

MOTOR VEHICLES: What constitutes "public" or "common carrier" within the meaning of Section 5, Laws of 1937, page 372. Taxi, taxicab.

December 16, 1937



Hon. V.H. Steward, Commissioner
Motor Vehicle Department
Jefferson City, Missouri

Dear Sir:

This department is in receipt of your opinion request of December 8, 1937, which is as follows:

"On October 6, 1937, you furnished us at our request, an opinion submitted by your Mr. Medling, regarding the issuance of Chauffeur's license and especially with reference to the age limit of Chauffeurs who operate school busses and/or motor vehicles used as a public or common carrier - Section 7765 R.S. 1929 - Driver's license law page 370 of 1937 laws.

"We now find that we are in need of further information in this connection as follows:

"The full meaning or definition of a Common or Public Carrier as applied to this matter and whether or not this age limit applies to Chauffeurs who drive or operate a taxi or taxi cab."

Section 5 of the Laws of 1937, page 372, is 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."

Section 1, Laws of 1937, page 371, defines "chauffeur" and "registered operator" as follows:

"'Chauffeur'. 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 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 operating of such motor vehicle."

Section 5 of this act repeals the provisions of Sections 7765 and 7766, R.S. Missouri 1929, insofar as these sections fix the age which a person must be to obtain a chauffeur's or registered operator's license when that person desires the license to operate a public or common carrier. This act substitutes in lieu of the age 18, the age 21. It is so ruled in the opinion of this department, mentioned in your request, to Hon. Dwight H. Brown, on October 6, 1937.

With these preliminaries disposed of, we now proceed to determine what is included within the provision in Section 5, supra, that no person under 21 years of age shall drive any motor vehicle while in use as a "public or common carrier of persons or property", nor in any event until he has obtained a license as a chauffeur or registered operator.

Whether or not a person is engaged in a business which constitutes that of a public or common carrier depends largely upon a question of fact which must be determined from the conditions and circumstances surrounding that person's operations. We shall set forth here the general rules to be followed in determining this fact, and all who fall within the rules enunciated must, of course, comply with the provisions of the Driver's License Law.

"Common carrier" is defined in Words and Phrases, Vol. 1, Fourth Series, page 455 and 456, as follows:

"'Common carrier' is one whose occupation is transportation of persons or things from place to place for hire and reward, and who holds himself out to world as ready and willing to serve public indifferently in particular line or department in which he is engaged. Independent Truck Co. v. Wright, 275 P. 726, 727, 151 Wash. 372."

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"'Common carrier' is one who undertakes, for hire, to transport from place to place the goods or persons of such as choose to employ him. Cummings v. Great American Casualty Co., 235 N.W. 617, 183 Minn. 112."

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"One who follows carrying for livelihood, or who gives out to world in any intelligible way that he will take goods, persons, or chattels for transportation or hire is 'common carrier,' even though he has no fixed schedule of charges, does not operate over definite route, does not always

load his vehicle to capacity, and refuses on occasion to accept freight or passengers whether vehicle is engaged or not. Stoner v. Underseth, 277 P. 437, 441, 85 Mont. 11."

"Public carrier" is defined in Words and Phrases, Vol. 6, Third Series, page 345, as follows:

"Whether carrier is a 'public carrier' must be determined by business actually carried on, and not by secret intention or mental reservation of owners or operators. Test of 'public carrier is' whether he holds himself out as being ready and willing for hire to carry particular classes of goods for all who may desire transportation between places between which he professes to carry.
* * * * * State v. Washington Tug & Barge Co., 250 P. 49, 50, 140 Wash. 613.

"A common carrier of passengers is one who undertakes for hire to carry all persons indifferently so long as there is room and there is no legal excuse for refusing. A 'public common carrier' is distinguished from private carriers by the franchises conferred upon it, and the obligations, restrictions, and liabilities with which it is charged, all flowing from considerations of public policy. It must carry all alike, for reasonable compensation, furnish reasonable accommodations, must continuously operate its line, and must submit to reasonable regulations. Under the definition thus given, steam railroads are common carriers of

passengers as to those accepted by them as such, as are street railways, steamboats, and steamships engaged in passenger traffic, and proprietors of ferries, stage coaches, and hackney coaches. *City of New Orleans v. Le Blanc*, 71 So. 248, 253, 139 La. 113."

"Public carrier" is also defined in *Words and Phrases*, Vol. 3, Fourth Series, page 252, as follows:

"Term 'public carrier' contemplates payment of compensation for transportation offered to the public. Organization operating ambulance gratuitously for members, although expecting contributions to ambulance fund, held 'public carrier'. *Leete v. Griswold Post No. 79*, *American Legion*, 158 A. 919, 923, 114 Conn. 400."

In 10 C.J., page 607, it is said that "a public carrier of passengers may be defined as 'one who undertakes for hire to carry all persons, indifferently, who may apply for passage' as long as there is room and there is no legal excuse for refusing."

In *State ex rel. v. Witthaus*, 102 S.W. 2nd 99 (Mo.), the Supreme Court passed upon and determined what were the essential features of a common carrier. The court said at l.c. 101, 102:

"The fundamental characteristic of a public calling is indiscriminate dealing with the general public. As Baron Alderson said in the leading case: 'Everybody who undertakes to carry for any one who asks him is a common carrier. The criterion is whether he carries for particular persons only, or whether he carries for every one. If a man holds himself out to do it for

every one who asks him, he is a common carrier; but if he does not do it for every one, but carries for you and me only, that is a matter of special contract.' This regular course of public service without respect of persons makes out a plain case of public profession by reason of the inevitable inference which the general public will put upon it. 'One transporting goods from place to place for hire, for such as see fit to employ him, whether usually or occasionally, whether as a principal or an incidental occupation, is a common carrier.'

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"We express a doctrine universally sanctioned when we say that anyone who holds himself out to the public as ready to undertake for hire or reward the transportation of goods from place to place, and so invites custom of the public, is in the estimation of the law a common carrier."

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"The essential feature of a public use is that it is not confined to privileged individuals, but is open to the indefinite public. It is this indefinite or unrestricted quality that gives it its public character."

The general understanding or conception of a definition of the words "taxi" or "taxicab" is that it is a vehicle for hire which will convey the public, upon request, from place to place. The actual manner in which the taxicab conducts its business and its operations, of course, determines whether or not it is acting in the capacity of a public or common carrier. Under the above definition as to what is generally referred to as a taxi or taxicab, it is clear that such a vehicle is a public or common carrier.

CONCLUSION

Therefore, it is the opinion of this department that an applicant for a chauffeur's or registered operator's license, when desired to authorize that person to operate a public or common carrier, in order to receive the same, must be twenty-one years of age. That only persons holding such license may operate vehicles used as public or common carriers.

The determination of the character of a carrier's operations, with reference to it being a private, public or common carrier, rests upon the business actually carried on, and must be determined from the facts and circumstances surrounding the actual conduct of said business in the final analysis. The controlling factor in determining this is the holding out to the public as being ready to undertake, for hire or reward, the transportation of person or property from place to place, and so inviting the trade of the public. This, we think, taxi or taxicab operators do, and so, are public or common carriers within the meaning of the law as laid down by the courts. A secret intention or mental reservation of the carrier as to its operations does not affect the character of its business when it otherwise falls within the rules we have set forth.

Respectfully submitted,

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APPROVED BY:

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