

MOTOR VEHICLES: It is an offense to operate motor vehicles as chauffeur without a chauffeur's license.

September 22, 1939

9-25

Honorable James P. Finnegan
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City of St. Louis
Municipal Courts Building
St. Louis, Missouri



Dear Sir:

This will acknowledge receipt of your letter of September 7, 1939, enclosing a form information, and asking our opinion on the following questions:

- (1) Is it an offense to operate a commercial vehicle or automobile without first having obtained a chauffeur's license?
- (2) Will a demurrer lie to the enclosed information?

We take your second question to mean, will a demurrer lie on the ground that the information states no offense known to the law, rather than asking our opinion on the phraseology there used, or necessary technical allegations. This understanding of said question makes one conclusion answer both.

Section 7759 R. S. Mo. 1929, defines "chauffeur" 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.'"

Said section defines "commercial motor vehicle" as:

"A motor vehicle designed or regularly used in carrying (a) freight or merchandise, or (b) more than eight passengers."

Section 7765 R. S. Mo. 1929, provides that every person desiring to operate a motor vehicle as a chauffeur shall make a certain application to the commissioner of motor vehicles and if found of good character and competent, the commissioner, upon payment of a fee, shall assign the applicant a number and issue to him a chauffeur's license.

Section 7786, R. S. Mo. 1929, after fixing penalties for certain offenses, none of which affect the instant question, provides:

"Any person who violates any of the other provisions of this article shall upon conviction thereof, be punished by a fine of not less than five dollars (\$5.00) or more than five hundred dollars (\$500.00) or by imprisonment in the county jail for a term not exceeding two years, or by both such fine and imprisonment."

We have carefully examined all parts of Article 1, Chapter 41, R. S. Mo. 1929, and find no express provision therein to the effect that "no person shall operate a commercial vehicle without first obtaining a chauffeur's license". The substance of the above sections is that a person desiring to operate a motor vehicle as a chauffeur shall make application for and obtain a license as such, but there is no provision expressly prohibiting the operation of a commercial vehicle unless the operator has a chauffeur's license. Neither is there any provision expressly stating the consequences if a person does operate a commercial vehicle without first obtaining a license as a chauffeur.

A rule which must be observed in reaching our conclu-

sion appears in State v. Huber 263 S. W. 1.c. 96 (Mo. Sup.) where it is said, "Criminal statutes are to be construed strictly; liberally in favor of the defendant, and strictly against the state, both as to the charge and the proof. No one is to be made subject to such statutes by implication. Where one class of persons is designated as subject to its penalties all others not mentioned are exonerated. (Cases cited). Such statutes are not to be 'extended or enlarged by judicial construction, so as to embrace offenses or persons not plainly (written) within their terms'. 'The reason of the rule is found in the tenderness of the law for individuals, and on the plain principle that the power of punishment is vested in the Legislature, and not in the judicial department.'" Further it appears, "this rule affords no warrant for a construction out of harmony with the manifest purpose and intent of the statute." (State v. Schwartzman Service 40 S. W. (2nd) 1.c. 480 Mo. App).

An offense or crime is "an act committed, or omitted, in violation of a public law either forbidding or commanding it." (16 C.J. Sec. 2, p. 50). In the instant case, we have a law commanding that a chauffeur's license be obtained if a person desires to operate a motor vehicle as a chauffeur and a law providing a penalty for violation of any provision of the act. It therefore seems the failure to obey the command to obtain a chauffeur's license is comprehended within the penalty for any violation of the act. While it is true there is no express provision prohibiting the operation of a motor vehicle as a chauffeur without a chauffeur's license, the penalty provided implies the prohibition. In Wood v. Krepps 143 P. 1.c. 692 (Cal.) it is stated:

"The general doctrine now well settled by the authorities is that when the object of the statute * * * in requiring a license for the privilege of carrying on a certain business is to prevent improper persons from engaging in that particular business or is for the purpose of regulating it for the protection of public morals, health or police, the imposition of the penalty amounts to a prohibition against doing the business without a license, * * * ."

Section 7765, supra, requires the commissioner to find the applicant for a chauffeur's license to be competent. Thus, one purpose of the license is to prevent improper persons from acting as chauffeurs. It has been repeatedly held that our laws regulating operation and use of motor vehicles on public highways are police regulations enacted by the state under its police powers for the safety of its citizens. (State ex rel v. Conn. 268 S. W. 87, 90 (Mo Sup); Platner v. Bourne 275 S. W. 590, 591 (Mo App); McGill v. City of St. Joseph 38 S. W. (2nd) 725, 729 (Mo App); State v. Swagerty 203 Mo. 517, 524). Thus, another purpose of the license is protection and safety for the public.

As reviewed in the foregoing paragraph, it is clear that the laws of this state come within the general doctrine expressed in the Wood case, supra, and that the terms of Section 7786, supra, impliedly prohibit the operation of a motor vehicle in this state as a chauffeur without first obtaining a chauffeur's license. While it is true this construction makes a criminal statute apply to one by implication, as pointed out above such rule will not serve to defeat the "manifest purpose and intent" of the legislature.

Whether the penalty attaches for failure to obey the command to obtain, or for operating the motor vehicle as a chauffeur without a license need not be determined. Under either construction it is an offense.

CONCLUSION

Therefore, it is our opinion that it is an offense against the laws of this state to operate a commercial motor vehicle as a chauffeur without first obtaining a chauffeur's license.

Respectfully submitted,

APPROVED:

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