

BLASHFIELD'S AUTOMOBILE LAW AND PRACTICE
SECOND EDITION
VOLUME 14
Chapter 466

LICENSE AND LICENSE FEES IN GENERAL

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Chapter 466

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466.3	License Fee Imposed under Police Power or as Revenue Measure.
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Library References:

C.J.S. Motor Vehicles §§ 14, 146 et seq.
West's Key No. Digests, Automobiles ⇨ 129 et seq.

§ 466.1 Licenses in General

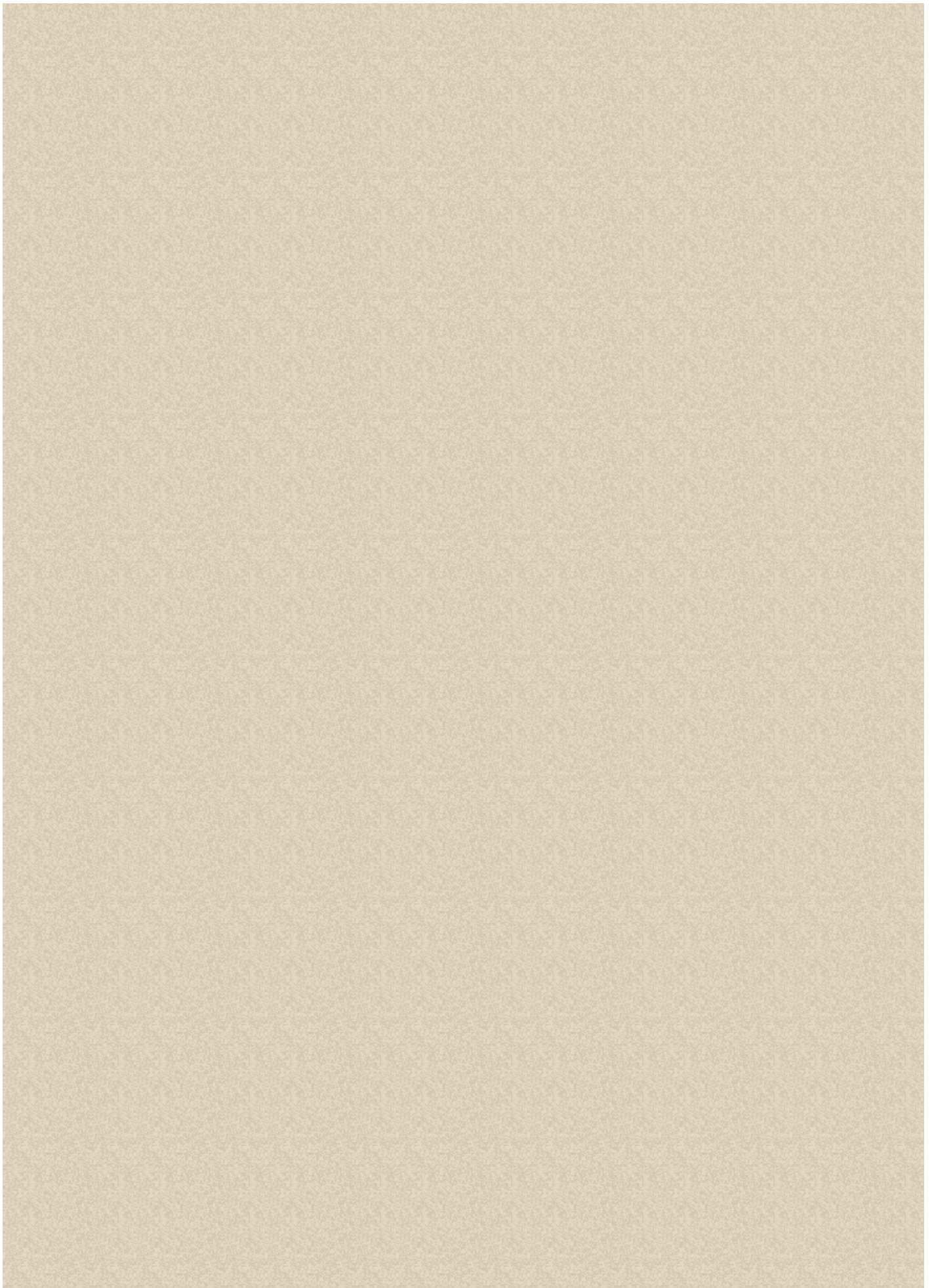
Research Note:

Licensing and registration of private motor vehicles is considered infra § 467.1 et seq. Licensing of chauffeurs and drivers is considered infra § 468.1 et seq. As to the power of a state or municipality to vary licensing requirements based upon classification of the vehicles or operators, see §§ 465.1-465.7 supra.

Library References:

C.J.S. Motor Vehicles § 146 et seq.
West's Key No. Digests, Automobiles ⇨ 130.

A license to operate a motor vehicle is granted under the inherent right of a state or municipality to regulate its use on the



public highways or streets.¹ It is a personal privilege which is neither transferable nor vendible, and is in no sense a contract between the state and the licensee,² for, unless there is authority under the law to make a transfer of a license, the license expires with the transfer of the motor vehicle to which it is attached.³

1. Cited by the court in *Ingels v. Boteler*, C.C.A.Cal., 100 F.2d 915, 919, affirmed 60 S.Ct. 29, 308 U.S. 57, 521, 84 L.Ed. 78, 442.

Cal.—*Lord v. Henderson*, 234 P.2d 197, 105 Cal.App. 426, appeal dismissed 72 S.Ct. 561, 342 U.S. 937, 96 L.Ed. 697.

Ky.—*Smith v. Commonwealth*, 194 S.W. 367, 175 Ky. 286.

Mass.—*Rummel v. Peters*, 51 N.E.2d 57, 314 Mass. 504.

N.Y.—*Papiernick v. City of New York*, 115 N.Y.S.2d 454, 202 Misc. 717.

Tex.—Ex parte *Schutte*, 42 S.W.2d 252, 118 Tex.Cr.R. 182.

State's power exclusive

The exclusive power to regulate the licensing of motor vehicles and to regulate their use of the public highways rests with the state and the city cannot legislate on this subject. *Sperling v. Valentine*, 28 N.Y.S.2d 788, 176 Misc. 826.

Where a bona fide regulation of an occupation by city is concerned, a license may be required even though the nature of the occupation implies the use of streets by a motor vehicle. *Sperling v. Valentine*, 28 N.Y.S.2d 788, 176 Misc. 826.

2. Ala.—*Foshee v. State*, 72 So. 685, 15 Ala.App. 113, certiorari denied 73 So. 999, 198 Ala. 689.

D.C.—*Stewart v. District of Columbia*, Mun.App., 35 A.2d 247 (taxi-cab license not transferrable).

Me.—*Burnham v. Burnham*, 156 A. 823, 130 Me. 409.

Mass.—*Burgess v. City of Brockton*, 126 N.E. 456, 235 Mass. 95.

Miss.—*Allen v. City of Kosciusko*, 42 So.2d 388, 207 Miss. 343 (taxi-cab permit not a vested or property right).

Mo.—*State ex rel. and to Use of Public Service Commission v. Blair*, 146 S.W.2d 865, 347 Mo. 220.

N.J.—“License” to operate motor vehicle is mere privilege, and not a contract or property right. *Garford Trucking v. Hoffman*, 177 A. 882, 114 N.J.L. 522.

Pa.—*Rineer v. Boardman*, 32 D. & C. 27, 45 Dauph. 78.

Purpose of license

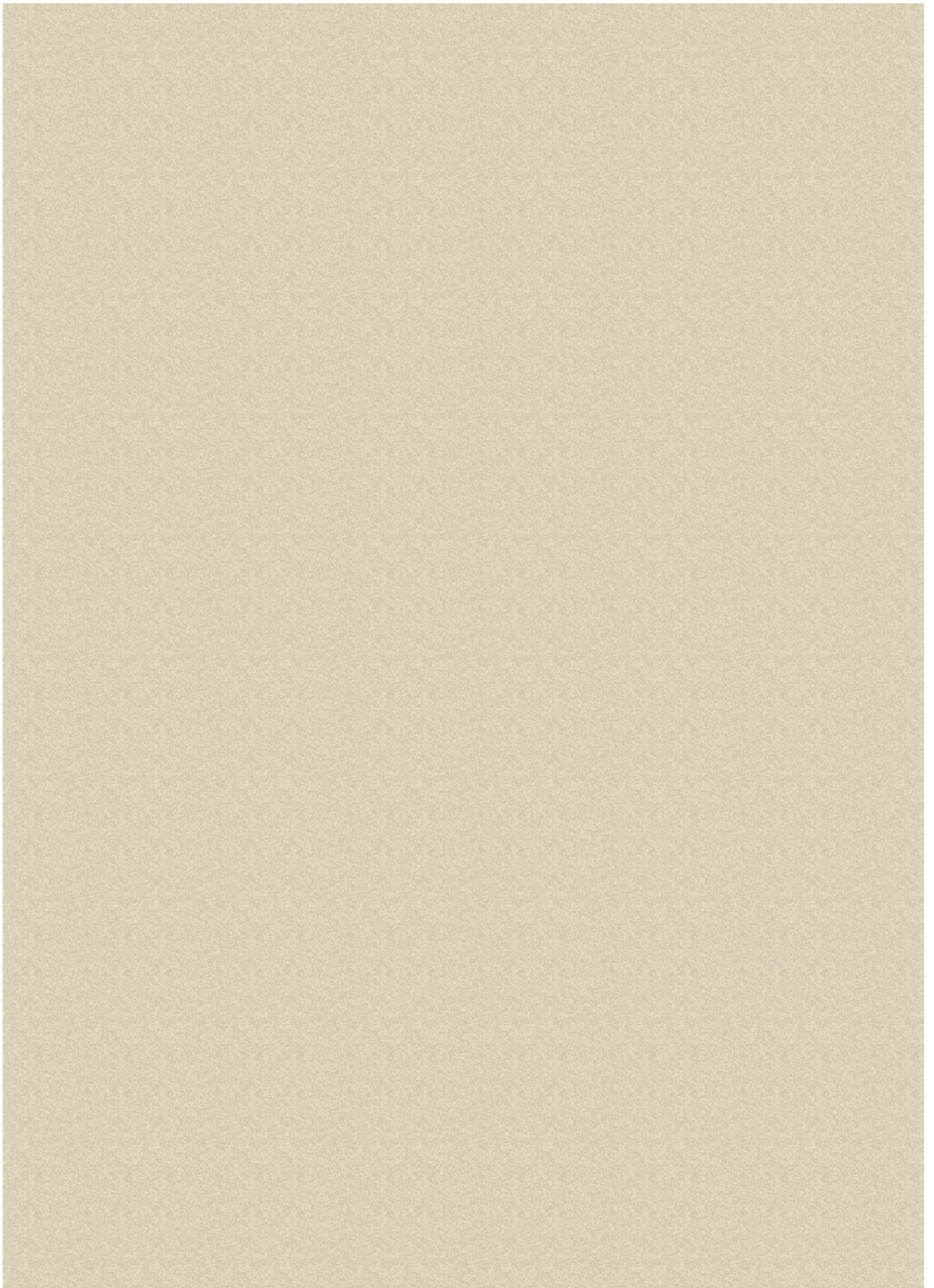
Registration of automobiles is for purpose of exercising control of right to use highways, and certificate of registration constitutes a “license” to operate in accordance with such conditions as are imposed. *Steves v. Robie*, 31 A.2d 797, 139 Me. 359.

License to use highways, conferred by certificate of registration of automobile is “privilege” and not “contract” or “property”, and state may make such rules for the issuance of the certificate as state deems proper. *Steves v. Robie*, 31 A.2d 797, 139 Me. 359.

Civil rights

The permission to operate a motor vehicle upon the highways of the Commonwealth is not embraced within the term civil rights, nor is a license to do so a contract or a right of property in any legal or constitutional sense. *Appeal of Klepeis*, 20 Lehigh. 59.

3. Utah.—*Bleon v. Emery*, 209 P. 627, 60 Utah, 582.



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Its object is to confer a right or power which does not exist without it and the exercise of which without the license would be illegal,⁴ and as legally interpreted it signifies the intangible right granted the licensee as well as the instrument which is the evidence of the grant.⁵ The fact that a driver is unlicensed, however, will not preclude him from recovering for injuries sustained in a collision caused by another driver.⁶

All the statutes of a state covering the general subject of licensing and taxing motor vehicles or the use thereof should be construed together.⁷

§ 466.2 License Fees in General

Research Note:

The amount of tax which can be levied is considered infra § 466.8.

Library References:

C.J.S. Motor Vehicles § 158.

West's Key No. Digests, Automobiles ¶141.

A motor vehicle license or registration fee is a privilege tax or an excise tax⁸ levied in exercise of the police power to control and regulate travel on the public highways. It is distinguished from a tax on property as such, which is imposed for producing revenue for public purposes.⁹ That is, when levied it is not con-

4. Ga.—Inter-City Coach Lines v. Harrison, 157 S.E. 673, 172 Ga. 390.

Ky.—Harlow v. Dick, 245 S.W.2d 616.

5. Conn.—Connecticut Breweries Co. v. Murphy, 70 A. 450, 81 Conn. 145.

Minn.—Moore v. City of St. Paul, 63 N.W. 1087, 61 Minn. 427.

N.Y.—Aldrich v. City of Syracuse, 236 N.Y.S. 614, 134 Misc. 698.

6. Cal.—Espe v. Salisbury, 68 Cal. Rptr. 796.

Mo.—Siess v. Layton, 417 S.W.2d 6.

7. Kan.—State ex rel. Sullivan v. Hickman, 89 P.2d 903, 149 Kan. 865.

8. Ohio.—Columbus & Southern Ohio Electric Co. v. West, App., 36 N.E.2d 1, appeal dismissed 37 N.E.2d 41, 138 Ohio St. 553, affirmed 42 N.E.2d 906, 140 Ohio St.

200; State ex rel. Walls v. Wallace, 35 N.E.2d 167, 138 Ohio St. 410.

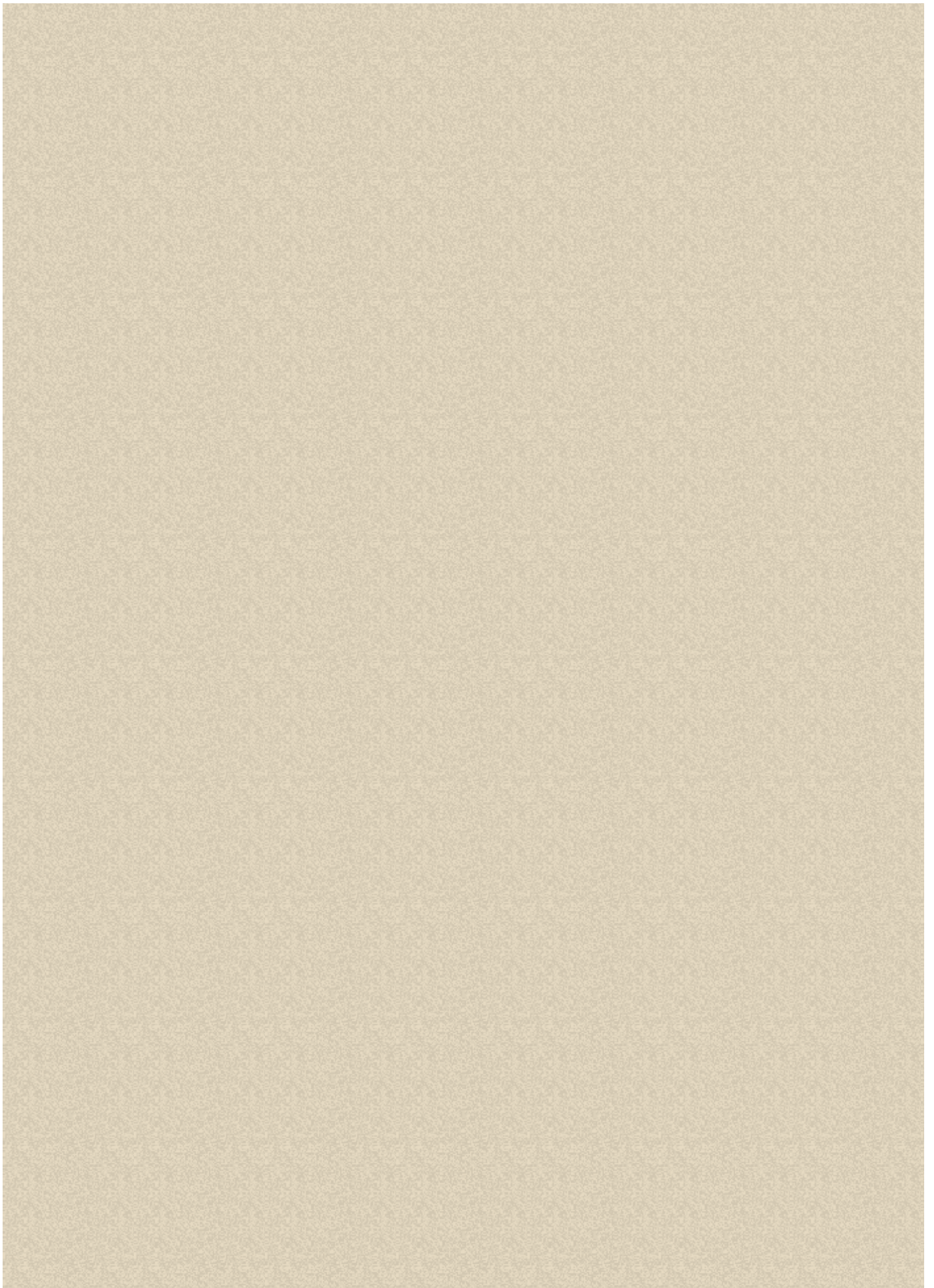
Tenn.—Silver Fleet Motor Exp. v. Carson, 219 S.W.2d 199, 188 Tenn. 338 (not ad valorem taxes).

Equal protection

A tax on privilege of using private motor vehicles, being excise tax, is not objectionable as denying equal protection of laws and demands of equality and uniformity in taxation, but is valid, unless inherently oppressive or unreasonably classifying persons or objects. State ex rel. Hansen v. Salter, 70 P.2d 1056, 190 Wash. 703.

9. Cited by the court in Ingels, Director of Motor Vehicles v. Boteler, C.C.A.Cal., 100 F.2d 915, 919, affirmed 60 S.Ct. 29, 308 U.S. 57, 521, 84 L.Ed. 78, 442.

Ala.—Foshee v. State, 72 So. 685, 15 Ala.App. 113, certiorari denied 73 So. 999, 198 Ala. 689.



sidered as a tax on the motor vehicle itself, but for the privilege of using the highways. As such it is in the nature of compensation for damage done to the roads, and is properly based not on the value of the machine, but on the amount of destruction it may cause.¹⁰ The collection of such a tax by way of a tollage or license for the use of public ways by motor vehicles has been upheld in many jurisdictions,¹¹ and the constitutional provision requiring uniformity in taxation has no application to license fees as such, since taxation as therein referred to relates to taxation in the general acceptance of the term as upon property.¹²

Ark.—Crane v. Crane, 199 S.W.2d 316, 211 Ark. 55; Wiseman v. Madison Cadillac Co., 88 S.W.2d 1007, 191 Ark. 1021, 103 A.L.R. 1208.

Cal.—Kelly v. City of San Diego, 147 P.2d 127, 63 Cal.App.2d 638.

Colo.—Ard v. People, 182 P. 892, 66 Colo. 480.

Idaho.—Ex parte Kessler, 146 P. 113, 26 Idaho, 764, L.R.A.1915D, 322, Ann.Cas.1917A, 228.

Ky.—Reeves v. Deisenroth, 157 S.W. 2d 331, 288 Ky. 724, 138 A.L.R. 1493.

Miss.—State v. Lawrence, 66 So. 745, 108 Miss. 291, Ann.Cas.1917E, 322.

N.J.—Kane v. Titus, 80 A. 453, 81 N.J.L. 594, L.R.A.1917B, 553, Ann. Cas.1912D, 237, affirmed 37 S.Ct. 30, 242 U.S. 160, 61 L.Ed. 222; State v. Unwin, 68 A. 110, 75 N.J.L. 500, affirming Unwin v. State, 64 A. 163, 73 N.J.L. 529.

Ohio.—State ex rel. Brunenkant v. Wallace, 30 N.E.2d 696, 137 Ohio St. 379.

Tex.—Payne v. Massey, 196 S.W.2d 493, 145 Tex. 237; Atkins v. State Highway Department, Tex.Civ. App., 201 S.W. 226.

10. Cal.—Valley Motor Lines v. Riley, 73 P.2d 288, 23 Cal.App.2d 208.

Colo.—Colorado Contractors Ass'n v. Public Utilities Commission, 262 P. 2d 266, 128 Colo. 333 (ton-mile tax).

Iowa.—State v. Robbins, 15 N.W.2d 877, 235 Iowa 602.

Mo.—State ex rel. McClung v. Becker, 233 S.W. 54, 288 Mo. 607.

N.J.—Kane v. Titus, 80 A. 453, 81 N. J.L. 594, L.R.A.1917B, 553, Ann. Cas.1912D, 237, affirmed 37 S.Ct. 30, 242 U.S. 160, 61 L.Ed. 222.

Or.—Northwestern Auto Co. v. Hurlburt, 207 P. 161, 104 Or. 398.

Equalization fees

The act imposing equalization fees on vehicles propelled by motors burning fuel not subject to state motor vehicle tax laws is not equivalent of income tax levy, but fixes reasonable compensation for use of state's highways by such vehicles. Rocky Mountain Lines v. Cochran, 299 N.W. 596, 140 Neb. 378.

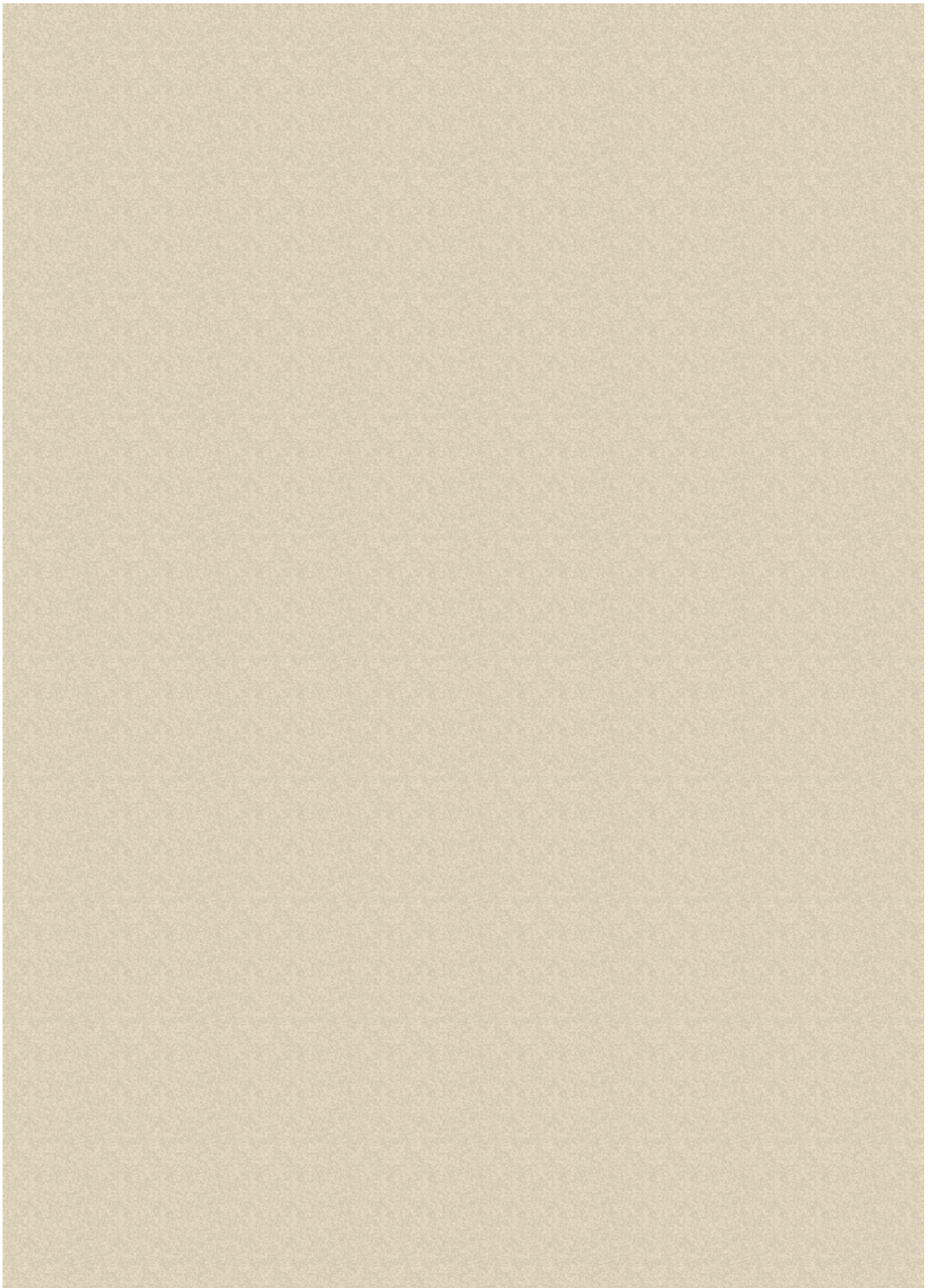
11. Mass.—Opinion of Justices, In re, 148 N.E. 889, 250 Mass. 591.

N.D.—State v. Kromarek, 52 N.W.2d 713, 78 N.D. 769, certiorari denied 72 S.Ct. 1064, 343 U.S. 968, 96 L. Ed. 1364 (no violation of due process).

12. Colo.—Public Utilities Commission v. Manley, 60 P.2d 913, 99 Colo. 153.

Fla.—Jackson v. Neff, 60 So. 350, 64 Fla. 326, dismissed 35 S.Ct. 792, 238 U.S. 610, 59 L.Ed. 1488.

Idaho.—Ex parte Kessler, 146 P. 113, 26 Idaho, 764, L.R.A.1915D, 322, Ann.Cas.1917A, 228.



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A, 228.

For the same reason, automobile license taxes have been held to be beyond the reach of various other constitutional requirements deemed to control property taxes¹³ such as a requirement that taxation be in proportion to value.¹⁴

Since the ultimate police power upon which the right to levy a license tax resides is in the state, a state may provide that no municipality may levy a use tax even upon vehicles using its municipal roads. In this case, no valid municipal license tax may be enacted by a city or town.¹⁵

§ 466.3 License Fee Imposed under Police Power or as Revenue Measure

Research Note:

License fees based upon a combination of police and taxing powers in the same statute are considered *infra* § 466.7.

The question of whether a license fee is imposed under the police power or as a revenue measure depends more upon the nature of the fee than the use made of the motor vehicle. Thus,

13. Colo.—Public Utilities Commission v. Manley, 60 P.2d 913, 99 Colo. 153.

Pa.—Shirks Motor Exp. Corp. v. Messner, 100 A.2d 913, 375 Pa. 450, appeal dismissed 74 S.Ct. 639, 640, 347 U.S. 941, 98 L.Ed. 1090, rehearing denied 74 S.Ct. 775, 776, 347 U.S. 970, 98 L.Ed. 1111 (not a "tax on motor vehicles or operators").

Exemptions

Statute levying three-mill tax per ton mile for use of highways by persons operating their own motor vehicles for transportation of their own property for commercial purposes held not a "property tax" so as to be subject to constitutional provision prohibiting exemption of certain classes of property from taxation. Public Utilities Commission v. Manley, 60 P.2d 913, 99 Colo. 153.

14. Cal.—City of Los Angeles v. Riley, 59 P.2d 137, 6 Cal.2d 621.

Ohio.—Rapa v. Haines, Com.Pl., 101 N.E.2d 733, appeal dismissed 108 N.E.2d 833, 158 Ohio St. 275, af-

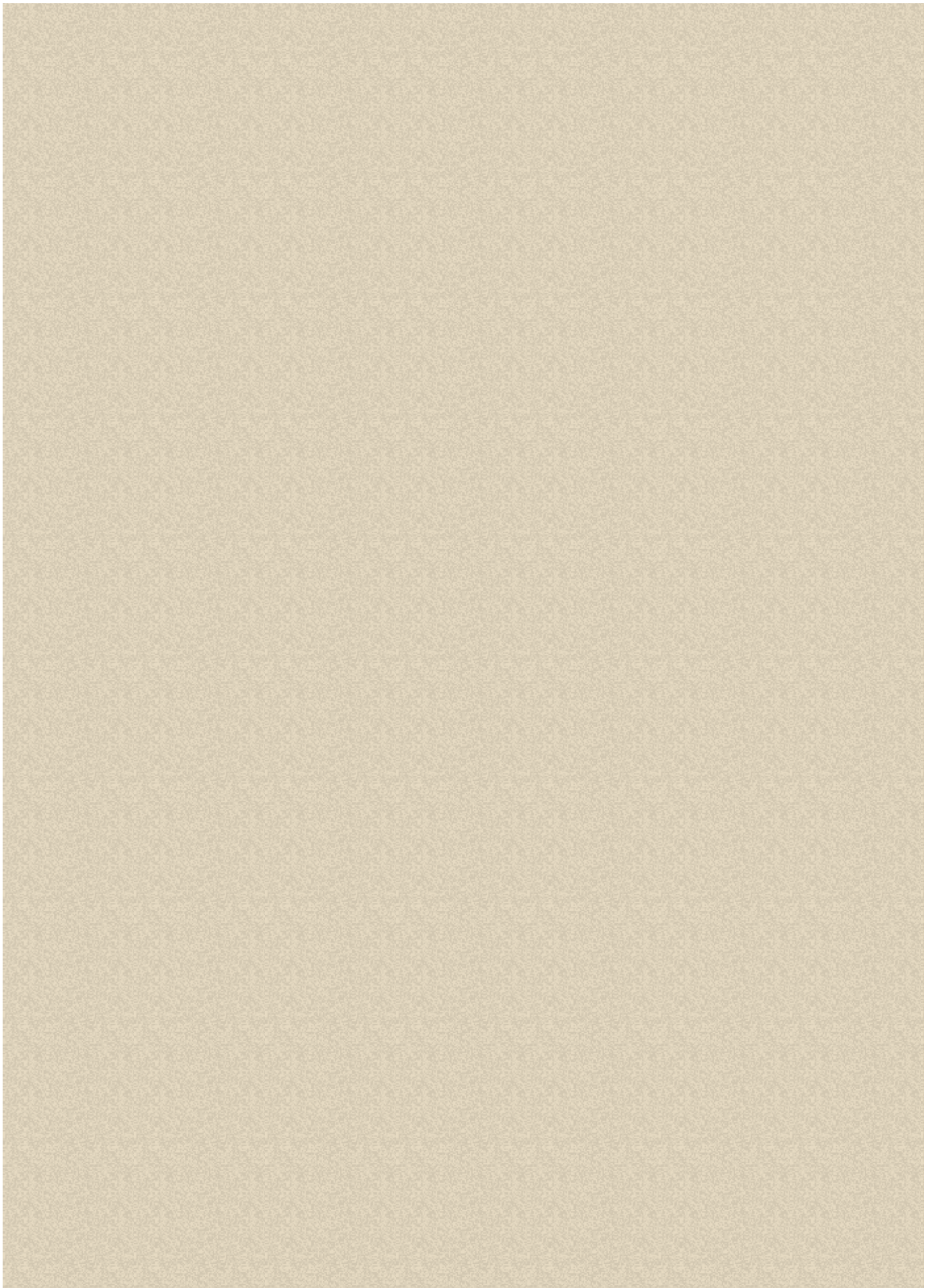
firmed App., 113 N.E.2d 121 (house trailer).

Double license tax

Constitutional requirement that taxation must be in proportion to value held applicable only to property taxes and does not affect power of Legislature to impose double license tax on operation of automobiles on public highways. Ingels v. Riley, 53 P.2d 939, 5 Cal.2d 154, 103 A.L.R. 1.

15. N.Y.—McLean Trucking Co. v. City of New York, 116 N.Y.S.2d 292, 202 Misc. 604; Papiernick v. City of New York, 115 N.Y.S.2d 454, 202 Misc. 717.

Tex.—Payne v. Massey, 196 S.W.2d 493, 495, 145 Tex. 237 (under a statute exacting a license or registration fee and prohibiting such a fee by municipalities, a municipality could not impose a street rental charge on taxicabs); A B C Storage & Moving Co. v. City of Houston, Tex.Civ.App., 269 S.W. 882 (city may require license but cannot require payment of fee for issuance thereof).



when license fees are imposed for the sole or main purpose of raising revenue, they are in effect taxes.¹⁶

Although registration or license fees for the purposes above stated may be required under either the police power¹⁷ or the taxing power of the state, the considerations governing the determination of the validity of the fee when exacted under one power are not the same as those determining such validity when imposed under the other. It is therefore important to determine which power the legislative body has attempted to exercise in imposing the particular fee.¹⁸

For example, constitutional provisions requiring that taxes be levied uniformly on all subjects in the same class,¹⁹ and that

16. U.S.—*Zierner v. Babcock & Wilcox Co.*, D.C.Nev., 22 F.Supp. 384.

Cal.—*Ex parte Bush*, 56 P.2d 511, 6 Cal.2d 43 (revenue measure).

Okl.—*Ex parte Mayes*, 167 P. 749, 64 Okl. 260.

Vt.—*State v. Williams*, 135 A. 713, 100 Vt. 160; *State v. Caplan*, 135 A. 705, 100 Vt. 140.

Privilege tax

A privilege tax on automobiles is a "tax" as distinguished from a "toll" and is not an exercise of the "police power" of the state, as distinguished from the "taxing power." *Roberts v. Federal Land Bank of New Orleans*, 196 So. 763, 189 Miss. 898.

17. Mont.—*Anderson v. Commercial Credit Co.*, 101 P.2d 367, 110 Mont. 333 ("police regulation" designed to deter auto thefts and apprehend thieves).

Neb.—*Rocky Mountain Lines v. Cochran*, 299 N.W. 596, 140 Neb. 378.

Provisions of revenue nature

The statutes relating to registration of motor vehicles and license fees, are "regulatory" and not "revenue" measures, notwithstanding that statutes contained provisions of revenue nature. *Carter v. State Tax Commission*, 96 P.2d 727, 98 Utah 96, 126 A.L.R. 1402.

18. U.S.—*Hendrick v. State of Maryland*, 35 S.Ct. 140, 235 U.S. 610, 59 L.Ed. 385.

Ark.—*City of Van Buren v. Lawson*, 255 S.W. 295, 160 Ark. 631.

Idaho.—*Ex parte Kessler*, 146 P. 113, 26 Idaho, 464, L.R.A.1915D, 322, Ann.Cas.1917A, 228.

Iowa.—*Solberg v. Davenport*, 232 N.W. 477, 211 Iowa, 612.

N.J.—*Kane v. State*, 80 A. 453, 81 N.J.L. 594, L.R.A.1917B, 553, Ann.Cas.1912D, 237, affirmed *Kane v. State of New Jersey*, 37 S.Ct. 30, 242 U.S. 160, 61 L.Ed. 222.

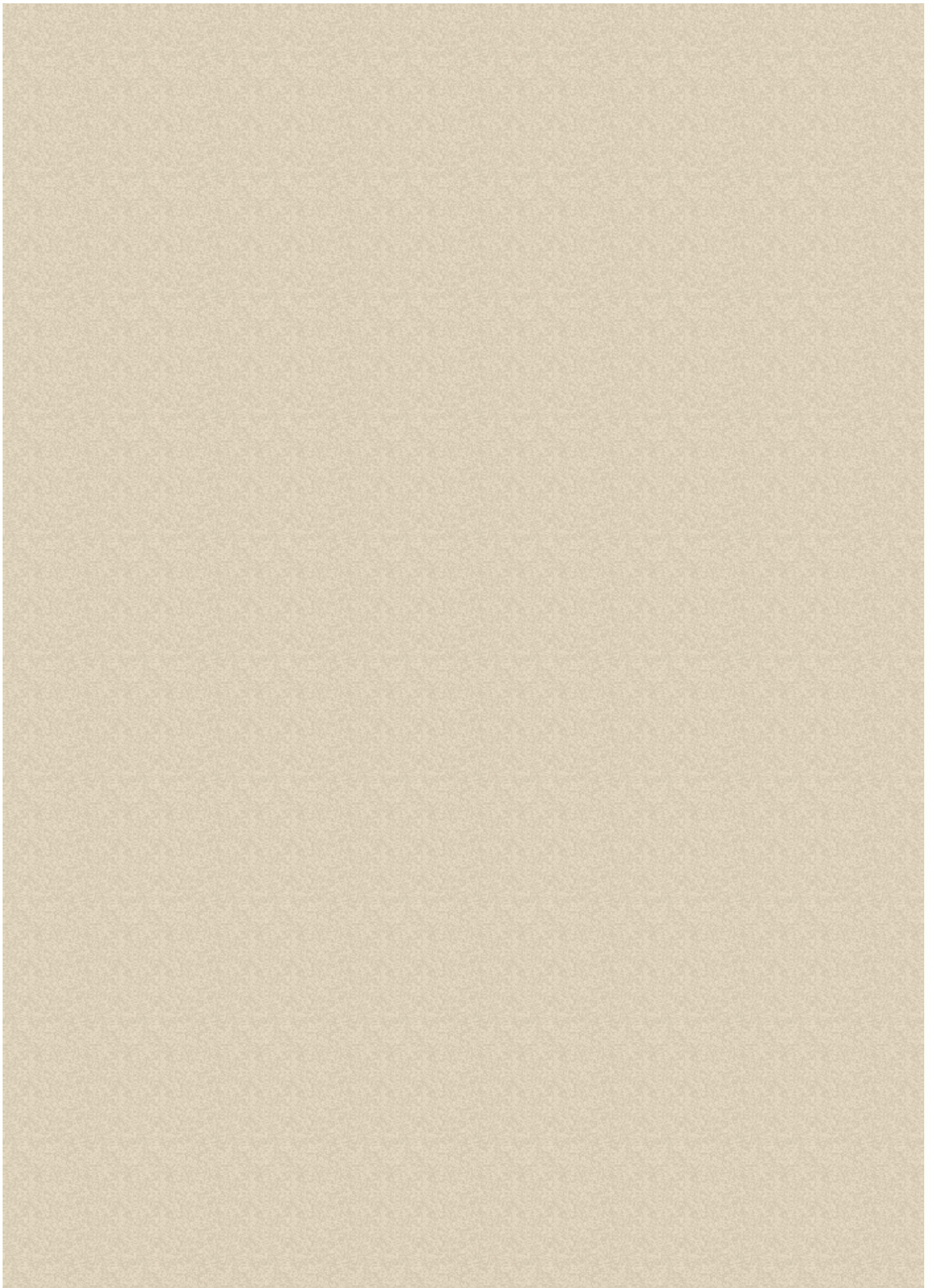
Or.—*Briedwell v. Henderson*, 195 P. 575, 99 Or. 506 (preamble of statute may be used to determine intent of legislature).

Extrinsic evidence not admissible

That the intention of the board of commissioners of a town in enacting an ordinance licensing and regulating automobiles was to levy a tax, and not to provide a police regulation, cannot be shown by extrinsic evidence, but the intention can be ascertained only from the face of the ordinance. *Thompson v. Town of Lumberton*, 108 S.E. 722, 182 N.C. 260.

19. Ga.—*Lee v. State*, 135 S.E. 912, 163 Ga. 239.

Idaho.—*Ex parte Kessler*, 146 P. 113, 26 Idaho, 464, L.R.A.1915D, 322, Ann.Cas.1917A, 228.



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A, 228.

they be collected according to regulations which insure a just valuation for all property subject to the tax,²⁰ do not apply to license or registration fees imposed under the police power as conditions to the operation of private automobiles upon the highway.²¹ A statute is not invalid, therefore, which provides for the payment of registration fees in varying amounts depending upon the horsepower of the vehicle.²² The legislature need not base the amount of the fee upon the value of the motor vehicle because the fee is imposed for the right to use the automobile upon the highway, and the value of this right is not affected by the value of the motor vehicle.²³

A city ordinance imposing a fee for the regulation of the use and operation of motor vehicles is generally a police regulation,²⁴

20. Idaho.—Ex parte Kessler, 146 P. 113, 26 Idaho, 464, L.R.A.1915D, 322, Ann.Cas.1917A, 228.

Miss.—State v. Lawrence, 66 So. 745, 108 Miss. 291, Ann.Cas.1917E, 322.

Mo.—State ex rel. McClung v. Becker, 233 S.W. 54, 288 Mo. 607.

Okl.—Ex parte Shaw, 157 P. 900, 53 Okl. 654.

Tex.—Atkins v. State Highway Department, Civ.App., 201 S.W. 226.

21. Cited by the court in Payne v. Massey, 196 S.W.2d 493, 495, 145 Tex. 237.

Ark.—Baldwin v. City of Blytheville, 208 S.W.2d 458, 212 Ark. 975.

Colo.—Ard v. People, 182 P. 892, 66 Colo. 480.

Idaho.—Garrett Transfer & Storage Co. v. Pfost, 33 P.2d 743, 54 Idaho 576 (uniformity of taxes provision not applicable to licensing).

Mo.—Samuel Bevard Manuro Products Co. v. Baughman, 173 A. 40, 167 Md. 55 (uniformity of taxes provision not applicable to licensing).

Miss.—State v. Lawrence, 66 So. 745, 108 Miss. 291, Ann.Cas.1917E, 322.

Mo.—State ex rel. McClung v. Becker, 233 S.W. 54, 288 Mo. 607.

Ohio.—Rapa v. Haines, Com.Pl., 101 N.E.2d 733, appeal dismissed 108

N.E.2d 833, 158 Ohio St. 275, affirmed, App., 113 N.E.2d 121 (uniformity of taxes).

Tenn.—Large v. City of Elizabethton, 203 S.W.2d 907, 185 Tenn. 156.

Invalid statute

Statute, making right to operate automobile upon public highway dependent upon whether person had paid his personal property taxes on property other than the vehicle to be licensed, did not relate to any of the subjects to which police power extended but was simply a revenue measure, adjunctive to enforcing collection of taxes on personal property. Schoo v. Rose, Ky., 270 S.W.2d 940.

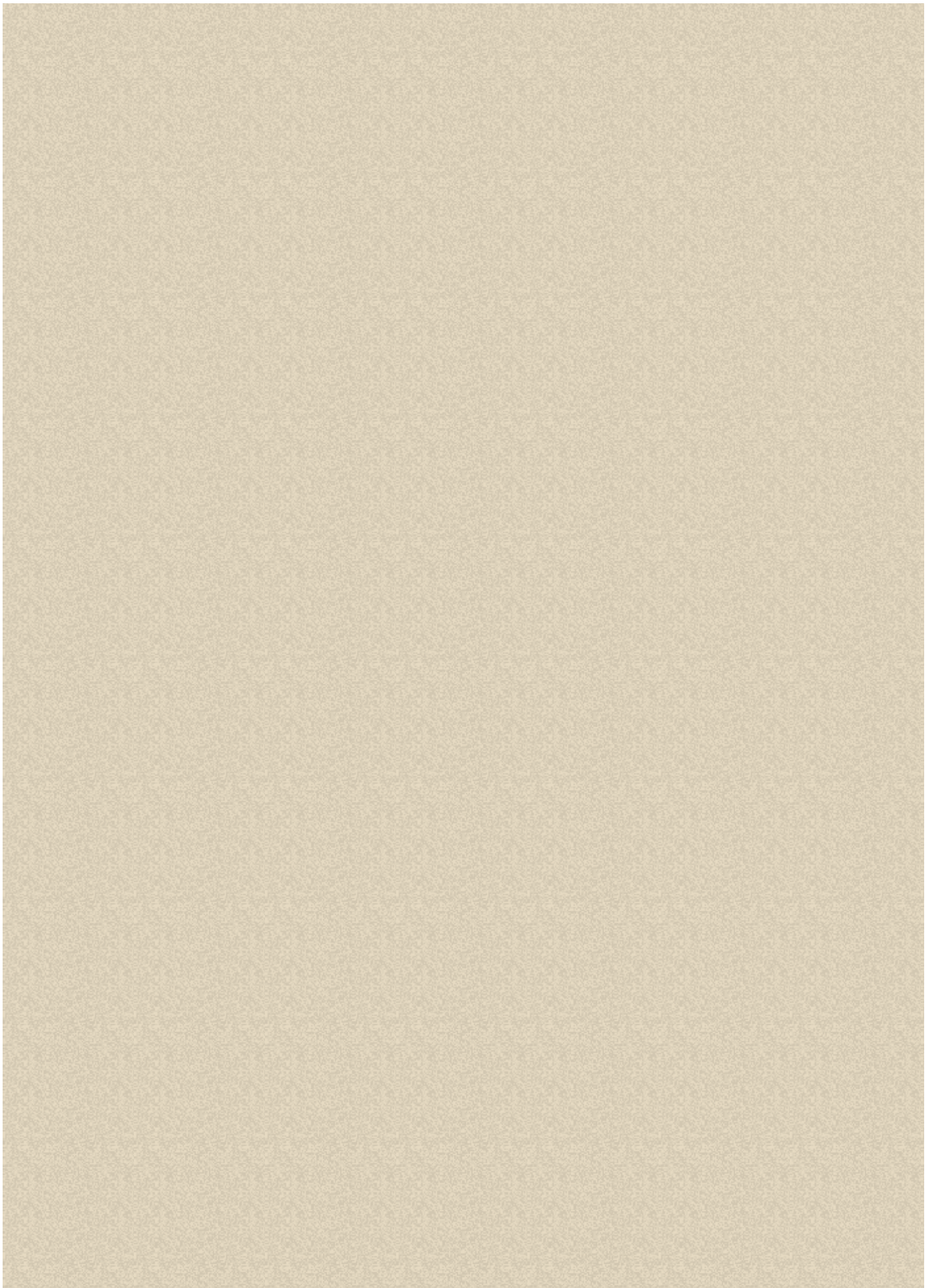
22. Tex.—Atkins v. State Highway Department, Civ.App., 201 S.W. 226.

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Tex.—Atkins v. State Highway Department, Civ.App., 201 S.W. 226.

24. Ill.—Keig Stevens Baking Co. v. City of Savanna, 44 N.E.2d 23, 380 Ill. 303 (\$15 license fee for food delivery vehicles is valid).

Ky.—Garner v. Hancock, 249 S.W.2d 824; Kroger Grocery & Baking Co. v. City of Lancaster, 124 S.W.2d 745, 276 Ky. 585 (license fee valid



and is valid unless the license fees are unreasonable or disproportionate to the cost of exercising the police power.²⁵

A municipality may not levy a tax under the guise of an exercise of its police power.²⁶ Thus the mere power to license automobiles or to subject them to police regulation does not include the power to tax distinctly for revenue purposes,²⁷ and municipalities frequently are without power to levy taxes on private motor vehicles for revenue purposes.²⁸

In some jurisdictions, statutes providing for the payment of a registration tax to the state also prohibit local authorities from enacting similar legislation requiring payment of a fee as a condition of using the streets of the municipality.²⁹

Under such a statute it has been held that a municipality could not collect a fee or tax for the privilege of operating taxicabs

even though it provides about 10 per cent of city's revenues).

N.Y.—People, on Complaint of Wallace v. Oestricher, 17 N.Y.S.2d 468, 173 Misc. 147 (license fee of \$20 for sight-seeing bus).

25. Ill.—Bode v. Barrett, 106 N.E.2d 521, 412 Ill. 204, judgment affirmed 73 S.Ct. 468, 344 U.S. 583, 97 L.Ed. 567 (tax is not unreasonably high when it does not even equal the total cost of highway maintenance).

Iowa.—Huston v. City of Des Moines, 156 N.W. 883, 176 Iowa, 455 (party attacking validity of fee has burden of proof as to unreasonableness).

Ky.—Johnson v. City of Paducah, 147 S.W.2d 721, 285 Ky. 294 (burden of proving unreasonableness of license fee lies with party attacking ordinance); Kroger Grocery & Baking Co. v. City of Lancaster, 124 S.W.2d 745, 276 Ky. 585; Daily v. City of Owensboro, 77 S.W.2d 939, 257 Ky. 281 (reasonableness of amount of fee is a question of fact).

Mass.—Commonwealth v. Slocum, 119 N.E. 687, 230 Mass. 180 (valid police regulation).

Mont.—City of Bozeman v. Nelson, 237 P. 528, 73 Mont. 147 (reasonableness of license fee is normally left to discretion of city council

and will not be reversed unless manifestly unreasonable).

N.Y.—People v. Horton Motor Lines, 10 N.Y.S.2d 580, 170 Misc. 507, reversed on other grounds 22 N.E.2d 338, 281 N.Y. 196 (valid police regulation).

N.D.—Ex parte Bryan, 264 N.W. 539, 66 N.D. 241 (valid police regulation).

Okl.—City of Muskogee v. Wilkins, 175 P. 497, 73 Okl. 192; Ex parte Mayes, 167 P. 749, 64 Okl. 260.

Tenn.—Hermitage Laundry Co. v. City of Nashville, 209 S.W.2d 5, 186 Tenn. 190.

Tex.—Ex parte Bogle, 179 S.W. 1193, 78 Tex.Cr.R. 1 (fee of \$50 per jitney not a tax).

26. Ark.—Baldwin v. City of Blytheville, 208 S.W.2d 458, 212 Ark. 975.

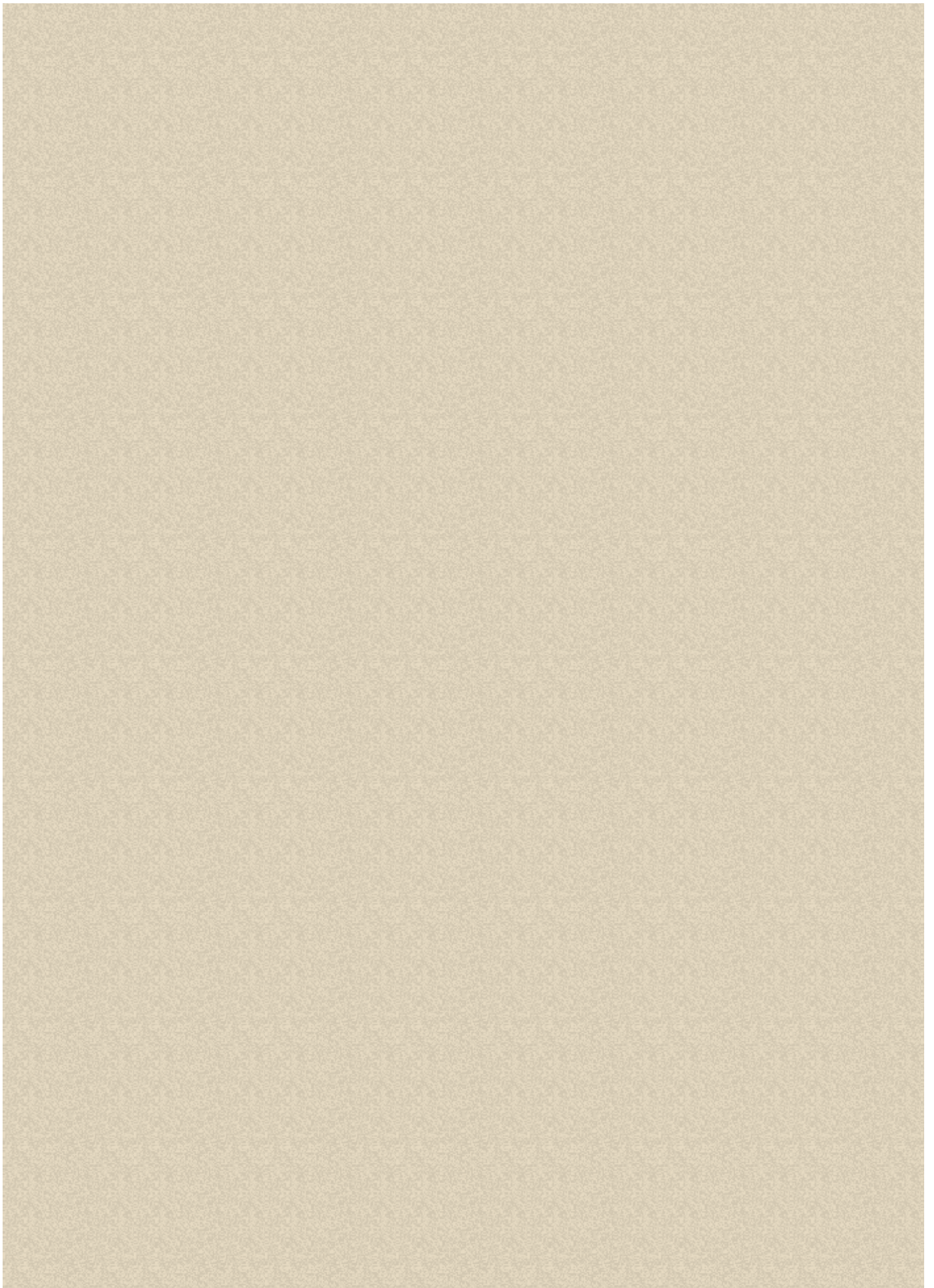
Okl.—Ex parte Holt, 178 P. 260, 74 Okl. 226.

S.C.—Southern Fruit Co. v. Porter, 199 S.E. 537, 188 S.C. 422.

27. Okl.—Ex parte Mayes, 167 P. 749, 64 Okl. 260.

28. Miss.—Wasson v. City of Greenville, 86 So. 450, 123 Miss. 642.

29. Okl.—Ex parte Phillips, 167 P. 221, 64 Okl. 276.



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by calling it a street rental charge.³⁰ Where a statute of this type is present, the validity of an ordinance requiring the payment of a license fee as a condition precedent to the operation of a vehicle upon the streets will depend on whether it can be deemed a regulatory measure, enacted pursuant to the police powers given to the municipality.³¹

It should be noted, however, that the term "license tax" as used in some statutes may be sufficiently broad to include both a charge imposed under the police power for a license to conduct a particular business, as the business of operating motorbusses, and a tax imposed for the sole purpose of raising revenue.³²

§ 466.4 License Fee Imposed under Police Power or as Revenue Measure—Tests for Determining Whether Fee Imposed under Police Power or for Revenue

The general rule, which is applicable to both private and commercial motor vehicles, is that license fees imposed under the police power should not exceed the reasonable cost of issuing the license and of supervising and regulating the subject of the license,³³ with the limitation in some jurisdictions that it is within

30. Tex.—Payne v. Massey, 196 S. W.2d 493, 495, 145 Tex. 237.

31. Miss.—Wasson v. City of Greenville, 86 So. 450, 123 Miss. 642.

Okl.—Ex parte Holt, 178 P. 260, 74 Okl. 226 (answer must be ascertained from all the provisions of the act).

32. Cal.—California Fireproof Storage Co. v. City of Santa Monica, 275 P. 948, 206 Cal. 714.

Ga.—City of Waycross v. Bell, 149 S.E. 641, 169 Ga. 57.

Tenn.—Southeastern Greyhound Lines v. City of Knoxville, 184 S.W. 2d 4, 181 Tenn. 622 (in determining validity of ordinance imposing a privilege tax, the court must look to the purpose of the ordinance rather than the name of the tax sought to be imposed).

33. U.S.—Jewel Tea Co. v. City of Troy, Ill., C.C.A.Ill., 80 F.2d 366

(\$15 fee on vehicles carrying food-stuffs not unreasonable).

Alaska.—Hoff v. City of Ketchikan, 10 Alaska 220.

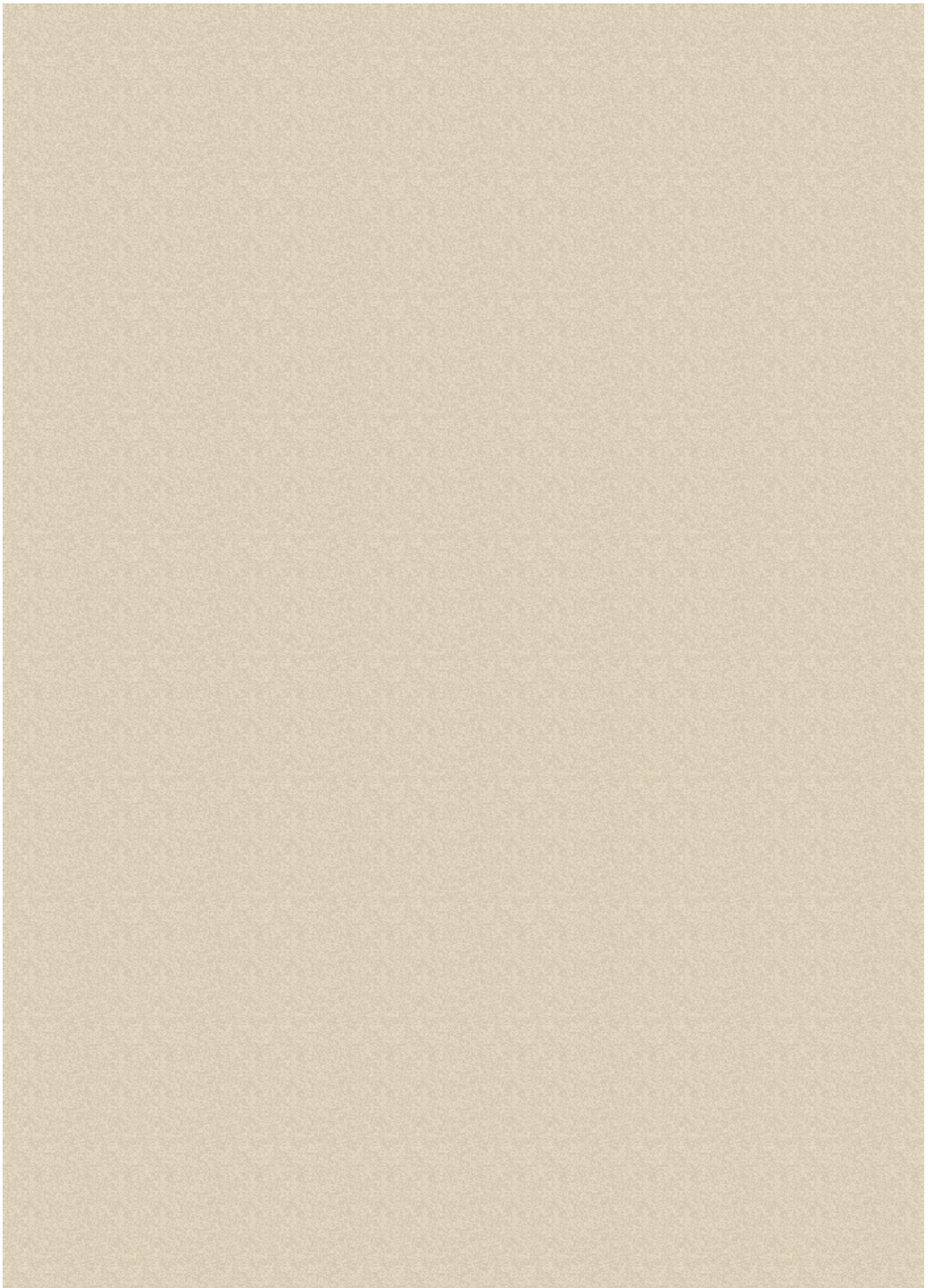
Cal.—In re Schuler, 139 P. 685, 167 Cal. 282, Ann.Cas.1915C, 706.

Idaho.—Ex parte Kessler, 146 P. 113, 26 Idaho, 764, L.R.A.1915D, 322, Ann.Cas.1917A, 228.

Iowa.—Solberg v. Davenport, 232 N. W. 477, 211 Iowa, 612; Star Transp. Co. v. Mason City, 192 N.W. 873, 195 Iowa, 930.

Ky.—Daily v. City of Owensboro, 77 S.W.2d 939, 257 Ky. 281; City of Newport v. French Bros. Bauer Co., 183 S.W. 532, 169 Ky. 174; City of Henderson v. Lockett, 163 S.W. 199, 157 Ky. 366 (reasonableness of amount of fee is a question of fact).

Mich.—Vernor v. Secretary of State, 146 N.W. 338, 179 Mich. 157, Ann. Cas.1915D, 128.



the police power of the state to exact a license tax in excess of such cost where the subject is within the police power, and to apply the excess to the remedying of the effects of the exercise of the taxed privilege.³⁴

The legislature need not, however, determine the exact amount of the cost of executing a police regulation, and the fact that a license or regulation fee produces funds in excess of the expenses of carrying out the law does not render the regulation invalid.³⁵ Thus, a registration fee may be a valid police regulation even if it results in an accumulation of excess funds, if these funds are used for the maintenance or construction of streets and highways.³⁶

N.Y.—United Taxicab Board of Trade v. City of New York, 270 N.Y.S. 263, 150 Misc. 636 (charge of 5 cents per fare collected by taxicabs strongly indicates a revenue producing purpose of ordinance).

Okl.—Ex parte Holt, 178 P. 260, 74 Okl. 226.

Or.—Hickey v. Riley, 162 P.2d 371, 177 Or. 321; Fine, In re, 264 P. 347, 124 Or. 175.

S.C.—State v. Perry, 136 S.E. 314, 138 S.C. 329.

Tex.—Kissinger v. Hay, 113 S.W. 1005, 52 Tex.Civ.App. 295.

Vt.—State v. Caplan, 135 A. 705, 100 Vt. 140.

Wyo.—Western Auto Transports v. City of Cheyenne, 120 P.2d 590, 57 Wyo. 351.

34. Ga.—Lee v. State, 135 S.E. 912, 163 Ga. 239.

Ky.—Blue Coach Lines v. Lewis, 294 S.W. 1080, 220 Ky. 116; Smith v. Commonwealth, 194 S.W. 367, 175 Ky. 286.

Mont.—State v. Pepper, 226 P. 1108, 70 Mont. 596; State ex rel. City of Bozeman v. Police Court of City of Bozeman, 219 P. 810, 68 Mont. 435.

35. Ohio.—Castle v. Mason, 110 N.E. 463, 91 Ohio St. 296, Ann.Cas. 1917A, 164, quoted in Fisher Bros.

Co. v. Brown, 146 N.E. 102, 111 Ohio St. 602.

36. U.S.—Kane v. State of New Jersey, 37 S.Ct. 30, 242 U.S. 160, 61 L.Ed. 222, affirming Kane v. State, 80 A. 453, 81 N.J.L. 594, Ann. Cas.1912D, 237, L.R.A.1917B, 553.

Colo.—Walker v. Bedford, 26 P.2d 1051, 93 Colo. 400, followed Consolidated Motor Freight v. Bedford, 26 P.2d 1066, 93 Colo. 440.

Ga.—Lee v. State, 135 S.E. 912, 163 Ga. 239.

Ind.—Bridges v. State ex rel. Vaughn, 190 N.E. 758, 208 Ind. 684.

Ky.—Smith v. Commonwealth, 194 S.W. 367, 175 Ky. 286; City of Newport v. French Bros. Bauer Co., 183 S.W. 532, 169 Ky. 174.

Mich.—Vernor v. Secretary of State, 146 N.W. 338, 179 Mich. 157, Ann. Cas.1915D, 128.

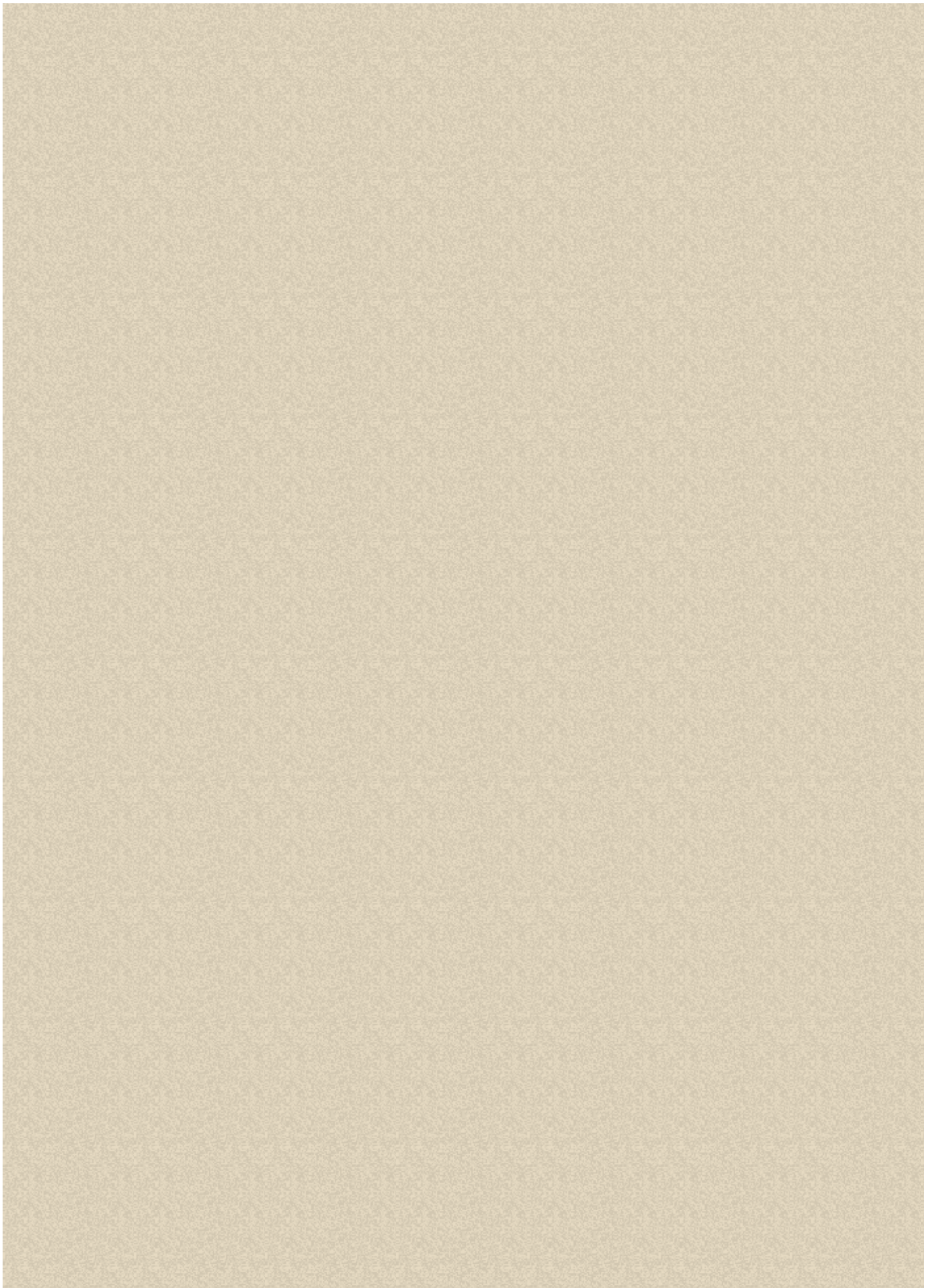
Mont.—State v. Pepper, 226 P. 1108, 70 Mont. 596.

N.J.—Cleary v. Johnston, 74 A. 538, 79 N.J.L. 49.

Or.—Camas Stage Co. v. Kozier, 209 P. 95, 104 Or. 600, 25 A.L.R. 27.

S.D.—Ex parte Hoffert, 148 N.W. 20, 34 S.D. 271, 52 L.R.A.,N.S., 949.

Tex.—Atkins v. State Highway Department, Civ.App., 201 S.W. 226.



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tate ex rel. Vaughn, 8 Ind. 684.

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Hoffert, 148 N.W. 20, 2 L.R.A., N.S., 949.

State Highway De- App., 201 S.W. 226.

While a registration fee is generally construed to be a license fee or toll for the use of the highway,³⁷ rather than a tax,³⁸ a court will often look to the disposition of the revenue from the fee in order to determine whether the regulation imposes a license fee or a tax.³⁹ Under the better rule, however, the disposition of the fee will not alone control the decision as to whether it is a license fee or a tax.⁴⁰

The fact that the revenue produced by a licensing ordinance is paid into a city treasury for the use of a special or general fund does not deprive the assessment of the character of a police regulation.⁴¹

If, upon investigation, the fee is found to be only sufficient to pay the expense that may reasonably be presumed to arise in the supervision and regulation of the automobile licensed, its disposition should not have the effect of converting it into a tax.⁴² The expenses of licensing and supervising automobiles and their drivers in the use of the highway must be borne by the city, out of its funds for governmental purposes, and it is immaterial that the particular funds used are not those derived from the license fee.⁴³

37. Ala.—Foshee v. State, 72 So. 685, 15 Ala.App. 113.

Colo.—Ard v. People, 182 P. 892, 66 Colo. 480, citing Atkins v. State Highway Department, Tex.Civ. App., 201 S.W. 226.

38. Colo.—Ard v. People, 182 P. 892, 66 Colo. 480.

Registration fee as a tax

It has been held that a law providing for the payment of registration fees according to a schedule of horsepower rates is a revenue measure, in view of other statutory provisions that the registration fees, less the cost of administering the law, must be paid into the state treasury for the benefit of the state road fund. State ex rel. McClung v. Becker, 233 S.W. 54, 288 Mo. 607.

A statute providing for the collection of an annual license tax, for the purpose of enforcing and paying the expenses of administering the Motor Vehicle Act and of maintaining the roads, all fees collected being paid in-

to the state treasury to the credit of the state road repair fund, is obviously a tax measure for the purpose of raising revenue for a specified purpose. Saviers v. Smith, 128 N.E. 269, 101 Ohio 132.

39. Mich.—Vernor v. Secretary of State, 146 N.W. 338, 179 Mich. 157, Ann.Cas.1915D, 128.

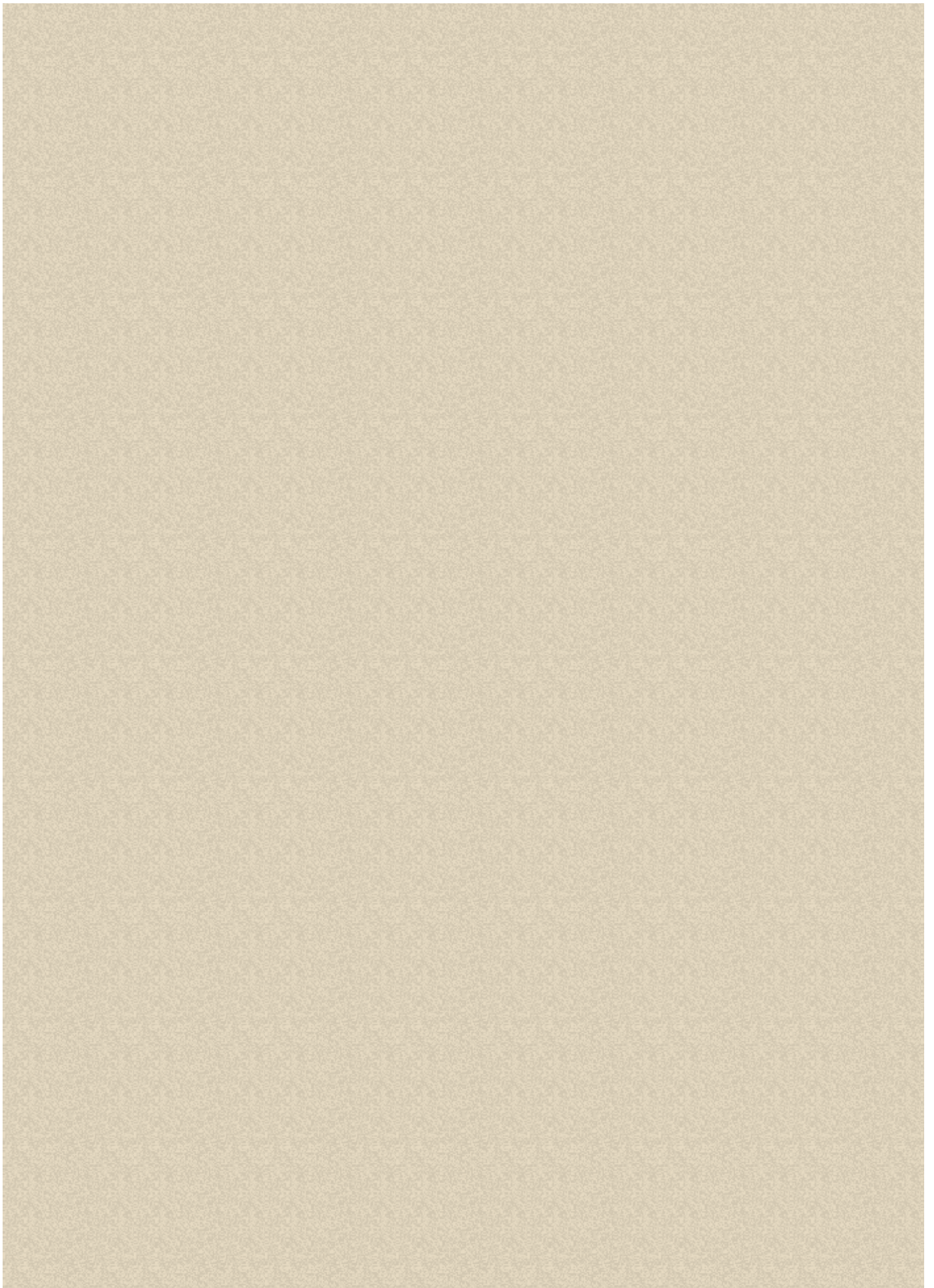
40. Mich.—Vernor v. Secretary of State, 146 N.W. 338, 179 Mich. 157, Ann.Cas.1915D, 128.

41. Iowa.—Star Transp. Co. v. Mason City, 192 N.W. 873, 195 Iowa 930.

Tex.—Ex parte Sullivan, 178 S.W. 537, 77 Tex.Cr.R. 72.

42. Mich.—Vernor v. Secretary of State, 146 N.W. 338, 179 Mich. 157, Ann.Cas.1915D, 128.

43. Ky.—City of Newport v. French Bros. Bauer Co., 183 S.W. 532, 169 Ky. 174



§ 466.5 Presumptions and Burden of Proof as to Reasonableness of Fee

In the absence of anything in the record indicating that the fee exacted from persons operating motor vehicles exceeds the reasonable cost of proper supervision, the fee will not be held so unreasonable as to brand the act as a revenue measure rather than a police regulation, the presumption being that the fee is reasonable until the contrary appears.⁴⁴

One who complains that such a fee is unreasonable or excessive for the purposes declared in the levying statute or ordinance has the burden of proving such fact.⁴⁵

§ 466.6 Theory of Registration Fee for Revenue Purposes

Where a registration fee is construed to be a tax for revenue purposes, the incident of the tax is the privilege of operating a vehicle on the highways, not the ownership of the vehicle itself.⁴⁶ Thus, constitutional provisions require equality and uniformity in taxation to validate such a privilege tax.⁴⁷ Accordingly, it

44. *Mont.*—*State v. Pepper*, 226 P. 1108, 70 Mont. 596; *State ex rel. City of Bozeman v. Police Court of City of Bozeman*, 219 P. 810, 68 Mont. 435.

Tenn.—*Hermitage Laundry Co. v. City of Nashville*, 209 S.W.2d 5, 186 Tenn. 190.

Tex.—*Atkins v. State Highway Department*, Civ.App., 201 S.W. 226.

45. *U.S.*—*Clark v. Paul Gray Inc.*, 59 S.Ct. 744, 306 U.S. 583, 83 L.Ed. 1001 (caravan fee).

Ky.—*Daily v. City of Owensboro*, 77 S.W.2d 939, 257 Ky. 281 (\$5 fee).

Contra:

Undercoffer v. White, 149 S.E.2d 845, 113 Ga.App. 853.

46. *U.S.*—*Storaasli v. State of Minnesota*, 51 S.Ct. 354, 283 U.S. 57, 75 L.Ed. 839, affirming *State v. Storaasli*, 230 N.W. 572, 180 Minn. 241.

Minn.—*Raymond v. Holm*, 206 N.W. 166, 165 Minn. 215.

Mo.—*State ex rel. McClung v. Becker*, 233 S.W. 54, 288 Mo. 607.

S.D.—*Ex parte Hoffert*, 148 N.W. 20, 34 S.D. 271, 52 L.R.A.,N.S., 949.

Excise tax

The annual motor vehicle registration fee exacted by statute is an "excise tax" for revenue purposes imposed on the privilege of operating motor vehicles upon highways of state. *Holdcroft v. Murphy*, 283 N.W. 860, 66 S.D. 388.

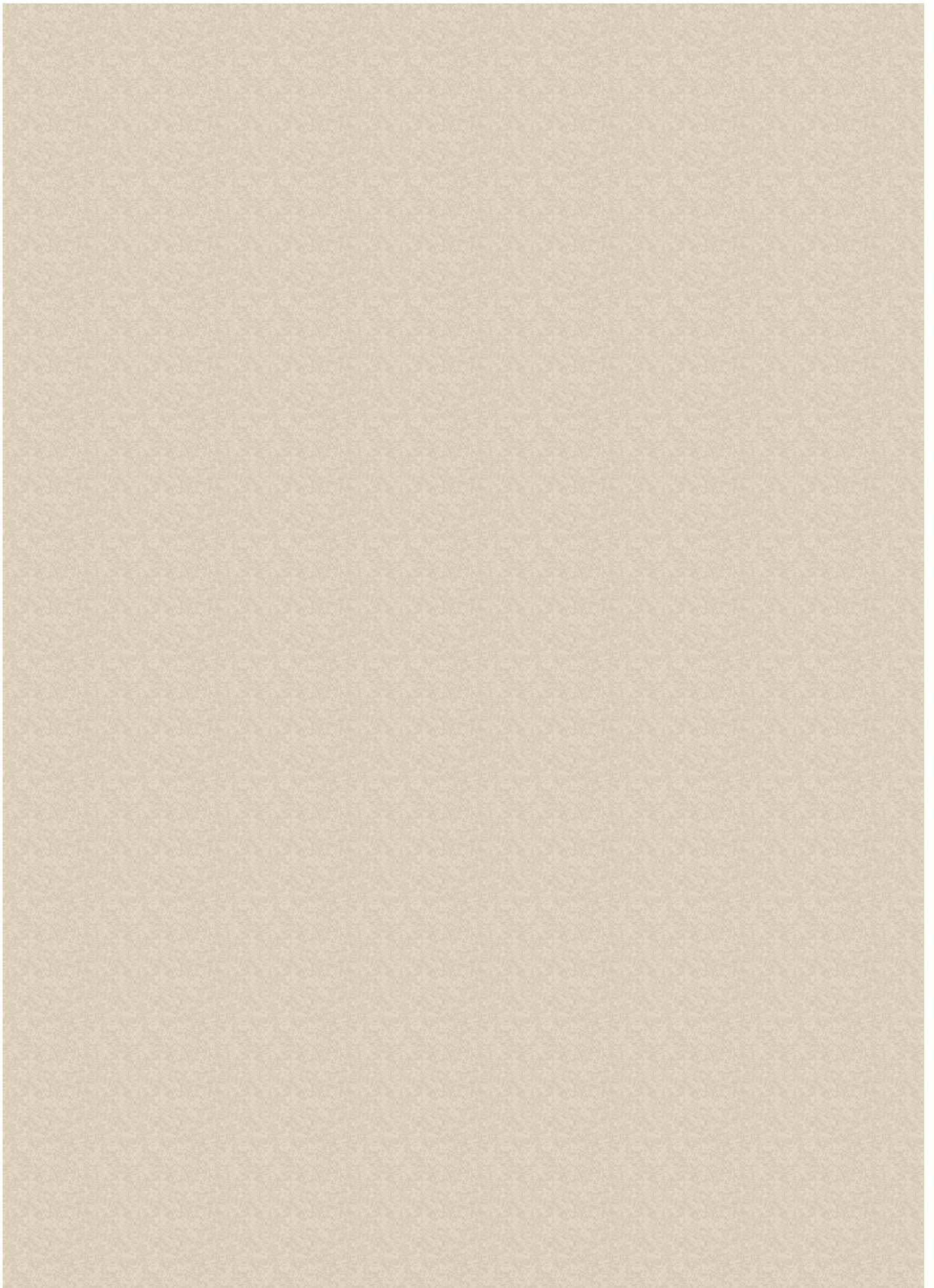
47. *Mo.*—*State ex rel. McClung v. Becker*, 233 S.W. 54, 288 Mo. 607.

N.M.—*State v. Ingalls*, 135 P. 1177, 18 N.M. 211.

Ohio.—*State ex rel. Walls v. Wallace*, 35 N.E.2d 167, 138 Ohio St. 410.

Must be used for highway purposes

Statute imposing additional motor vehicle registration fees to provide additional funds for aid of needy and destitute held unconstitutional as imposing tax for county purposes.



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cannot be objected to on the ground that it is imposed without regard to the value of the property involved.⁴⁸

§ 466.7 Combination of Police and Taxing Powers in Same Statute

Library References:

C.J.S. Motor Vehicles § 146 et seq.
West's Key No. Digests, Automobiles ⇨132.

A motor vehicle law will sometimes provide for the exaction of fees for licenses, both as a regulatory measure and a source of revenue⁴⁹ and that the statute has a two-fold purpose does not render it invalid, provided it operates uniformly throughout the state.⁵⁰

§ 466.8 Weight or Value as Basis of Tax

A tax on the use of the highways by a motor vehicle is an excise tax, not a property tax, whether it is based to the value of the automobile,⁵¹ or upon its weight.⁵² Subject to certain exemp-

Walker v. Bedford, 26 P.2d 1051, 93 Colo. 400, followed Consolidated Motor Freight v. Bedford, 26 P.2d 1066, 93 Colo. 440.

48. N.J.—Kane v. Titus, 80 A. 453, 81 N.J.L. 594, L.R.A.1917B, 553, AnnCas.1912D, 237, affirming Kane v. State of New Jersey, 37 S.Ct. 30, 242 U.S. 160, 61 L.Ed. 222.

49. Conn.—Dempsey v. Tynan, 120 A.2d 700, 143 Conn. 202 (identification and revenue).

Fla.—Miami Transit Co. v. McLin, 133 So. 99, 101 Fla. 1233.

Ill.—City of Chicago v. Willett Co., 115 N.E.2d 785, 1 Ill.2d 311 (license, tax and regulate carters).

Ind.—Kelly v. Finney, 194 N.E. 157, 207 Ind. 557.

Or.—State v. Preston, 206 P. 304, 103 Or. 631, 23 A.L.R. 414.

50. Mich.—Jasnowski v. Board of Assessors of City of Detroit, 157 N.W. 891, 191 Mich. 287.

Nev.—Ex parte Iratacable, 30 P.2d 284, 55 Nev. 263 (primarily a reve-

nue measure but secondarily a police measure).

Or.—State v. Preston, 206 P. 304, 103 Or. 631, 23 A.L.R. 414.

Utah.—Bleon v. Emery, 209 P. 627, 60 Utah 582.

51. Cal.—Consolidated Rock Products Co. v. Carter, 129 P.2d 455, 54 Cal.App.2d 519; Ingels v. Riley, 53 P.2d 939, 5 Cal.2d 154, 103 A.L.R. 1.

52. U.S.—Brashear Freight Lines v. Hughes, D.C.Ill., 26 F.Supp. 908.

Ala.—State v. H. M. Hobbie Grocery Co., 142 So. 46, 225 Ala. 151.

Hawaii.—Kitagawa v. Shipman, 31 Haw. 726, affirmed Kitagawa v. Shipman, C.C.A.Hawaii, 54 F.2d 313, certiorari denied 52 S.Ct. 496, 286 U.S. 543, 76 L.Ed. 1281, and Mana Transp. Co. v. Shipman, 52 S.Ct. 496, 286 U.S. 543, 76 L.Ed. 1281 (purpose of tax is to regulate under police power as well as to compensate for damage to highways).

Ill.—People ex rel. Auburn Coal & Material Co. v. Hughes, 192 N.E. 551, 357 Ill. 524.

CONTINUE TO "LIABILITY FOR FEE AS DEPENDANT ON USE OF AUTOMOBILE
ON ROAD"



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