

ATTORNEY GENERAL

“\*\*\* In the absence of malconduct or fraud, we cannot overturn a concluded election for an irregularity in the ballot unless in all human likelihood the irregularity has interfered with the full and free expression of the popular will, and has thus influenced the result of the election.”

As previously demonstrated, the amendments of Chapter 143 pertained to technical changes, non-critical financial provisions and minor alterations in phraseology. The published Act, in its recitals, fully set forth the proposals for capital expenditure and itemized the specific amounts to be allocated for higher education purposes. The publication contained the question to be voted upon by quoting verbatim the title of the Act. The title specified the amount of the public debt to be created, the maximum amount of interest to be paid thereon and the purpose for which the bonds were to be issued. This is what the Legislature deemed important. It is thus clear that the amendments reflected in L. 1964, c. 143 did not alter materially the substantive provisions of the Higher Education Construction Bond Act (1964). Under the foregoing authorities the Higher Education Construction Bond Act (1964), L. 1964, c. 142, as amended by L. 1964, c. 143, was duly and validly approved by the people of the State of New Jersey at the General Election held on November 3, 1964.

For the reasons expressed herein, we are of the opinion that the Issuing Officials may lawfully issue bonds in accordance with the provisions of the Higher Education Construction Bond Act (1964), L. 1964, c. 142, as amended by L. 1964, c. 143.

Very truly yours,

ARTHUR J. SILLS

*Attorney General*

By: DONALD M. ALTMAN

*Deputy Attorney General*

December 29, 1964

HONORABLE JOHN A. KERVICK

*State Treasurer*

State House

Trenton, New Jersey

FORMAL OPINION 1964—NO.7

Dear Mr. Kervick:

You have requested an opinion as to the exemption from personal property taxation of certain enumerated classifications of vehicles registered under the provisions of Title 39 of the Revised Statutes of the State of New Jersey, and upon which registration fees have been paid.

More specifically, you have asked whether the following types of vehicles are exempt from taxation under the provisions of N.J.S.A. 54:4-3.21, viz:

FORMAL OPINION

a. Private utility and house type semitrailers and trailers (N.J.S.A. 39:3-8).

b. Trailers and semitrailers used to haul machinery (N.J.S.A. 39:4-26).

c. Road building machinery, traction engines and other machinery (N.J.S.A. 39:4-30).

d. Motor vehicles owned or controlled by manufacturers of motor vehicles, dealers in motor vehicles, transporters of vehicles, persons engaged in the business of financing the purchase of motor vehicles, corporations engaged in the business of insuring motor vehicles (N.J.S.A. 39:3-18).

e. Farm tractors and traction equipment, motor vehicles used exclusively as farm machinery or farm implements which may travel upon the public highways from one farm, or portion thereof, to another farm, or portion thereof (N.J.S.A. 39:3-24).

In addition, you ask whether equipment which is mounted on an exempt vehicle should be considered a part of that vehicle and also entitled to exemption.

The exemption of motor vehicles from personal property taxation is derived from N.J.S.A. 54:4-3.21 which provides as follows:

“All motor vehicles registered by the motor vehicle department of the State of New Jersey and upon which registration fees have been paid, in accordance with the provisions of Title 39, Motor Vehicles and Traffic Regulations, shall be exempt from taxation under this chapter.”

The exemption was originally enacted as *L. 1927, c. 338, §1, p. 790* which amended the personal property tax law to exempt motor vehicles as defined therein from its provisions. The amendment provided:

“. . .203. The following property shall be exempt from taxation under this act, namely: \*\*\*

“(17) All motor vehicles registered by the Motor Vehicle Department of the State of New Jersey and upon which registration fees have been paid, in accordance with an act entitled ‘An act defining motor vehicles and providing for the registration of the same and the licensing of drivers thereof; fixing rules regulating the use and speed of motor vehicles; fixing the amount of license and registration fees; prescribing and regulating process and the service thereof and proceedings for the violation of the provisions of this act and penalties for said violations,’ also known as chapter two hundred and eight of the Laws of New Jersey, one thousand nine hundred and twenty-one, its supplements and amendments; *provided, however*, that nothing in this act contained shall be construed to interfere in any way with the provisions of an act entitled ‘An act concerning auto busses commonly called jitneys, and their operation in cities,’ approved March seventeenth, one thousand nine hundred and sixteen, or any act amendatory thereof or supplemental thereto, or in any way be construed to relieve any autobus from the payment of any license fee, franchise tax or other imposition in the nature thereof whether such fee, tax or imposition be paid to the state of New Jersey, or to any municipality or municipalities thereof.”

ATTORNEY GENERAL

“The purpose of this act is to abolish the property tax on motor vehicles.”

At the time of the passage of this legislation in 1927, motor vehicles were defined in *L. 1291, c 208*, the predecessor to Title 39, Revised Statutes, as follows:

“... ‘motor vehicle’ includes all vehicles propelled otherwise than by muscular power, excepting such vehicles as run only upon rails or tracks.” *L. 1921, c. 208, §1, p. 643.*

This early definition was recodified in Title 39, Revised Statutes, without change (R.S. 39:1-1). Nowhere within the context of *L. 1927, c. 338* does the Legislature refine its definition sufficiently to make clear whether it intends to include specifically within the class of motor vehicles exempted from personal property taxation each of the vehicles which are the subject of the within inquiry.

In construing a statute,

“... [I]t is fundamental that statutes cannot be considered in a vacuum. They must be understood in their relation and interaction with other laws which relate to the same subject or thing; they must be construed together with these related sections in order to learn and give effect to the true meaning, intent and purpose of the legislation as a whole.” *Appeal of New York State Realty & Terminal Co.*, 21 N.J. 90, 98 (1956).

It has been further indicated that:

“... [I]n construing statutes the inquiry is to determine the purpose and intent of the Legislature. If the statute alters or amends the previous law or creates or abolishes types of action, it is important to discover the intention of the Legislature to ascertain the old law, the mischief, and the proposed remedy.” *DeFazio v. Haven Savings and Loan Ass'n.*, 22 N.J. 511, 518-519 (1956).

It is therefore necessary to seek the legislative intention in enacting the exemption amendment with reference to the background of the 1927 legislation.

In 1924 by *Assembly Joint Resolution No. 12*, the Legislature indicated its concern with the methods then available to finance construction and repair of the expanding system of roads and highways throughout the State. In accordance with that resolution it provided for the appointment of a special commission to study the question of motor vehicles taxation and report thereon, with recommendations to the Legislature.

The committee so appointed reported to the Legislative Session of 1925 that motor vehicles were subject to two forms of taxation:

“In the case of the general taxes levied on motor vehicles as personal property, these have the same origin and destinations as the general taxes

## FORMAL OPINION

assessed upon and collected from other forms of personalty such as household goods, horses, wagons, etc., etc. As for special taxes on motor vehicles and their drivers, these first were justified and measured by the annual cost involved in issuing registration plates and license cards but now are called upon to meet an ever-increasing share of the highway financing burden." *Final Report and Recommendation of Special Commission Appointed to Investigate Motor Vehicle Taxation in New Jersey* (1925) at p. 3.

The Committee recommended an increase in special taxation on motor vehicles and drivers to the end that additional revenues for highway financing purposes might be obtained.

"In the eyes of the general public and indeed of the motorist himself the special taxes levied upon him in addition to the general tax which he must pay through the present property tax are justified and are acceptable because they are used to maintain and reconstruct the highways over which he operates.

"In return for his outlays, which are indeed virtually a double tax, the motorist obtains hard and smooth highways, convenient for travel at all seasons with a resulting lowering of the cost of operation and upkeep of his machine." *Ibid.*, at p. 13.

The Commission recommended that passenger cars and commercial cars pay a 2 cent per gallon tax; that commercial cars should in addition pay a fee based upon gross weight of the vehicle and its load; that trailers and semitrailers should be charged on the weight basis provided for commercial vehicles. *Ibid.*, at pp. 14, 15.

A second report of the commission recommended that:

"Provision should be made for refunds of taxes paid on gasoline used for other purposes than on highway travel, which may include motor boats, farm tractors and machinery, stationery [*sic*] engines and dry cleaning." *Majority Report of the Legislative Commission on Motor Vehicle Taxation* (1925) at p. 15.

In 1926 attempts were made in the Legislature to implement the commission's purposes. *Assembly Bill* No. 12 (1926) was introduced on January 18, 1926. This bill sought to increase the registration fees on commercial motor vehicles weighing more than 6,000 pounds. The bill was sent to the judiciary committee and did not emerge. On January 19, 1926, *Assembly Bill* No. 92 (1926) was introduced. This bill would have exempted motor vehicles from personal property taxation. The bill was sent to the taxation committee and also did not emerge. *Assembly Bills* No. 117 and 118 (1926) were introduced on January 25, 1926. Bill No. 117 would have modified the motor vehicle act to conform it to possible gas tax requirements. Bill No. 118 provided for the collection and distribution of revenue from a tax on motor fuels. On March 8, 1926 both bills were reported out for second reading. Thereafter nothing further was heard of them.

In 1927 new attempts were made to enact gas tax legislation. *Assembly Bill* No. 19 (1927) provided for a 2 cent per gallon gas tax on motor vehicles and defined both "motor vehicles" and "fuels" as follows:

## ATTORNEY GENERAL

“(1) The term ‘motor vehicle’ shall include any vehicle propelled or drawn along any public road by any power other than muscular, and motor boats or any boat or scow propelled wholly or in part from power derived from a gasoline engine, except road rollers, street sprinklers, fire engines or fire department apparatus, police patrol wagons, ambulances owned by municipalities or hospitals, motor cycles of State and municipal police, motor vehicles of the United States government, auto busses; commonly called jitneys, which now pay a municipal or franchise tax on their gross receipts, agricultural tractors, and such vehicles as run only on rail or tracks.

“(2) The term ‘fuels’ shall include gasoline, benzol or other products to be used by the purchaser thereof in the propelling of motor vehicles using combustible type engines over the highways of this State.”

One week later *Assembly Bill No. 222 (1927)* was introduced in the Assembly. This bill amended the personal property tax law and abolished the tax on motor vehicles as defined.

Both *Assembly Bill No. 19* and *Assembly Bill No. 222* passed both houses of the Legislature, were vetoed by Governor Moore and passed by the Legislature the next day over the Governor's veto. *Assembly Bill No. 19* became *L. 1927, c. 334*, and *Assembly Bill No. 222* became *L. 1927, c. 338*. The Governor's veto message on *Assembly Bill No. 19* indicated his belief that a bond issue coupled with an increase in motor vehicle fees would be sufficient for the revenue purposes sought by the gas tax. In his veto message accompanying *Assembly Bill No. 222* the Governor stated:

“I return herewith *Assembly Bill 222* without my approval, because this is a companion bill to the Gasoline Tax Act, which would probably not have been passed were it not for the latter bill. It would hardly be fair for me to disapprove one bill and approve the other.

“I find that the various cities and counties throughout the State would lose approximately \$3,888,300.51 by the enactment of this bill into law. Their budgets are predicated upon the assumption that they would raise that much money from this source, and of course, if they do not obtain it from automobiles they will place it on other property, so that, in the final analysis, the bill does not afford the relief indicated.” *Veto Messages of A. Harry Moore to the 151st Legislature (1927)* at p. 13.

It would thus appear that the purpose of the Legislature in passing both bills over the Governor's expressed veto was to reaffirm the principle that the gasoline taxes on motor vehicles and their use were to be special taxes directed to the purposes expressed, and that the revenue obtained should not be expended for the general use of the State. In substituting one form of tax for the other, the Legislature also included within the broad class of motor vehicles those vehicles which utilized or, by virtue of their being drawn by motor powered vehicles, engendered the use of motor fuel in travelling the highways. As further evidence of this legislative intention, it should be noted that in the case of auto busses, commonly called jitneys, which paid a special municipal or franchise tax, the Legislature specifically exempted this class of motor vehicle from the requirement to pay a gasoline tax, and concomitantly denied them

## FORMAL OPINION

exemption from said license fee or franchise tax under the provisions of the exemption amendment. *L. 1927, c. 338, §1, p. 790*. In this way the Legislature again focused its purpose on a single *quid pro quo*, that of a special tax on gasoline, specifically directed, as replacement for a general tax on motor vehicles as personal property.

Chapters 338 and 334 of the Laws of 1927 must be construed in *pari materia* for:

“It is a cardinal principle of statutory construction that statutes relating to the same or similar subject matter—statutes *in pari materia*—are to be construed together. *Sutherland, Statutory Construction* (3rd ed. 1943), §5201.” *Palmer v. Kingsley*, 27 N.J. 425, 429 (1958).

So construed it is clear that the Legislature established two criteria to be applied in determining the class into which a particular type of motor vehicle falls, namely: (1) Is the vehicle in question a motor vehicle duly registered in New Jersey and upon which registration fees have been paid? (2) Does the vehicle use or cause the use of motor fuel in travelling the highways? Both criteria must apply for the exemption to become effective.

The legislative attitudes here developed are not unique to the State of New Jersey. The question of which types of vehicles are included within the term “motor vehicles” has arisen in other states and in other contexts. It has been observed that:

“The ubiquitous trailers are so much a part of ordinary motor traffic that it would be putting too narrow a construction upon § 3513 to exclude them from its scope. Although the motor which pulls it is that of another vehicle, the trailer is yet so exclusively dependent upon it for movement that it also must be considered a motor vehicle within the meaning of this law.” *Gendreau v. State Farm Fire Ins. Co.*, 288 N.W. 225 (Minn. Sup. Ct. 1939).

To the same effect see, *Fruehauf Trailer Co. v. South Carolina Elec. & Gas Co.*, 75 S.E. 2d 688 (S.C. Sup. Ct. 1953), *State v. Schwartzmann Service, Inc.*, 40 S.W. 2d 479 (Mo. Ct. of App. 1931), and *Department of Motor Transportation v. Trailer Convoys*, 279 S.W. 2d 815 (Ky. Ct. of App. 1955). Thus, there is much support for the use by the Legislature of the criteria hereinabove set forth to be used in determining the application of the exemption amendment.

Within the context of these criteria, it is our opinion that:

(1) Trailers, commercial trailers, semitrailers and private utility trailers including those trailers used to haul machinery, which have been duly registered are exempt from personal property taxation. These trailers, commercial trailers, semitrailers and private utility trailers are registered individually under Title 39. They are drawn by a power other than muscular involving the consumption of motor fuels and are clearly within the contemplation of the Gasoline Tax Act definition.

(2) Road building machinery, traction engines and other machinery are not exempt. This category of machinery is operated pursuant to N.J.S.A. 39:4-30 on a general registration and the plates evidencing the general registration may be freely transferred from one vehicle or machine to another. “Such plates do not register

ATTORNEY GENERAL

or serve to identify the piece of equipment, but simply identify the owner." *Borough of Bogota v. Brewster Equipment Company*, 83 N.J. Super. 586 (App. Div. 1964), certif. granted 43 N.J. (1964). Accordingly, this equipment is not such as would be considered registered under Title 39, Revised Statutes, for purposes of compliance with N.J.S.A. 54:4-3.21.

(3) Motor vehicles owned or controlled by manufacturers of motor vehicles, dealers in motor vehicles, transporters of motor vehicles, persons engaged in the business of financing the purchase of motor vehicles and corporations engaged in the business of insuring motor vehicles, are not exempt. These vehicles are subject to a general registration (N.J.S.A. 39:3-18) and fall in the same category as the class enumerated in No. 2 above.

(4) Farm tractors and traction equipment are exempt. These vehicles are registered on an individual basis (N.J.S.A. 39:3-24), traverse the highways, and were implicitly recognized to be within the class of motor vehicles for gas tax purposes. Such recognition takes the form of the specific exception thought necessary by the Legislature to exclude this class from the provisions of the Gasoline Tax Act.

(5) Motor vehicles used exclusively as farm machinery formerly covered by N.J.S.A. 39:3-24.1 have been specifically covered since the repeal of this section, by N.J.S.A. 39:3-24. They are individually registered and are exempt.

(6) House trailers are not exempt. In reaching this conclusion reference is necessarily made to the determination of the Division of Tax Appeals, Department of the Treasury, State of New Jersey, in the case of *Keane v. Township of Elk*, Case No. 42 (October 21, 1958). It was therein held that such house trailers are not exempt from the *ad valorem* personal property tax. No appeal was taken from that determination and judgment. Accordingly, the Division's conclusions represent the unchallenged authority of the highest tax administrative agency.

(7) Equipment mounted on a vehicle may be considered part of the vehicle itself if that equipment is an integral part of the basic vehicle and the basic vehicle will lose its identity should the equipment be removed. Conversely, equipment merely carried on a vehicle affects neither the status of the carrying vehicle nor the independent status of the equipment carried. See *State v. Johnson Lumber Company, Inc.*, 68 N.J. Super. 276, 278 (App. Div. 1961). Consequently, an exemption will be granted or denied based exclusively on a consideration of the status of the vehicle itself without reference to any equipment added thereto. If the vehicle and the equipment are not severable the determination shall be made on the status of the vehicle without regard to the equipment. If the vehicle and the equipment are severable the determination of the status of the vehicle shall not affect the status of the equipment considered independently.

Very truly yours,  
ARTHUR J. SILLS  
*Attorney General*

By: ELIAS ABELSON  
*Deputy Attorney General*