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Robert R. Corbin

August 21, 1984

Ralph T. Milstead, Colonel
Director, Department of Public Safety
2310 North 20th Avenue
Phoenix, Arizona 85009

Re: I84-114 (R84-081)

Dear Colonel Milstead:

This letter is in response to your inquiry concerning the applicability of A.R.S. §§ 28-929.4 and 28-952.3 to disabled motor vehicles or forklifts which are towed behind another vehicle by means of a tow bar or other rigid towing device. You have specifically asked whether such a vehicle is a "trailer" as defined by A.R.S. § 28-103.53 so as to be subject to the statutory equipment requirements for trailers?

A.R.S. § 28-929.4 requires that every trailer or semitrailer having a gross weight in excess of 3,000 pounds be equipped with lamps and reflectors in a manner specifically designated by statute.¹ Likewise, A.R.S. § 28-952.3 mandates

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1. A.R.S. § 28-929.4 provides:

In addition to other equipment required in this article, the following vehicles shall be equipped as proved by this section under the conditions stated in § 28-928.

* * *

(Footnote continued on next page)

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that a trailer or semitrailer of gross weight of 3,000 pounds or more when operated on a highway be equipped with brakes as designated by statute.^{2/} Your concern is whether disabled highway patrol squad cars or forklifts are trailers which, therefore, fall within the brake and lamp requirements of the foregoing statutes. For the reasons set forth below, we conclude that an unmodified disabled vehicle, such as an ordinary passenger car, and a forklift do not fit within the definition of trailer as it is used in the foregoing statutes.

(Footnote continued)

4. On every trailer or semi-trailer having a gross weight in excess of three thousand pounds:

(a) On the front, two clearance lamps, one at each side.

(b) On each side, two side marker lamps, one at or near the front and one at or near the rear.

(c) On each side, two reflectors, one at or near the front and one at or near the rear.

(d) On the rear, two clearance lamps, one at each side, and two reflectors, one at each side, and one stop light.

2. A.R.S. § 28-952.3 provides:

Every trailer or semitrailer of a gross weight of three thousand pounds or more when operated upon a highway shall be equipped with brakes adequate to control the movement of and to stop and to hold the vehicle from its cab or be of a type which will operate automatically when the service brakes of the towing vehicle are applied, and the brakes shall be so designed and connected that in case of an accidental break-away of the towed vehicle the brakes shall be automatically applied, except that brakes shall not be required on all wheels of a truck being towed as a semitrailer which is being towed in a drive-away, tow-away operation, if the combination of vehicles is capable of complying with all state and federal brake performance requirements. Only such brakes on the vehicle being towed need be operative as may be necessary to insure compliance with such performance requirements.

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A.R.S. § 28-101.5 defines a trailer as follows:

[A] vehicle with or without motive power, other than a pole trailer, designed for carrying of persons or property and for being drawn by a motor vehicle and so constructed that no part of its weight rests upon the towing vehicle.^{3/}

(Emphasis added). Thus, this definition establishes three criteria which must be met before a vehicle is, by statute, determined to be a trailer:

1. It must be designed for carrying persons or property, and
2. It must be designed for being drawn by a motor vehicle, and
3. It must be constructed so that no part of its weight rests upon the towing vehicle.

We believe that, in addition to the construction requirement, the conjunctive language of A.R.S. § 28-101.5 requires a vehicle to be designed for carrying persons or property while it is being towed in order to fall within the statutory definition of "trailer".^{4/} While an unmodified

3. Implicit in this definition is the assumption that the vehicle is used on the highway, for the requirements at issue are premised upon highway use or planned highway use. For purposes of this opinion, we therefore, assume that the vehicles in question are being used on the highway.

4. A.R.S. § 28-101.43 uses this same conjunctive language in defining "semitrailer" as "a vehicle with or without motive power, other than a pole trailer, designed for carrying persons or property and for being drawn by a motor vehicle and constructed so that some part of its weight and that of its load rests upon or is carried by another vehicle."

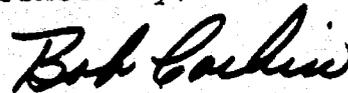
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disabled vehicle may be designed for carrying persons or property, it is not ordinarily designed for being drawn by another vehicle at the same time. The fact that a vehicle is capable of being towed while carrying persons or property does not, in and of itself, mean that it is designed to do so.

We note that the applicability of these statutes to a particular towed vehicle requires a determination based upon the particular design of each vehicle in question. However, we believe that an unmodified vehicle such as an ordinary passenger car (whether disabled or nondisabled) would not customarily be designed to be drawn by a motor vehicle while carrying persons or property. See e.g. McNown v. Pacific Freight Lines, 122 P.2d 582 (Cal.App. 1942). Vehicles such as forklifts do not fall within the criteria of the statute as they are, likewise, not designed for carrying property while being towed.

We have previously issued opinions which address whether certain vehicles could become semi-trailers by use or modification. See Ariz. Atty. Gen. Ops. 57-75, 60-36, 63-10-L and 63-23-L. To the extent that these opinions are inconsistent with the conclusions reached herein, those previous opinions are reversed.

Sincerely,



BOB CORBIN
Attorney General

BC:SMS:pd