

TABLE OF AUTHORITIES

RIGHT OF WAY

AND

MEMORANDUM IN SUPPORT OF FORM DOT 150

"The right to travel on the public highways is a constitutional right."
--Teche Lines v. Danforth, Miss. 12 So 2d 784, 787.

"The right to travel is part of the liberty of which a citizen cannot be deprived without due process law under the 5th Amendment. This Right was emerging as early as the Magna Carta."

-- Kent vs. Dules, 357 US 116 (1958).

"With regard particularly to the U.S. Constitution, it is elementary that a Right secured or protected by that document cannot be overthrown or impaired by any state police authority." --Connolly vs. Union Sewer Pipe Co.184 US 540

"The claim & exercise of a constitutional right cannot be converted into a crime."
-- Miller vs. U.S., F486, 489

It is undisputed that the use of the highway for the purpose of travel and transportation is NOT a mere PRIVILEGE, but a "COMMON AND FUNDAMENTAL RIGHT" of which the public and individuals cannot rightfully be deprived. (Emphasis added) See: Chicago Motor Coach v. Chicago, supra; Ligare v. Chicago, 28 N.E. 934; Boone v. Clark, 214 S.W. 607; American Jurisprudence 1st Ed., Highways 163

Travel. Noun: A constitutional right under the Fifth Amendment to the United States Constitution. Aptheke v Secretary of State, 378 US 500, 12 L Ed 2nd 992, 84 SCt 1659. The act of taking a trip. Ex parte Archy, 9 Cal 147, 164. To travel is to pass or make a journey from place to place, whether on foot, on horseback, or in any conveyance. Traveling is the act of making a journey; change of place; passage.

In transit. Literally, in the course of passing from point to point.

Right of Way. A right of passage; an easement.

Traveler. One using a public way. As for whom a public way must be kept reasonably safe, anyone rightfully using the way viatically, or who has occasion to pass over the way for the purpose of business convenience, or pleasure. 25 Am J1st Highway §427.

Way. A road, sidewalk or path. In a more technical sense, a right of way, that is, the right of one person, or several persons, or the community at large to pass over the land of another. 25 Am J1st Highway § 3.

Public Highway. A way for the use of the public; a highway. Any way used by the public in going from one place to another . . .”

The term "public highway," in its broad popular sense, includes toll roads -- any road which the public have a "RIGHT" to use even conditionally, though in a strict legal sense it is restricted to roads which are wholly public.” –See *Weirich v. State*, 140 Wis. 98.

The term "public highway," in its broad popular sense, includes toll roads -- any road which the public have a "RIGHT" to use even conditionally, though in a strict legal sense it is restricted to roads which are wholly public. (Emphasis added). See: *Weirich v. State*, 140 Wis. 98.

Public. The people.

Sovereign state. A people . . . exercising through the medium of an organized government, independent sovereignty and control over all persons and things within its boundaries.” 30 Am J Rev ed Internat L § 10.

--Ballentine's Law Dictionary

"The sovereignty of a state does not reside in the persons who fill the different departments of its government, but in the People, from whom the government emanated; and they may change it at their discretion. Sovereignty, then in this country, abides with the constituency, and not with the agent; and this remark is true, both in reference to the federal and state government." -- *Spooner v. McConnell*, 22 F 939, 943.

"This word `person' and its scope and bearing in the law, involving, as it does, legal fictions and also apparently natural beings, it is difficult to understand; but it is absolutely necessary to grasp, at whatever cost, a true and proper understanding to the word in all the phases of its proper use ... A person is here not a physical or individual person, but the status or condition with which he is invested ... not an individual or physical person, but the status, condition or character borne by physical persons ... The law of persons is the law of status or condition." -- *American Law and Procedure*, Vol 13, page 137, 1910:

"The word `person' in legal terminology is perceived as a general word which normally includes in its scope a variety of entities other than human beings., see e.g. 1, U.S.C. paragraph 1." -- *Church of Scientology v. US Department of Justice* (1979) 612 F2d 417, 425:

"The people, or sovereign are not bound by general words in statutes, restrictive of prerogative right, title or interest, unless expressly named. Acts of limitation do not bind the King or the people. The people have been ceded all the rights of the King, the former sovereign ... It is a maxim of the common law, that when an act is made for the common good and to prevent injury, the King shall be bound, though not named, but when a statute is general and prerogative right would be divested or taken from the King [or the

people] he shall not be bound." -- The People v. Herkimer, 4 Cowen (NY) 345, 348 (1825):

WAY. A passage, path, road or street. In a technical sense, a *right* of passage over land.

PRIVATE WAY. A right which a person has of passing over the land of another. In another sense a private way is one laid out by the local public authorities for the accommodation of individuals and wholly or chiefly at their expense, but not restricted to their exclusive use, being subject, like highways to the public easement of passage.

TRAVELED WAY. The traveled path, or the path used for public travel. Within located limits of the way. Also called "traveled part of highway. --Black's Law Dictionary

Pursuant to this notice, the definition of "motor vehicle," as codified in the Federal Criminal Code, and other related terms from the Motor Vehicle Compact between the compact states and listed below, with reference to my status; to their "meaning and signification;" to "the true and proper understanding to the term in all the phases of its proper use;" and for any future "legal proceeding;" shall be as follows and ONLY as follows.

The principle of *in pari materia* dictates that this definition in 18 USC § 31 must be applied in all Federal and/or State statutes that contain or include the term "motor vehicle," which statutes are limited in their application and operation, and that can embrace only one, single subject matter: the regulation of certain State-created entities: persons who operate said "motor vehicles" that are "used for commercial purposes."

If any person claims that any other definition of the term "motor vehicle," that varies from the definition below that would include any carriage or contrivance NOT used for commercial purposes, exists at law, or in any Federal and/or State statute, let him come forth by sworn affidavit, as such a claim would nullify, under the Void for Vagueness Doctrine, all statutes or rules that include the contradictory term.

Title 18, UNITED STATES CODE Sec. 31
PART I - CRIMES
CHAPTER 2 - AIRCRAFT AND MOTOR VEHICLES

Sec. 31. **Definitions**

When used in this chapter the term –

"Motor vehicle" means every description of carriage or other contrivance propelled or drawn by mechanical power and **used for commercial purposes** on the highways in the transportation of passengers, passengers and property, or property or cargo;

"Used for commercial purposes" means the carriage of persons or property for any **fare, fee, rate, charge or other consideration**, or directly or indirectly in connection with any **business**, or other undertaking intended for **profit**[.]”

"... [T]he **exemptions** provided for in section 1 of the Motor Vehicle Transportation License Act of 1925 (Stats. 1925, p. 833) in favor of **those who solely transport their own property or employees**, or both, and of those **who transport no persons or property for hire or compensation, by motor vehicle**, have been determined in the Bacon Service Corporation case to be **lawful exemptions**. --*In re Schmolke* (1926) 199 Cal. 42, 46.

"It is obvious that those who **operate motor vehicles** for the transportation of persons or property **for hire** enjoy **a different and more extensive use of the public highways**. * *
* Such **extraordinary use** constitutes a natural distinction and a full justification for their separate classification and **for relieving from the burden of the license tax those who merely employ the public highways for the transportation of their own property or employees**."

--*Bacon Service Corporation v. Huss*, 129 Cal. 21, 248 P. 235, 238." (State v. Karel, 180 So. 3 at 8.)

4 USC 112

TITLE 4 > CHAPTER 4 > § 112

§ 112. **Compacts between States** for cooperation in prevention of crime; consent of Congress -
Release date: 2006-03-20

(a) The consent of Congress is hereby given to any two or more States to enter into agreements or **compacts** for cooperative effort and mutual assistance in the prevention of crime and **in the enforcement of their respective criminal laws and policies**, and to establish such agencies, joint or otherwise, as they may deem desirable for making effective such agreements and compacts.

(b) For the purpose of this section, the term "**States**" means the **several States** and Alaska, Hawaii, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and the District of Columbia.

Motor Vehicle Compact Excerpts

The Federal Motor Carrier Safety Administration (FMCSA)

Driver-related Regulations - § 390 General

§390.5 Definitions.

Unless specifically defined elsewhere, in this subchapter:

Driver means any person who operates any commercial motor vehicle.

Multiple-employer driver means a **driver**, who in any period of 7 consecutive days, is employed or used as a driver by more than one **motor carrier**.

Operator— **See driver.**

Single-employer driver means a driver who, in any period of 7 consecutive days, is employed or used as a driver solely by a single motor carrier. This term includes a driver who operates a commercial motor vehicle on an intermittent, casual, or occasional basis.

Vehicle-Related Regulations

Subpart A — General

§392.1 Scope of the rules in this part.

Every **motor carrier**, its officers, agents, representatives, and employees responsible for the management, maintenance, **operation, or driving of commercial motor vehicles**, or the hiring, supervising, training, assigning, or dispatching of **drivers**, shall be instructed in and comply with the rules in this part.

[53 FR 18057, May 19, 1988, as amended at 60 FR 38746, July 28, 1995].

§392.16 **Use of seat belts.**

A **commercial motor vehicle** which has a seat belt assembly installed at the **driver's seat** shall not be driven unless the **driver** has properly restrained himself/herself with the seat belt assembly.

[35 FR 10860, July 3, 1970, as amended at 60 FR 38747, July 28, 1995].

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§367.1 **Definitions.**

(c) **Motor vehicle** — **A self-propelled or motor driven vehicle operated by a motor carrier in interstate or foreign commerce** under authority issued by the Secretary.

§367.2 Participation by **States.**

(a) A state is eligible to participate as a **registration State** and to receive fee revenue only if, as of January 1, 1991, it charged or collected a fee for a vehicle identification stamp or a number pursuant to the provisions of the predecessor to this part.

U.C.C. - ARTICLE 9 - SECURED TRANSACTIONS; SALES OF ACCOUNTS AND CHATTEL PAPER

PART 1. SHORT TITLE, APPLICABILITY AND DEFINITIONS

§ 9-109. Classification of Goods: "Consumer Goods"; "Equipment"; "Farm Products"; "Inventory".

Goods are

(1) "consumer goods" if they are used or bought **for use primarily for personal, family or household purposes**;

(2) "**equipment**" if they are used or bought for use primarily in **business** (including farming or a profession) or by a debtor who is a non-profit organization or a governmental subdivision or agency or if the goods are not included in the definitions of inventory, farm products or consumer goods;

Relevant applicable *stare decisis* case cites relating directly to UCC 9-109:

“Under UCC §9-109 there is a real distinction between goods purchased for personal use and those purchased for business use. The two are mutually exclusive and the principal use to which the property is put should be considered as determinative.” James Talcott, Inc. v Gee, 5 UCC Rep Serv 1028; 266 Cal.App.2d 384, 72 Cal.Rptr. 168 (1968).

“The classification of goods in UCC §9-109 are mutually exclusive.” McFadden v Mercantile-Safe Deposit & Trust Co., 8 UCC Rep Serv 766; 260 Md 601, 273 A.2d 198 (1971).

“Automobile purchased for the purpose of transporting buyer to and from his place of employment was “consumer goods” as defined in UCC §9-109.” Mallicoat v Volunteer Finance & Loan Corp., 3 UCC Rep Serv 1035; 415 S.W.2d 347 (Tenn. App., 1966).

“The provisions of UCC §2-316 of the Maryland UCC do not apply to sales of consumer goods (a term which includes automobiles, whether new or used, that are bought primarily for personal, family, or household use).” Maryland Independent Automobile Dealers Assoc., Inc. v Administrator, Motor Vehicle Admin., 25 UCC Rep Serv 699; 394 A.2d 820, 41 Md App 7 (1978).

IN RE BARNES
United States District Court,
D Maine, September 15, 1972
Bankruptcy No. BK 72-129ND, No. EK 72-13OND

[9109] Consumer goods - automobile for transportation to and from work.

The use of a vehicle by its owner for purposes of traveling to and from his employment is a personal, as opposed to a business use, as that term is used in UCC § 9-109(l), and the vehicle will be classified as consumer goods rather than equipment.

The phraseology of § 9-109(2) defining equipment as goods used or bought for use primarily in business seems to contemplate a distinction between the use of collateral "**in business**" and the mere use of the collateral for some commercial, economic or income-producing purpose by **one not engaged "in business."**

The appropriate filing place turns upon the classification of the collateral as consumer goods or equipment. The Uniform Commercial Code classifies goods as consumer goods

". . . if they are used or bought for use primarily for personal, family or household purposes. (2). Fn (2) 11 MRSA § 9-109(1).

It is the court's opinion that **the use of a vehicle by its owner for purposes of traveling to and from his employment is a "personal," as opposed to a business use,** as that term is used in UCC § 9-109 (1). The phraseology of UCC § 9-109 (2), defining "equipment" as goods used or bought for use primarily "in business" seems to contemplate a distinction between the use of collateral "in business," and the mere use of the collateral for some commercial, economic or income-producing purpose by one not engaged "in business."

Traveling to and from work is a PERSONAL use NOT a BUSINESS use!

This ruling is consistent with the undisputed fact that "**The classification of goods is determined by its primary use**" (Barron's Law Dictionary, Third Edition, 1991) and not by the type of goods, including, but not limited to, vehicles.

"A vehicle not used for commercial activity is **a "consumer goods", . . . it is NOT a type of vehicle required to be registered and "use tax" paid of which the tab is evidence of receipt of the tax.**" Bank of Boston vs Jones, 4 UCC Rep. Serv. 1021, 236 A2d 484, UCC PP 9-109.14.

"Thus self-driven vehicles are classified according to the use to which they are put rather than according to the means by which they are propelled." Ex Parte Hoffert, 148 NW 20.

"The Supreme Court, in Arthur v. Morgan, 112 U.S. 495, 5 S.Ct. 241, 28 L.Ed. 825, held that carriages were properly classified as household effects, and we see no reason that automobiles should not be similarly disposed of." Hillhouse v United States, 152 F. 163, 164 (2nd Cir. 1907).

"A soldier's personal automobile is part of his ``household goods[.]" U.S. v Bomar, C.A.5(Tex.), 8 F.3d 226, 235" 19A Words and Phrases - Permanent Edition (West) pocket part 94.

"... [T]he **exemptions** provided for in section 1 of the Motor Vehicle Transportation License Act of 1925 (Stats. 1925, p. 833) in favor of **those who solely transport their own property or employees**, or both, and of those **who transport no persons or property for hire or compensation, by motor vehicle**, have been determined in the Bacon Service Corporation case to be lawful exemptions. --*In re Schmolke* (1926) 199 Cal. 42, 46.

"The **right** of a citizen to travel upon the public highways and to transport his property thereon **in the ordinary course of life and business is a common right which he has under his right to enjoy life and liberty**.... It includes **the right in so doing to use the ordinary and usual conveyances of the day**; and under existing modes of travel includes the right to drive a horse-drawn carriage or wagon thereon, or to operate an **automobile** thereon **for the usual and ordinary purposes of life and business**. It is not a mere **privilege**, like the privilege of moving a house in the street, operating a business stand in the street, or transporting persons or property **for hire** along the street, which the city may permit or prohibit at will."

Key emphasis added. Indisputable wisdom recorded in **Thompson v. Smith, 154 S.E. 579**, 1929.

"In view of this rule a statutory provision that the supervising officials "**may**" exempt such persons when **the transportation is not on a commercial basis means that they "must" exempt them.**" --*State v. Johnson*, 243 P. 1073; 60 C.J.S. section 94 page 581.

Title 49 Sec. 31102. - Grants to States

(a) General Authority. -

Subject to this section and the availability of amounts, the Secretary of Transportation may make grants to States for the development or implementation of programs for improving **motor carrier** safety and the enforcement of regulations, standards, and orders of the United States Government on **commercial motor vehicle safety**, hazardous materials transportation safety, and compatible **State regulations**, standards, and orders.