

THE MYTHOLOGICAL MOTOR VEHICLE

by The Travelers Guide
c/o Rod Knox, P.O. Box 5755
Portland, Oregon [97228]

From Webster's New International Dictionary, 2nd Edition:

Myth is defined as "1. A story the origin of which is forgotten, that ostensibly relates historical events which are usually of such character as to serve to explain some practice, belief, institution...".

Some people believe that they drive a motor vehicle - some actually do, most do not.

A few vehicles powered by motors are beginning to appear on our modern highways. There were a few vehicles powered by motors as our society emerged from the horse and buggy mode. Most were powered by, and still are, engines.

The Vehicle Code of the several states is a legitimate exercise of the police power reserved to the states. The police power is exercised by Executive Branch Organizations, also known as "agencies", and is intended to secure the health, safety and welfare of the public. Police power must be exercised within constitutional constraints inherent in the enabling clause, adopted upon entry by each state to the Union. Under such constraint, police power cannot impinge upon the people's constitutionally secured rights.

Commercial interests, by nature, being driven by profit motive, have always been the object of executive branch organization or state agency (hereinafter "agency") policing. While many businessmen are upright, the temptation is always at their elbow to cut a corner. Agencies, with a few notable exceptions, establish and enforce rules, consistent with their legislative mandate, to protect the public from unscrupulous business practices, in part by requiring examination and licensing of various tradesmen and professionals. The legislative language of the state of Oregon defining "license" is: "...permission required by law to engage in any commercial activity, trade, occupation or profession."

I am a former father who, out of concern for his son and children generally, devoted fourteen consecutive years to lobbying for family law reform. One of the bills I opposed would, and now does, provide that a dead beat parent (at least we got the dead beat (ad language gender neutralized) could lose his or her driver license. At the text legislative session it was brought to the legislature's attention that ex-spouses of doctors, lawyers, architects and other professionals were entitled to equal protection against non-payment of child support. My dawning of consciousness, a driver license is another professional license! A license or privilege is granted by the

state to a qualified (maybe) person to protect the public from unscrupulous or incompetent business operators. What the state giveth the state may take away.

I had heard rumors that the Driver and Motor Vehicle Services Division (hereinafter DMV) might be running a scam. My first "official" confirmation of this came from a trip to Multnomah County's Central Library. While strolling the stacks, looking for the point at which to begin my research, I was literally touched near my knee by the General Laws of Oregon, 1921. The "General Laws" is the term referring to legislative enactments made by Oregon's Legislature during the first half of the nineteenth century, now the same thing is referred to as "Oregon Law". These journals of legislative activity are distinct from the "Revised Statues", which are regularly edited into contextually appropriate volumes by, the: staff of Legislative Counsel (the legislature's attorney). If you want to look at General Laws at the Multnomah County Library now, you must fill out a request slip asking that they be brought up from the basement.

In a "special session" of 1921, Oregon's Legislature exercised its police power in re-enacting the Vehicle Code. To meet an emergency Created by the use of heavy haulers causing damage to the public's highways, it was declared that all vehicles transporting persons and property for compensation would be charged fees to offset the cost of maintenance and, along with their operators, be subject to regulation.

Later, I wrote to the attorney for the Oregon Legislature, Mr. Greg Chaimov, and asked him where the most recent legislative definition of motor vehicle was to be found. His unequivocal answer was that it is to be found in the General Laws of Oregon & 1925, Chapter 380. The purpose paragraph, which appears above the text and provides context in a summary of the act, is language very similar to the 1921 version. Legislative purpose is expressed as: We, the legislature intend to "impose a charge upon motor vehicles for the use of such highways in the transportation of persons and property for compensation..." In the definition section:

Motor Vehicle, *"motor vehicle" means any self-propelled vehicle moving over the public highways of this state and not moving, operated, or driven upon fixed rails or track. It includes motor trucks and motor buses and trailers, semi trailers and other trailers used in connection therewith*

Note that "includes" is an exclusive term. That which is not within the list of "included" is not there, unless the phrase "but not limited to" follows. In the 1925 re-enactment "compensation" was defined in minute detail to include, but not limited to, barter, futures, and securities. Apparently some truckers were hauling on the promise of a percentage of the value of the load they were transporting. Additionally classes of regulated "motor vehicles" were established based on weight and tire width.

In 1927, responding to police zeal in enforcement of the registration provisions of the Vehicle Code upon businessmen's automobiles, the legislature inserted a paragraph describing a list of business uses that are exempt from regulation. In no uncertain terms, our elected representatives clarified that regulated "motor vehicles" are those actually transporting persons and property for compensation. Motor vehicles are not to be confused with those used to merely travel to sales meetings or going somewhere incident to business. (Depending on what the subsequent legislative record shows, this could be the basis for penalties against peace officers for assailing automobiles used by the public. Research yet to be done.)

To clarify that everything running under its own power was not a "motor vehicle" the 1927 legislature also added the definition of "vehicle" as "every mechanical device moving by any power", except for human powered, and those operated over stationary rails. Highway was defined on the same page as: all the places in the state, including the streets and roads of municipalities and counties, "used or intended for use by the general public for vehicles".

Right of use of the highway by the public was understood in the early part of the twentieth century, perhaps because people were closer to their common law heritage. In 1983 the legislative language defining highway was amended to include the word "open" and the phrase "...or vehicular traffic as a matter of right". Thus, the "general public" uses every "mechanical device" on the highway, "as a matter of right? This right of use is clearly contra-distinguished by current statutory language which declares that subject to the provisions of the Vehicle Code, the state grants a privilege to "motorists" to "operate motor vehicles" on the highway.

In 1929, realizing that there was more road work the state would like to do than could be covered by the licensing and registration fees, the legislature imposed a tax on fuel used by regulated "motor vehicles" of three cents per gallon. This is the same "motor vehicle fuel tax" that today is twenty-four cents per gallon in Oregon. The motor Vehicle fuel tax, neither state nor federal, has ever applied to every mechanical device powered by whatever means, used on the highway by the public. When the state tax was three cents per gallon, most people knew it didn't. Now that state and federal tax is almost 500 a gallon, most people pay it without a thought. How many of your regularly paid taxes amount to anything like your "motor vehicle fuel tax"?

The statutory language through the 1981 Oregon Revised Statutes listed two types of licenses, "operator's" and "chauffeur's". While there may be some confusion about the word "operator" (even among citizen legislators), most literate individuals understand that businesses "operate". For those of us who don't understand the business connotation of "operate", there is the "Operator Manual", available at a DMV Branch near you. The manual clearly states that "Oregon currently issues

three classes of driver license; Class A commercial... Class B commercial... and Class C commercial..." The manual is intended as a study guide for those who will be employed to "operate" a vehicle for compensation.

When one looks to an era appropriate edition of Black's Law Dictionary, the term **Operate...when** used with relation to automobiles, signifies a personal act in working the mechanism of the automobile; That is, the driver operates the automobile for the owner, but the owner does not operate the automobile unless he drives it himself. Similarly, **Driver**. One employed in conducting or operating a...motor car, though not a street railroad car." And, **Chauffeur**. An operator who directly or indirectly receives compensation for operating motor vehicle. Operators who drive jitneys in cities and towns for hire. Person employed or paid to operate, drive and attend car.

By the term "era appropriate edition", it is meant an edition which was published, or in use during the early years of the Vehicle Code when the language was being developed and "settled" by the courts. The edition cited throughout this article is the fourth, with court citations giving rise to the definitions virtually identical to those cited in the third.

The most recent statutory definition of Chauffeur, which was deleted by Oregon Laws 1983, Chapter 338, is consistent with Black's definition of driver and chauffeur:

"Chauffeur means every person who is employed by another for the principal purpose of driving a motor vehicle carrying persons or property for compensation."

An exception under this definition makes it perfectly clear that the dividing line between drivers who are licensed and other highway users is the issue of compensation: *students operating vehicles, commonly known and used as private passenger vehicles, which are not operated for compensation...*

It is interesting to note that "passengers" are technically those who pay a fare to be transported from one place to another (see Black's), but the legislature (or perhaps legislative counsel committee) qualified the use of "passenger" by the modifying phrases, "commonly known and used as private..." and "not operated for compensation.." This mixing of terms by the legislature should constantly be born in mind by readers of the law or statutes, because many of our elected representatives have had just as faulty an education as most of the rest of us.

In 1931 the Oregon Legislature changed the wording in the definition of the term "vehicle" to: *"every device in upon or by which persons and property is or may be transported upon the highway".*

By the time the Legislature began working on the major revision of the Code that is pretty much what we see today, the original definition of "vehicle" had been reinserted, but with the addition of a third exception, the devices that traveled under overhead trolley wires. The fact that the definition has changed back and forth means that the changes were not substantive, and probably were done by legislative counsel as an editing function.

The significance of the definition of "vehicle" either original or current, cannot be overestimated. Even though "vehicle" is not now explicitly defined, there remains enough history in its grammar, if you know how to conjugate English and have Black's Law Dictionary definition of:

Transportation. The removal of goods or persons from one place to another, by a carrier (carrier is defined as an entity engaged in the activity for hire).

Thus, every device which "is" connotes those currently engaged in commerce, and "may be" means that by form, the vehicle could be, but is not now so engaged.

A casual reader without knowledge of the legislative language above might inquire why the legislature or legislative counsel would currently define the regulated object, motor vehicle, the way it does:

ORS 801.360 Motor vehicle. A vehicle which is self-propelled or designed for self-propulsion.

Unless it was intended to apply to everybody's car, nowhere in the Vehicle Code does it say that "everybody's car is a motor vehicle", or that "the public operates". Most important however, is the context in which the definition occurs. The legislative language of 1925 providing adequate context has been deleted, ostensibly for the sake of simplification, but what remains is nearly identical.

YOU can't tell what's in a book from the cover, but it is the first indication of context. When one approaches a bookshelf loaded with the nineteen volumes of Oregon Revised Statutes, it can be seen that Volume 15, is titled Business Regulations (Part 2), Volume 14 being Part 1. The Vehicle Code is "Title 59" of Business Regulations (Part 2). Here's a bone for conspiracy buffs: The subject matter indicated on Volume 15's cover does have Business Regulations (Part 2) in its lead line, but each of the "sub headings" are in the same font, laid out in lines, and separated by semi-colons as though listing things of similar importance. In contrast, Volume 14 has Business Regulations (Part 1) as the lead line, but what follows is in much smaller font, in a column centered under it (so the list is literally "sub headings"). When the reader flips past the fly leaf to the table of contents, the

format for both volumes is identical, and of course Business Regulations is not one of the listed "Titles". •

I had a talk with Legislative Counsel Chaimov about the inconsistency in formatting and apparent misuse of the semi-colons in 2001. Because he had no legitimate explanation for the way the covers look, I wrongly assumed that corrections would be made in the 2002-2003 version of the Oregon Revised Statutes.

Unfortunately for peace officers and personnel of the DMV, they are regularly provided an excerpt of Business Regulations (Fart 2) called the Vehicle Code Handbook, so they never get to see the primary contextual statement. I personally conducted a poll of peace officers, asking whether they enforce business regulations. None knew that they did, and most were adamant that they didn't.

In reading statutes, it is always a good idea to read the policy statement that precedes the substance, and the definition section. When people do not comprehend context, they sometimes believe that the law is a complicated thing because of all the numbers thrown in with the text. This is not a complicating factor at all, but rather a means of referencing, so that contextualizing sentences and paragraphs do not have to constantly be restated, but are nevertheless explicitly referred to. One particularly well contextualized passage that is not interspersed with reference numbers, describes the offense of "operating motor vehicles without grant of driving privilege" (ORS 807.010). In this passage the grammatical technique of contradistinguishing is employed: "...every person who operates a motor vehicle on the highway or premises open to the public..." must have a license. Two kinds of people are explicitly mentioned in this sentence, persons who operate motor vehicles, and the Public for whom the highway is open. The legislature (or legislative counsel) did a great job conveying the intent of the Vehicle Code with this particular section of law, as the phrase "open to the public", excerpted from the language defining "highway" used by the public by right, makes it clear that the public is not the subject of regulation. The language in the financial responsibility paragraph (ORS 806.010) just happens to use exactly the same phrasing as who must be licensed.

In 1983 the legislature extensively reorganized the Vehicle Code with this stated intent, "It is not the intent of the Oregon Legislative Assembly to change the law by enacting this revision if the Oregon Vehicle Code..." They go on to say: "The intent of the assembly is to make the law relating to vehicles easier to use, amend, and understandably simplifying the language..." They emphasize their intent not to change the law by stating: "Every agency of this state, every court, and every person shall consider the revision to be a continuation of the vehicle laws in effect on the effective date of the revision".

Needless to say, the statement of legislative intent does not routinely make it into the Oregon Revised Statutes. So by confining one's research to the statutes, essential context can not be taken into account. For example "drive" is one of the most crucial words of the Vehicle Code. If one does not refer to Oregon Laws, chapter 338, to read the legislative intent, and then find the 1981 definition of chauffeur who is employed to "drive", how would one know? It should be noted that there is one reference left in today's Vehicle Code to chauffeur. The paragraph at ORS 802.070 provides that the DMV will funnel money into schools to teach students about chauffeur's and operator's licenses. Call your local high school's driver training program to find out just what students are learning and see what happens.

If one does not know what a "driver" is, then comprehending what a "Driver license" allows is impossible. Throughout the Vehicle Code one sees the term "license", which is to be used interchangeably with "Driver license" (ORS 801. 245). Usually the crucial words of any given code are defined at the beginning. In the Vehicle Code, one will not find the definition of "License". Historical note: In 1985 the Attorney General's Office supported a bill to change the definition of license. The reason given was that they had been involved in several lawsuits over what a driver license is and hoped that by obscuring the meaning they would not have to keep on arguing this issue (SB 118 of 1985).

Though most of the Vehicle Code bears a footnote indicating revision in 1983, the Legislative Session of 1985 capped the four year project. This business had been going on during the interim session as well as during regular session. In April of 1985 a lobbyist from the DMV visited the joint sub committee on Transportation to lobby for a law to allowing the DMV to adopt rules so that they could title and register vehicles which are exempt from the titling requirements, Senate Bill 124-A. The lobbyist explained that under the previous language it was obscure to which vehicles needed to be titled, but the new language was now so clear that steps had to be taken. She brought along an exhibit supporting SB 124-A labeled Exhibit B and signed in behalf of her boss, the director of the DMV. Frank admission was made in this document acknowledging that the DMV had been titling and registering vehicles without authorization. While the document says they were "historically" doing what they were not authorized to do, during sub committee sessions it was generally acknowledged that it had been going on longer than any one in the room could remember. In the official minutes of the sub committee, the word "illegal" is used to describe the practice which the lobbyist low wanted authorization to do. Just to confirm what the document said, the chairwoman, who was later to become one of Oregon's more notable DMV directors, asked if there would be any changes as a result of this bill's passage. The lobbyist reiterated that

there would be no change, not even in tie fees that they were currently charging without authorization.

Most significant was the lobbyist's testimony that no change to the titling requirements was proposed, because "titling depends on use". While the lobbyist repeated this several times during her appearances before the sub committee, she never actually said what the "use" was. There was some discussion about making certain "types" of vehicles subject to registration. There was even a suggestion that it might be easier if every vehicle with a motor in it was required to be titled, but the lobbyist told her listeners that every vehicle which could be titled and registered was potentially exempt because it is use that determines.

The point I will make here about SB 124-A, and there are others, is that it resulted in the current ORS 803.035, "Optional titling rules". This paragraph provides that "upon request of an owner..." any "otherwise exempt vehicle" may be titled by the DMV. When DMV accepts the owner's money and becomes title holder in fact, the vehicle becomes subject to all the provisions of the Vehicle Code. Of course the owner sets the benefit of one form of proof of right to possession. Exhibit B actually contends that this is a benefit owners "sometimes want". The bottom line is; "If this authority were not continued, there would be some loss of revenue". Slight misstatement, the purpose of the bill -was to obtain authority never possessed by the DMV, but the previous sentence says, "if this authority were not continued".

Options are always nice to have. Did anyone at the DMV ever tell you about their optional titling program? Of course, anything that can be opted into, has to have an opt out protocol. The very next paragraph, ORS 803.040, which was part of SB 124-A, says that, an optionally titled vehicle will so remain "until the owner uses a method recognized or established by the department to establish the vehicle is no longer subject to the provisions of the vehicle code". That sounds pretty inviting. Who knows what the method is? Who's going to say, even if he or she knows?

###

NOTICE: Information served herein is for educational purposes only, no liability assumed for use. The information you obtain in this presentation is not, nor is it intended to be, legal advice. Author does not consent to unlawful action. Author advocates and encourages one and all to adhere to, support and defend all law which is particularly applicable. If anything in this presentation is found to be in error a good faith effort will be made to correct it in timely fashion upon notification.

VOID where prohibited by law.