

To start, the presumed right to travel is firmly established in U.S. law and precedent. I misstated when I said such language is in the Oregon Constitution. In fact, it's a matter of Common Law, and ebeb codified in ORS 801.305:

(1) "Highway" means every public way, road, street, thoroughfare and place, including bridges, viaducts and other structures within the boundaries of this state, open, used or intended for use of the general public for vehicles or vehicular traffic **as a matter of right.**

In *U.S. v Guest*, 383 U.S. 745 (1966), the Supreme Court noted, "It is a right that has been firmly established and repeatedly recognized." In fact, in *Shapiro v Thompson*, 394 U.S. 618 (1969), Justice Stewart noted in a concurring opinion that "it is a right broadly assertable against private interference as well as governmental action. Like the right of association ... it is a virtually unconditional personal right, guaranteed by the Constitution to us all."

The [Articles of Confederation](#) had an explicit right to travel; perhaps the right is so fundamental that the Framers thought it unnecessary to include it in the Constitution or the Bill of Rights.

The Oregon Supreme Court, as well, ruled (see generally *Kalich v. Knapp*, 73 Or. 558) "the legislature has no power to regulate the people or their automobiles."

This knowledge used to be taught in law school:

"Personal liberty largely consists of the Right of locomotion -- to go where and when one pleases -- only so far restrained as the Rights of others may make it necessary for the welfare of all other citizens. The Right of the Citizen to travel upon the public highways and to transport his property thereon, by horsedrawn carriage, wagon, or automobile, is not a mere privilege which may be permitted or prohibited at will, but the common Right which he has under his Right to life, liberty, and the pursuit of happiness. Under this Constitutional guarantee one may, therefore, under normal conditions, travel at his inclination along the public highways or in public places, and while conducting himself in an orderly and decent manner, neither interfering with nor disturbing another's Rights, he will be protected, not only in his person, but in his safe conduct." [emphasis added] II Am.Jur. (1st) Constitutional Law, Sect.329, p.1135."

A state's Department of Motor Vehicles, whether Oregon 's or another's, regulates "motor vehicles," not automobiles, and as with any other

circumstance, words have meaning. Title 18 USC 31 (federal law) states (<http://codes.lp.findlaw.com/uscode/18/1/2/31>):

(6) Motor vehicle. - 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.

(10) Used for commercial purposes. - The term "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.

According to ORS 807.080, there are three classes of driver licenses in the state of Oregon . Note are all for “commercial drivers”.

- (a) A Class A commercial driver license.
- (b) A Class B commercial driver license.
- (c) A Class C commercial driver license.

There is no language anywhere in Title 59 Business Regulations (Part 2) that creates a “driver license” in order to travel to a destination to perform a service. In fact, DMV’s own form 735-32, Traffic Accident and Insurance Report (Section 3 - <http://www.odot.state.or.us/forms/dmv/32.pdf>), specifically excludes “driving to a destination to perform a service” from the definition of “driving.”

And the “operator” of a “motor vehicle” is “the person who is licensed to have the car on the streets in the business of carrying passengers for hire; while the 'driver' is the one who actually drives the car. However, in the actual prosecution of business, it was possible for the same person to be both 'operator' and 'driver.'" *Newbill vs. Union Indemnity Co.*, 60 SE.2d 658.

Neither does “motor vehicle” refer to recreational vehicles. Note in ORS 801.208, “the term “commercial motor vehicle” does not include the following:

(a) An emergency fire vehicle being operated by firefighters as defined in ORS 652.050;

(b) Emergency vehicles being operated by qualified emergency service volunteers as defined in ORS 401.358;

(c) A motor home used to transport or house, for nonbusiness purposes, the operator or the operator’s family members or personal possessions; or

(d) A recreational vehicle that is operated solely for personal use. [1989 c.636 §2; 1991 c.185 §1; 1991 c.676 §1; 1999 c.359 §1; 2007 c.387 §1; 2009 c.395 §3; 2009 c.718 §27]

We once understood the difference between traveling, as a matter of right, and driving for hire. Bovier’s Law Dictionary distinguished between a “traveler” and a “driver.”

"Traveler - One who passes from place to place, whether for pleasure, instruction, business, or health." *Locket vs. State*, 47 Ala. 45; *Bovier's Law Dictionary*, 1914 ed., p. 3309.

"Driver - One employed in conducting a coach, carriage, wagon, or other vehicle..." *Bovier's Law Dictionary*, 1914 ed., p. 940.

There is also a difference, legally, between the terms “traffic” and “travel.”

"Traffic - Commerce, trade, sale or exchange of merchandise, bills, money, or the like. The passing of goods and commodities from one person to another for an equivalent in goods or money..." *Bovier's Law Dictionary*, 1914 ed., p. 3307.

<http://usff.com/iepsc/dlbrieff1.html>

Furthermore, the word "traffic" and "travel" must have different meanings which the courts recognize. The difference is recognized in *Ex Parte Dickey*, supra:

"..in addition to this, cabs, hackney coaches, omnibuses, taxicabs, and hacks, when unnecessarily numerous, interfere with the ordinary traffic and travel and obstruct them."

The court, by using both terms, signified its recognition of a distinction between the two. But, what was the distinction? We have already defined both terms, but to clear up any doubt:

"The word 'traffic' is manifestly used here in secondary sense, and has reference to the business of transportation rather than to its primary meaning of interchange of commodities." *Allen vs. City of Bellingham*, 163 P. 18.

Here the Supreme Court of the State of Washington has defined the word "traffic" (in either its primary or secondary sense) in reference to business, and not to mere travel! So it is clear that the term "traffic" is business related and therefore, it is a "privilege."

Here are some other case citations:

<http://www.apfn.org/apfn/travel.htm>

CASE #1: "The use of the highway for the purpose of travel and transportation is not a mere privilege, but a common fundamental right of which the public and individuals cannot rightfully be deprived." *Chicago Motor Coach v. Chicago*, 169 NE 221.

CASE #2: "The right of the citizen to travel upon the public highways and to transport his property thereon, either by carriage or by automobile, is not a mere privilege which a city may prohibit or permit at will, but a

common law right which he has under the right to life, liberty, and the pursuit of happiness." *Thompson v. Smith*, 154 SE 579.

It could not be stated more directly or conclusively that citizens of the states have a common law right to travel, without approval or restriction (license), and that this right is protected under the U.S Constitution.

CASE #3: "The right to travel is a part of the liberty of which the citizen cannot be deprived without due process of law under the Fifth Amendment." *Kent v. Dulles*, 357 US 116, 125.

CASE #4: "The right to travel is a well-established common right that does not owe its existence to the federal government. It is recognized by the courts as a natural right." *Schactman v. Dulles* 96 App DC 287, 225 F2d 938, at 941.

ORS 153.039 is the controlling statute for police officers who make "traffic stops" of vehicles covered by Title 59 Business Regulations (Part 2). (These statutes are "business regulations" because they regulate the professionals who haul for hire and are not applicable to the general public. And the term "driver" is a commercial term, properly applied to those who "operate" trucks, buses and taxi cabs.....and anyone who wittingly or not is licensed to engage in that business. - Kathy) It states in part....

153.039 Stop and detention for violation. (1) An enforcement officer may not arrest,

stop or detain a person for the commission of a violation except to the extent provided in this

section and ORS 810.410.

(2) An enforcement officer may stop and detain any person if the officer has reasonable

grounds to believe that the person has committed a violation. An enforcement officer may

stop and detain any employee, agent or representative of a firm, corporation or other

organization if the officer has reasonable grounds to believe that the firm, corporation or

other organization has committed a violation. "

(3) Except as provided in subsection (4) of this section, the period of detention may be

only as long as is necessary to:

(a) Establish the identity of the person, firm, corporation or organization believed to have

committed the violation;

(b) Conduct any investigation reasonably related to the violation; and

(c) Issue a citation for the violation.

(4) The authority of an enforcement officer to stop and detain a person for a traffic

violation as defined by ORS 801.557 is governed by ORS 810.410. [1999 c. 1051 Subsection 10]

And, yes, under Oregon law, the only "person" identified as liable for administrative stops is an "employee" of one of the entities defined in Title 59 Business Regulations (Part 2).

Now, ORS 810.410, in (4) above, is controlling at traffic stops. This statute makes clear an officer can only stop for a "crime" which is directly in line with the U.S. Supreme Court's holding that an officer must have

"probably cause or at least a reasonable articulable suspicion that a crime is or is about to take place" prior to stopping a member of the traveling public. See *Delaware v. Prouse*, 440 U.S. 648, 654(1979) and cases cited. The 9th Circuit Court of Appeals (with jurisdiction over Oregon) and the U. S. Supreme Court have stated it this way:

"The question is whether the stop was legally permissible under the facts of this case. The Supreme Court articulated the level of cause necessary to justify an investigatory stop in *United States v. Cortez*, 449

U.S. 411, 417, 101 S. Ct. 690, 694, 66 L. Ed.2d 621(1981): "An investigatory stop must be justified by some objective manifestation that the person stopped is, or is about to be, engaged in criminal activity The Ninth Circuit has termed the requisite level of cause a "reasonable" or "founded" suspicion of criminal activity. *United Statesw v. Greene*, 783 F.ed 1364, 1367 (9th Cir.), *cert. denied*, 476 U.S. 1185, 106 S.Ct. 2923, 91 L.Ed.2d 551(1986)"

A "traffic violation" is not a "crime."

And further - "Personal liberty -- consists of the power of locomotion, of changing situations, of removing one's person to whatever place one's inclination may direct, without imprisonment or restraint unless by due process of law." 1 Blackstone's Commentary 134; Hare, *Constitution* __.777; Bovier's Law Dictionary, 1914 ed., Black's Law Dictionary, 5th ed. Remember, if it's a right it cannot be abridged, or it becomes a privilege.

"...Based upon the fundamental ground that the sovereign state has the plenary control of the streets and highways in the exercise of its police power (see police power, *infra*.), may absolutely prohibit the use of the streets as a place for the prosecution of a private business for gain. They all recognize 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." *Hadfield vs. Lundin*, 98 Wash 657l, 168, p.516.

"The use of the highways for the purpose of travel and transportation is not a mere privilege, but a common and fundamental Right of which the public and the individual cannot be rightfully deprived." [emphasis added] *Chicago Motor Coach vs. Chicago*, 169 NE 22; *Ligare vs. Chicago*, 28 NE 934; *Boon vs. Clark*, 214 SSW 607; 25 Am.Jur. (1st) Highways Sect.163.