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STATE OF NEBRASKA
OFFICIAL
MAY 30 1991
DEPT. OF JUSTICE

DATE: May 30, 1991

SUBJECT: Interstate Registration Cancelled Carrier List

REQUESTED BY: Jack C. Conrad
Nebraska Department of Motor Vehicles

WRITTEN BY: Don Stenberg, Attorney General
Paul N. Potadle, Assistant Attorney General

Issues:

1. If a registered fleet owner fails to make payment for apportioned registration fees, then can vehicles in the fleet be stopped or detained until proper payment is received by the Department of Motor Vehicles?

2. If the vehicle may be detained or stopped, then under whose authority does said detention take place?

3. Under what circumstances can the officer remove the operating credentials (registration and license place), and return said credentials to the Department?

Discussion:

It is the understanding of this office that the interstate registration cancelled carrier list provided by the Nebraska Department of Motor Vehicles is a compilation of those carriers who have: 1) received temporary authority but no permanent credentials

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are ever issued because of failure to make payment, 2) filed a renewal application and operated through the grace period but failed to make payment, or 3) been audited and failed to pay audit fees. The list is issued semi-annually with periodic updates. The updates contain additions and deletions to the original list. The updates are issued immediately upon receipt or non-receipt of payment. There is a two to three day lag period between receipt of a carrier's registration payment and receipt of the updated list by scale officers. This list is provided to scale officers throughout the state in order to alert officers concerning carriers who have failed to make payment of registration fees that are due.

An investigatory stop of a fleet vehicle based on information supplied by the Department of Motor Vehicles through the interstate registration cancelled carrier list would be lawful and justifiable. A vehicle may be stopped by a law enforcement official where the officer can point to articulable facts which warrant intrusion. State v. Bowley, 232 Neb. 771, 442 N.W.2d 215 (1989). In Bowley, the defendant was stopped by a police officer because of information supplied by another person. The court held

> . . . in order for an investigatory stop to be lawful and justifiable, the officer must be able to point to specific and articulable facts, which, . . . reasonably warrant the intrusion . . . the factual basis for the stop . . . may be supplied by information acquired from another person . . . the information must contain sufficient indicia of reliability.

Id. at 773, 442 N.W.2d at 217. The factual basis for stopping a fleet vehicle would be the cancelled carrier list. It is supplied by another person, the Department of Motor Vehicles. The information contained therein is sufficiently reliable since it is updated continuously.

The Motor Vehicle Registration laws for the State of Nebraska do not provide for a fleet vehicle to be impounded for failure to pay apportioned registration fees.

> The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures shall not be violated; and no warrant shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the person or thing to be seized.

Neb. Const. art.I §7. Detention of a fleet vehicle for an extended period of time is a seizure. It would be unreasonable if the gravity of harm caused outweighed any pervading government

interests. The gravity of harm caused could include lost profits, lost time and lost wages as well as loss of perishable cargo. On the other hand, the government interests are slight, which are collection of registration fees sooner than could be accomplished through due process, i.e. issuance of a citation. A search warrant would be required to properly seize the vehicle.

In State v. Skolnik, 218 Neb. 667, 3578 N.W.2d 497 (1984), police officers seized two films when defendant failed to deliver them pursuant to a court order. The court held

> [f]or a seizure to be valid it must be made pursuant to a validly authorized search warrant, or in response to sufficient exigent circumstances or other recognized exceptions. The seizure of the two films in this case violated the defendant's rights under article I, §7 of the Nebraska Constitution. . . .

Id. at 669, 358 N.W.2d at 499. Failure to pay apportioned registration fees is not an exigent circumstance or other recognized exception. The seizure would not be valid without a warrant.

The Department of Motor Vehicles with and through their agents, county sheriffs, state patrol, and scale officers are authorized to enforce the provisions dealing with motor vehicle registration. "The Department of Motor Vehicles is hereby authorized to enforce the provisions of sections 60-302 to 60-305.10" Neb.Rev.Stat. §60-306 (Reissue 1988). ". . . It shall be the duty of the sheriffs of the several counties and other police officials to enforce the provisions of sections . . . 60-301 to 60-343. . . ." Neb.Rev.Stat. §39-6,188 (Reissue 1988) (emphasis added).

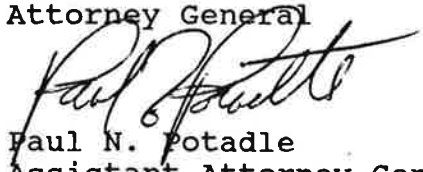
Credentials should not be removed without due process of law. In Bell v. Burson, 402 U.S. 535 (1971), the Supreme Court declared a Georgia statute unconstitutional that required persons involved in traffic accidents to post a bond or suffer suspension of their driver's license regardless of fault. The court held

> [o]nce licenses are issued . . . their continued possession may become essential in the pursuit of a livelihood. Suspension of issued licenses thus involves state action that adjudicates important interests of the licensees. In such cases, the licenses are not to be taken away without that procedural due process required by the Fourteen Amendment.

Id. at 539. See also Bosselman, Inc. v. State, 230 Neb. 471, 475, 432 N.W.2d 226, 229 (1988). In the present situation, the registration and license plate of the fleet vehicle are essential in the pursuit of a livelihood for both the owner and driver. Revocation of those already issued credentials adjudicates important interests of the fleet owner and driver. Where the cancelled carrier list may not be accurate at the time of the stop, the issued credentials should not be taken away without the procedural due process required by the Fourteenth Amendment.

Respectfully submitted,

DON STENBERG
Attorney General



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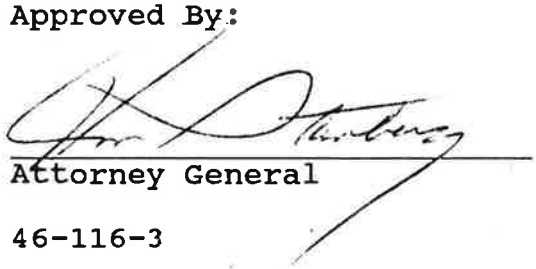

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