

Section 39-0439 of the 1943 Revised Code is a part of Chapter 39-094 relating to motor vehicle registration and the provisions of this section must be construed in connection with, and in the light of, the other sections of said chapter relating to the licensing and registration of motor vehicles. It was, in my opinion, clearly the intention of the legislature that when a trailer house is used as a vehicle for transportation on the highways of the state, and in that connection only incidentally as a residence and place of abode, it must be licensed under the provisions of section 39-0439; that as long as the trailer house is primarily used as a vehicle for transportation, it is subject to the tax prescribed by said section, and that under the provisions of Section 39-0466 such license tax must be regarded as a lieu tax.

But it is further my opinion, that when a trailer house is used primarily for residential purposes or purposes other than a means of conveyance, that it loses its character as a vehicle within the intent and purpose of sections 39-0439 and 39-0466 of the Revised Code. The fact that a house suitable for residential purposes, or

for purposes other than transportation, is so constructed that it can be placed on wheels and hauled over the highways by an automobile does not create exemption from general property taxation. Any other construction would be discriminatory in its results, and a statute conferring tax exemption would be regarded as discriminatory class legislation.

It is my opinion that a trailer house used as a residence, and not principally or primarily as a vehicle or means of conveyance, is subject to assessment and taxation like any other structure of like value which has not been built for use as a vehicle. And it is further my conclusion, that a trailer house which is used as a residence, and also occasionally used as a vehicle, is subject not only to assessment and taxation but also to the license tax prescribed by section 39-0439. The license tax is imposed for the use of the highways and if a trailer house is driven on the highways, it must be licensed.

If a trailer house, used as a residence, is readily movable, or if it is located on leased ground, it should be assessed as personal property. But if it is owned by the owner of the land on which it is situated, and is attached to the soil like any other house or structure assessed as realty in the community, it should be regarded as real estate.

NELS G. JOHNSON

Attorney General