

Ordinary and Extraordinary uses of the public highways and roads

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In the United States of America, the public highways and roads can be used for ordinary (private) and extraordinary (special) purposes with a motor vehicle.

In the lead case of *Packard v. Banton* (264 U.S. 140), the Supreme Court of the United States writes:

"The contention most pressed is that the act (statute of New York Laws, 1922, c. 612, p. 1566) unreasonably and arbitrarily discriminates against those engaged in operating motor vehicles for hire in favor of persons operating such vehicles for their private ends, and in favor of street cars and motor omnibuses. If the State determines that the use of streets for private purposes in the usual and ordinary manner shall be preferred over their use by common carriers for hire, there is nothing in the Fourteenth Amendment to prevent that. The streets belong to the public and are primarily for the use of the public in the ordinary way. Their use for the purposes of gain is special and extraordinary and, generally at least, may be prohibited or conditioned as the legislature deems proper. Neither is there substance in the complaint that street cars and omnibuses are not included in the requirements of the statute. The reason, appearing in the statute itself, for excluding them is that they are regulated by the Public Service Commission laws, and this circumstance if there were nothing more, would preclude us from saying that their non-inclusion renders the classification so arbitrary as to cause it to be obnoxious to the equal protection clause." *Packard v. Banton*: 264 U.S. 140, at 144 (1924). [Footnote 1]

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Also:

"These cases . . . all recognize and are based upon the fundamental ground that the sovereign state has the plenary control of streets and highways, and, in the exercise of its police power, may absolutely prohibit the use of the streets as a place for the prosecution of a private business for gain. They all recognized the fundamental distinction between the ordinary right of the citizen to use the streets in the usual way and the use of the streets as a place of business or a main instrumentality of business for private gain. The former is a common right, the latter is an extraordinary use. As to the former the legislative power is confined to

regulation, as to the latter it is plenary and extends even to absolute prohibition. Since the use of the streets by a common carrier in the prosecution of its business as such is not a right but a mere license of privilege, it follows that the Legislature may prohibit such use entirely without impinging any provision of either the state or federal Constitution.” Hadfield v. Lundin: 168 Pac. Rep. 516, at 517 (1917); thru 518 98 Wash. 657.

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Extraordinary or special use of the public highways or roads requires that the user obtain permission from the particular State in the form of a license to operate a motor vehicle thereupon:

“Each appellant owns automobiles and is carrying on the business of leasing them, for compensation based on mileage, to be driven by the lessees on the city streets and elsewhere. . . .

Appellants maintain that the measure (ordinance No. 50-1929) constitutes an unreasonable interference with a purely private business and is not one for the regulation of the use of streets; that it attempts to convert appellants into public utilities and impose upon them liability without fault, and that it is discriminatory and oppressive.

Unquestionably, appellants contemplate that those hiring their cars will operate them upon the streets. In fact such use of the streets is essential to appellants’ business. It is a special and extraordinary use materially differing from operation of automobile or trucks by owners or their chauffeurs in the usual way for private ends. The running of automobiles necessarily is attended by danger to persons and property in the vicinity; and, when they are negligently driven upon city streets. The peril is great. The court below found that the operation of automobiles by such hirers is extra-hazardous to the public. The State has power for the safety of the public to regulate the use of its public highways. *Hendrick v. Maryland*, 235 U.S. 610, 622, *Kane v. New Jersey*, 242 U.S. 160, 167, *Sprout v. South Bend*, 277 U.S. 163, 168. It may prohibit or condition as it deems proper the use of city streets as a place for the carrying on of private business. This Court has sustained a state law requiring reasonable security for the protection of persons in respect of injuries and losses caused by the negligent operation of motor vehicles engaged in carrying persons for hire. *Packard v. Banton*, 264 U.S. 140, 144. See also, *Hess v. Pawloski*, 274 U.S. 352, 356.” Hodge Drive-It Yourself Company et. al. v. Cincinnati et. al.: 284 U.S. 335, at 336 thru 337 (1932).

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Ordinary or private use of the public highways or roads is a right the user (citizen) has [Footnote 2] to transport himself and his property thereupon with a motor vehicle, subject to regulation by the particular State:

“... In Georgia, the highways, built and maintained by the public, are public property, and (subject to such interest as the United States may have in them as post roads) are subject to state control. ‘The use of streets and highways is not absolute and unrestricted. Such use is subject to reasonable regulation by the public. ... From the premise that streets belong to the public the conclusion is drawn that individuals have the right to use the streets ... for the purpose of transporting passengers for hire. This conclusion does not properly follow from this premise. ... ***The ordinary use of the streets, as we have seen above, is for travel, and to this may be added transportation of goods by their owners to and from their residence or places of business.*** Transportation of travelers or goods ... for hire does not fall within the ordinary way in which streets are used. Their use for the purpose of gain is special and extraordinary, and may be prohibited or conditioned as the Legislature or municipality deems proper. The conduct of the business of a carrier ... for hire over the streets of a city is a mere privilege, it can be given or withheld. *Schlesinger v. City of Atlanta*, 161 Ga. 148, 129 S.E. 861, 866. The law thus announced was supported by reasoning and authorities applicable also to highways. To the same effect, the Supreme Court of the United States speaks: ‘The streets belong to the public and are primarily for the use of the public in the ordinary way. Their use for the purposes of gain is special and extraordinary, and generally at least, may be prohibited or conditioned as the Legislature deems proper.’ *Packard v. Banton*, 264 U.S. 140, 144, 44 S.Ct. 257, 259, 68 L.Ed. 596.” *Southern Motorways, Incorporated v. Perry et. al.*: 39 F. 2d 145, at 147 (1930).

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“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, to acquire and possess property, and to pursue happiness and safety. It includes the right in so doing to use the ordinary and usual conveyances of the day; and under the 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 a city may permit or prohibit at will.

The exercise of such a common right the city may, under its police power, regulate in the interest of the public safety and welfare; but it may not arbitrarily or

unreasonably prohibit or restrict it, nor may it permit one to exercise it and refuse to permit another of like qualifications, under like conditions and circumstances, to exercise it. *Taylor v. Smith*, 140 Va. 217, 124 S.E. 259; *Ex parte Dickey*, 76 W.Va. 576, 85 S.E. 781, L.R.A. 1915-F, 840; *Hadfield v. Lundin*, 98 Wash. 657, 168 Pac. 516, L.R.A. 1918-B, 909, Ann. Cas. 1918-C, 942.” *Thompson v. Smith*: 155 Va. 367, at 377 thru 378 (1930); 154 S.E. 579.

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“The right of a citizen to travel upon the highway and transport his property thereon, in the ordinary course of life and business, differs radically and obviously from that of one who makes the highway his place of business and uses it for private gain, in the running of a stage coach or omnibus. The former is the usual and ordinary right of a citizen, a common right, a right common to all, while the latter is special, unusual, and extraordinary. As to the former, the extent of legislative power is that of regulation; but, as to the latter, its power is broader. The right may be wholly denied, or it may be permitted to some and denied to others, because of its extraordinary nature. This distinction, elementary and fundamental in character, is recognized by all the authorities.” *Ex parte Dickey*: 85 S.E. 781, at 782 (1915).

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cited in: *Cummins v. Jones*: 155 Pac. Rep. 171, at 172 (1916).

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to this: State, ex. rel. *Schafer v. City of Spokane*: 186 Pac. Rep. 864, at 865 (1920).

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Therefore, one who is using the public highways and roads with a motor vehicle for extraordinary (special) purposes, is engaged in a business and must obtain a license (permit) from a particular State to pursue it. And, one who is using the public highways and roads with a motor vehicle for ordinary (private) purposes, is engaged in travel and can only be regulated.

Footnotes:

1. Reaffirmed:

“It is well established law that the highways of the state are public property; that their primary and preferred use is for private purposes, and that their use for purposes of gain is special and extraordinary, which generally at least, the legislature may prohibit or condition as it sees fit. *Packard v. Banton*, 264 U.S. 140, 144.” *Stephenson v. Binford*: 287 U.S. 251, at 264.

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2. This right, for a citizen of the United States; *Crandall v. State of Nevada* (73 U.S. 35, 1868); for a citizen of the several States; *Wheeler v. United States* (254 U.S. 281, 1920).

See my work “Yes there are two citizens (with privileges and immunities) under the Constitution since the adoption of the Fourteenth Amendment”, where I show that since the adoption of the Fourteenth Amendment, there are now two citizens, with their own set of privileges and immunities; a citizen of the United States under Section 1 of the Fourteenth Amendment, and a citizen of the several States under Article IV, Section 2, Clause 1 of the Constitution of the United States of America.

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