

MOTOR VEHICLES:

Definition of "registered operators" applied to facts in case of registered dealer employing irregular employe for purpose of driving cars.

2-27

February 26, 1936.



Colonel B. M. Casteel  
Superintendent  
Missouri State Highway Patrol  
Jefferson City, Missouri

Dear Colonel Casteel:

This is to acknowledge your letter dated February 21, 1936, wherein you enclosed a copy of a letter from Captain Lewis B. Howard and request our opinion on the question therein contained. Captain Howard's letter reads in part as follows:

"A registered dealer in motor vehicles, located in Springfield, takes several men, not regularly employed by him, but under the supervision of a salesman, or other regular employee of the dealer, to St. Louis to drive new or used automobiles back to the dealer's place of business.

"These irregular employees receive no compensation for the trip other than their meals, en route, and do not make regular trips.

"In the opinion of the Attorney General, will it be necessary that drivers, as described, register either as Registered Operators or Chauffeurs, as defined in the Motor Vehicle Law."

On December 27, 1933, this Department rendered an opinion to you wherein we said:

"The Legislature seems to have had in mind laying out a scheme of legislation intending

to throw about the traveling public all possible protection under all circumstances and to not only keep a check on these authorized to drive automobiles but to see that those who did drive motor vehicles had some sort of qualification for such service and this would apply, as to those required to be registered operators, whether driving a car in the course of his employment or merely as an incident to such employment."

Section 7765, R. S. Mo. 1929, requires chauffeurs to be registered, and Section 7766, R. S. Mo. 1929, requires operators to be registered. Section 7759, R. S. Mo. 1929, defines "Chauffeur" as follows:

"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 employe operates a motor vehicle carrying passengers or property for hire."

"Registered operators" are also defined by Section 7759, supra, as follows:

"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 operating of such motor vehicle."

From the definition given of "chauffeur" it will be seen that the persons driving the motor vehicles in the manner you state, would not be chauffeurs. There is likewise doubt as to whether or not said persons are registered operators.

Whether or not a person is a registered operator within the meaning of the definition of the word depends upon the facts. Captain Howard's letter states that the persons who drive the motor vehicles are not regularly employed, but when driving the automobiles from St. Louis to the dealer's place of business such persons are employes for that purpose. No compensation is paid for the services thus rendered by said persons. Applying the definition then of "registered operators," it will be seen that said persons regularly drive motor vehicles as an incident to their employment but the principal occupation of said persons is not the driving of said automobiles. As we gather from the facts stated, said persons are employes of the dealer and whenever new or used automobiles are to be driven that these same persons perform that work. We are cognizant of the fact that the definition of "registered operators" uses the words "who regularly operates a motor vehicle of another person," and we believe the Legislature intended the word "regularly" to be given the same definition as was given to the word "regularly" in *Palle v. Industrial Commission (Utah)*, 7 Pac. (2d) 284, 289. We quote from *Words & Phrases*, 4th Series, page 347, as follows:

"Term 'regularly employed' within the Workmens Compensation Act, does not mean continuously or occasionally, but connotes usually and systematically employed."

Thus, if said persons are usually and systematically chosen to drive used cars to the dealer from the City of St. Louis, said persons would, in our opinion, be within the definition of the words "registered operators." Whether a person is a registered operator within the definition of the term is a question of fact, and from the facts stated in your letter it is our opinion that said persons would be registered operators within the definition, as defined by Section 7759, supra.

Yours very truly,

James L. HornBostel  
Assistant Attorney-General

APPROVED:

JOHN W. HOFFMAN, Jr.,  
(Acting) Attorney-General

JLH:EG