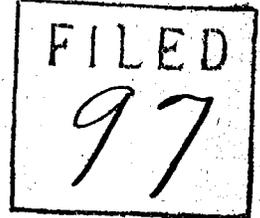


MOTOR VEHICLES: Minimum age of taxi drivers as fixed by state law is eighteen. One who is engaged as a motor carrier or contract hauler is not operating a taxi under the definition as set out in subsection (d), Section 5720, Laws of 1941.

April 17, 1947



Honorable Hugh P. Williamson
Prosecuting Attorney
Callaway County
Fulton, Missouri

Dear Sir:

This is in reply to your letter of March 28, 1947, in which you request an opinion on the question of the minimum age requirement for persons who operate taxicabs. Said letter in part reads as follows:

"I would like to have the opinion of your department upon the following fact situation:

"A boy named George Baumgartner lives in Kingdom City, Missouri, an unincorporated village containing perhaps 25 residents, located at the junction of Highways 40 and 54 in Callaway County. This boy is 19 years of age and operates a taxicab in which he conveys paying passengers from Kingdom City to Fulton, Mexico and Columbia. The City of Fulton and the city of Columbia both have ordinances which provide that the operator of a taxicab must be not less than 21 years of age. I would like to know whether this boy can lawfully continue to operate as he is now operating without violating a state law regarding the age of taxi operators or the ordinance of the city of Fulton which provides that a taxi driver must be not less than 21 years of age.

"I call your attention to Section 8447 of the Missouri Statutes which states that no person under 21 shall drive a motor vehicle while in use as a public or common carrier of persons or property. I am informed, however, by one of our State Troopers that this section has been modified by Senate Bill No. 40 and that by virtue of such modification, a person who is 18 years of age can drive a taxicab. I am

also informed by this Trooper that a letter from your office dated February 26, 1947, to Colonel Hugh Wagoner states that such is the case.

"I would like to be fully advised about this matter as quickly as possible."

Section 8447, R.S. Mo. 1939, reads as follows:

"No person who is under the age of twenty-one (21) years shall drive any motor vehicle while in use as a school bus for the transportation of pupils to or from school, nor any motor vehicle while in use as a public or common carrier of persons or property, nor in either event until he has been licensed as a chauffeur or as a registered operator."

It is to be noted that Senate Bill No. 40, passed by the 63rd General Assembly, repealed Section 5730, R.S. Mo. 1939, as amended by Laws of 1941, and enacted in lieu thereof Section 5730, which reads in part as follows:

"Section 5730. The commission, in the exercise of the authority by this act vested in it, to license, supervise and regulate all motor carriers or contract haulers shall promulgate and mail or deliver to each holder of a certificate of convenience and necessity, interstate permit or contract hauler's permit hereunder, such safety rules and regulations as it may deem necessary to govern and control the operation of motor carriers or contract haulers over and along the public highways of this state, and the equipment to be used. Any such safety rules promulgated, in addition to any others deemed necessary by the commission, shall include the following:

"(a) Every motor vehicle and all parts thereof shall be maintained in a safe and sanitary condition at all times.

"(b) Every driver employed by motor carriers or contract haulers shall be at least eighteen years of age, of good moral character, and shall be fully competent to operate the motor vehicle under his charge."

From a reading of the two above quoted sections it can readily be seen that Section 8447, supra, and Section 5730, Senate Bill No. 40, are in conflict as regards the minimum age requirement for a driver of a motor carrier. An opinion rendered by this office under date of July 16, 1946, to Mr. Hinkle Statler, said that these two statutes, as they affect common carriers, are totally inconsistent. The opinion held that it was the intention of the Legislature to change the minimum age requirement as it affected drivers of common carriers from twenty-one to eighteen, and said opinion continued on page 7: "If their attempt is to be of any effect it will be necessary to construe Section 5730, Laws of Missouri, 1945, (Senate Bill No. 40) as repealing, or being an exception to, Section 8447, supra, at least in part." Said opinion then concluded: "Therefore, it is the opinion of this department that the minimum age of drivers of public or common carriers is, eighteen years, with the exception of drivers of school busses, who must be at least twenty-one years of age."

Section 8372, Laws of 1943, page 668, provides for the registration of chauffeurs, and at subsection (c) says:

"(c) The Commissioner shall also furnish to such applicant, without further charge, a suitable metal badge of such size as the commissioner may determine, which shall bear thereon the words 'Registered chauffeur number, Missouri motor vehicle law' (with the registry number inserted thereon) and said badge shall be thereafter worn by such chauffeur upon his clothing in a conspicuous place at all times when he is operating a motor vehicle on the highways. No certificate of registration as chauffeur shall be issued to any person under the age of eighteen years, except as herein provided below."

Subsections (d) and (e) of said Section 8372 provides for certain exceptions where a special chauffeur's certificate may be issued to persons 16 and 17 years of age. Subsection (f) provides that

subsections (d) and (e) shall expire June 1, 1945. Therefore, we see that this act as of today now provides that no certificate of registration as chauffeur shall be issued to any person under the age of eighteen years. Section 8367, R.S. Mo. 1939, defines "chauffeur," as used in the above quoted sections, as "* * * An operator (a) who operates a motor vehicle in the transportation of persons or property, and who receives compensation for such service in wages, salary, commission or fare, or (b) who as owner or employee operates a motor vehicle carrying passengers or property for hire. * * *"

We feel that the sections above quoted defining "chauffeur" and setting the age limit for the certification of such at eighteen is the state law as to the minimum age requirement of the driver of a taxicab. As was stated by the Court of Appeal of Louisiana in Day v. Bush, 139 So. 42, l.c. 44:

"The Legislature, by paragraph (x), section 2, Act No. 296 of 1928, has defined clearly who are chauffeurs within the meaning of that statute; it being as follows: 'Chauffeurs or Operators.' Any person who operates a motor vehicle in the transportation of persons or property and who receives any compensation for such services in wages, commissions or otherwise, paid directly or indirectly or who as owner or employee operates a motor vehicle carrying passengers or property for hire.'

"Of course, it is well known the Legislature had in mind, in adopting this definition, that class of operators who drive jitneys in the cities and towns for hire, and did not have in view the other class of chauffeurs who drive the cars of private persons for a salary or other compensation, and it was to this latter class of chauffeurs that Act No. 86 of 1928 relates.

* * * * *

"We have not found that our own courts have had occasion to construe or define the word 'chauffeur' as employed in the 1928 act.

The following quotation from Com. v. Cooper, 37 Pa. Co. Ct. R. 277, 282, 285, cited in footnote, 11 C. J. 747, is apropos of the question, to wit: 'The accepted meaning of the word "Chauffeur" in every state where the term is used in a motor vehicle statute is a paid operator or employee, and includes in it the idea of compensation for the operation of the vehicle. * * * * *

Section 5721, R.S. Mo. 1939, was repealed by House Bill No. 137 of the 63rd General Assembly, and a new section was enacted in lieu thereof, to be known as Section 5721, and which provides as follows:

"The provisions of this article shall not apply to any motor vehicle of a carrying capacity of not to exceed five persons, or one ton of freight, when operated under contract with the federal government for carrying the United States mail and when on the trip provided in said contract; nor to any motor vehicle owned, controlled or operated as a school bus; nor taxicab, as herein defined; nor to motor vehicles used in transporting farm machinery, produce, supplies, household goods, or other articles or commodities from farm to farm; nor to motor vehicles used exclusively in transporting farm and dairy products from the farm or dairy to a creamery, warehouse, or other original storage or market, and transporting stocker and feeder livestock from market to farm or from farm to farm nor to motor vehicles used exclusively in the distribution of newspapers from the publisher to subscribers or distributors. No provision of this article shall be so construed as to deprive any county or municipality within this state of the right of police control over the use of its public highways, or the state highway commission of the right of police control over the use of state highways. This article shall not apply to trucks used in work for the state or any civil subdivision thereof."

The above article referred to is Article 8 of Chapter 35, R.S. Mo. 1939, which deals with the powers of the Public Service Commission on transportation of persons by motor vehicle. The definition of "taxicab" as found in subsection (d), Section 5720, Laws of 1941, page 523, is:

"The term 'taxicab,' when used in this article, shall mean every motor vehicle designated and/or constructed to accommodate and transport passengers, not more than five in number, exclusive of the driver, and fitted with taximeters and/or using or having some other device, method or system, to indicate and determine the passenger fare charged for distance traveled, and the principal operations of which taxicabs are confined to the area within the corporate limits of cities of the state and suburban territory as herein defined."

Section 5720 (f), Laws of 1941, page 524, says:

"The term 'suburban territory,' when used in this article, means that territory extending one mile beyond the corporate limits of any municipality in this state and one mile additional for each 50,000 population or portion thereof: Provided, that when more than one municipality is contained within (within) the limits of any such territory so described, motor carriers operating in and out of any such municipalities within said territory shall be permitted to operate anywhere within the limits of the larger territory so described."

We are lead to the conclusion then that the vehicle to which you refer in your case is not a taxicab within the meaning as used in this article, and thus does not come within the exception of Section 5721. Therefore, this vehicle must come within either the term "motor carrier," as defined in subsection (b), or the term "contract hauler," as defined in subsection (c), Section 5720, Laws of 1941, page 523. In either event, whether classified as a motor carrier or a contract hauler, said vehicle would come within the regulations of the Public Service Commission, either by Section 5723, R.S. Mo. 1939, where it is stated that the Public Service Commission is vested with the power and authority to

license, supervise and regulate every motor carrier in this state to fix or approve the rates, fares, charges, classifications and rules and regulations pertaining thereto; or by Section 5727, R.S. Mo. 1939, where it is stated that it is unlawful for any contract hauler, except as provided in Section 5721, to operate or furnish transportation of persons or property, or both, for hire over the highways of this state without first having obtained from the commission a contract hauler's permit.

CONCLUSION

It is, therefore, the opinion of this department that the minimum age of taxicab drivers as provided in subsection (c), Section 8372, Laws of 1943, page 668, is eighteen years of age. The boy in question as presented by your case is not operating a taxi under the definition as set out in subsection (d), Section 5720, Laws of 1941, page 522, but instead is operating either a motor carrier or contract hauler, depending on the circumstances of the case, and as such, in either event, is subject to the rules and regulations of the Public Service Commission. As provided in subsection (b), Section 5730, Senate Bill No. 40, "Every driver employed by motor carriers or contract haulers shall be at least eighteen years of age, of good moral character, and shall be fully competent to operate the motor vehicle under his charge."

Respectfully submitted,

Wm. C. COCKRILL
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

WCC:LR