

MOTOR VEHICLES:

Who required to register as reig
registered operators.

March 9, 1933

FILED

Miss Agnes Mae Wilson
Prosecuting Attorney
Trenton, Missouri

Dear Miss Wilson:

We acknowledge receipt of your letter dated
March 4, 1933, in which you state in part and inquire as follows:

"I am writing you for some assistance in another matter. I should like to have your opinion as to what is meant by the word 'regularly', as employed in the definition of Registered Operator in Sec. 7759 R. S. Mo. 1929, as follows: "Registered Operator."

"An operator, other than a chauffeur, who regularly operates a motor vehicle of another person in the course of, or as an incident to his employment, but whose principal occupation is not the operation of such motor vehicle".

"Should a farm laborer who operates a motor truck of another person, his employer, as a part of his employment, but as a small part of his employment, be required to obtain a Registered Operator's license? In this instance, the laborer operates a truck for hauling purposes about the farm and to and from market. The truck is operated at irregular intervals, part of the time every week or two; at other times remaining in the garage for as long as a month."

You have correctly set out in the letter above quoted, the definition of a "Registered Operator", as found in Section 7759 Revised Statutes Missouri 1929.

We think the words "in the course of" and "as an incident to" are used interchangeably and to be treated as substantially synonymous phrases.

We find the word "Incidental" or the phrase "as an incident to" as applied to services rendered in connection with certain employment and as the same is used in Section 7759 to be defined in the case of *The Robin Goodfellow*, 20 Fed. (2nd) 924,925, as follows:

"Incidental", obviously, means depending upon or appertaining to something else as primary. "Burrill's Law Dictionary defines 'incident' as 'belonging or appertaining to; following; depending upon another thing as more worthy.' * * * A thing may be necessarily or inseparably incident to another, or usually so'. Webster defines it thus: 'Something necessarily appertaining to or depending on another, which is termed the principal'. *Thomas v. Harmon*, 46 Hun. (N. Y.) 75,77". 4 Words and Phrases, First Series, p. 3494.

Lord Dunevin, in *Trustee of Harbor of Dundee v. Nicol*, (1915) H. L. A. C. 550, said: "Incidental, in my view, means incident to the main purpose of the main business".

Section 7766 Revised Statutes 1929, makes provision for the registration of registered operators requiring that the person desiring to be so registered should file in the office of the Commissioner of Motor Vehicles of the state a statement containing his name, age and address and the trade name and motive power of the motor vehicle he is competent to operate and which statement should be endorsed by two citizens of this state who are registered motor vehicle owners and who shall certify to the correctness of the facts stated in such application and the good character of the applicant. Whereupon, upon the payment of the fee of \$3.00 the applicant shall be granted a certificate of registration and assigned a number as a registered operator.

Subdivision F of Section 7783, Revised Statutes 1929, requires every person operating or driving a motor vehicle on the highways of this state, knowing that an injury has been caused to a person or damage to property, due to the culpability of said operator or driver or due to accident, shall not leave the place of said injury, damage or accident without stopping, giving his name, residence, motor vehicle number and chauffeur's or registered operator's number, if any, to the injured party or other persons specified.

Section 7783, Subdivision A, requires registered operators to at all times carry subject to inspection the registration certificate furnished by the Commissioner.

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We have no way of knowing what was in the minds of the legislators with reference to what persons the defined words "registered operator" was intended to apply, except as we may ascertain that intention from what the legislature said by way of definition. We are unable to find any construction or interpretation of the term "registered operator" by any court or in any text book.

We assume that the legislators had in mind that in addition to the protection afforded by "licensing chauffeurs" who could only be licensed when they possessed the requisite qualifications that it further intended to throw about the traveling public some additional protection by requiring other persons not the owner of cars and while operating a car on the public highways of the state, but only as an incident to the main business of the employer, to likewise register, not only for identification purposes but so that only those persons who possessed the qualifications described in Section 7766 and who could obtain the endorsements therein required would operate motor vehicles on the public highway.

The word regularly, as used in Section 7759 with reference to registered operators, means in accordance with some consistent or periodical rule or practice.

Green v. Benedict, 128 A. 20, 21; 102 Conn. 1.

We therefore are of the opinion that, on your statement, the person referred to in your letter, is engaged in regularly operating the motor vehicle of his employer and that such operation is in the course of and as an incident to his employment, as those terms are above defined and is required to register as an operator of motor vehicles under said Section 7766.

Very truly yours,

GILBERT LAMB
Assistant Attorney General

APPROVED:

Attorney General.

GL:LC