

MISSOURI STATE HIGHWAY
PATROL:



(1) Necessity of employees of the State of Missouri and of members of Patrol complying with motor vehicle drivers' regulations; and (2) applicability of Motor Vehicle Safety Responsibility Act to employees of the State of Missouri and to members of Patrol.

September 26, 1946

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Colonel Hugh H. Waggoner
Superintendent
Missouri State Highway Patrol
Jefferson City, Missouri

Dear Sir:

Reference is made to your letter of recent date requesting an official opinion of this office, and reading as follows:

"The Legislature recently passed House Bill No. 317, which is known as the 'Motor Vehicle Safety Responsibility Act.' We are in doubt as to the intent of the Legislature concerning the status of persons operating state-owned vehicles in performance of their duties, and of course, we are particularly interested in the status of members of the Patrol when operating patrol cars.

"We also would like to know what license, driver's, or registered operator's, if any, an employee of the State of Missouri must have, to legally operate a state-owned motor vehicle. Again we are particularly interested in what license our patrolmen need to operate a patrol car in performance of their duty.

"We ask that you inform us of your opinion on these questions as soon as you possibly can, as the law becomes effective October 6, 1946."

For reasons which will appear subsequently in this opinion, we have answered your question in inverse order, and have subdivided each question into its components.

We first consider the applicability of the motor vehicle drivers' licensing regulations with respect to employees of the State of Missouri. Section 8444, R.S. Mo. 1939, reads as follows:

"(a) It shall be unlawful for any person except those hereinafter expressly exempted to drive any motor vehicle upon any highway in this state unless such person has a valid license as an operator under the provisions of this article.

"(b) Any person holding a valid chauffeur's license or registered operator's license, as provided in Sections 8372 and 8373, need not procure an operator's license."

The exemptions mentioned in the statute quoted supra are set out in Section 8445, R.S. Mo. 1939, as reenacted Laws of Missouri 1943, page 662:

"The following persons are exempt from license hereunder:

"1. Any person while driving or operating any road machine, farm tractor, or implement of husbandry temporarily operated or moved on a highway.

"2. A nonresident who is at least sixteen (16) years of age and who has in his immediate possession a valid operator's license issued to him in his home State or country may operate a motor vehicle in this State only as an operator.

"3. A nonresident who is at least eighteen (18) years of age and who has in his immediate possession a valid chauffeur's license issued to him in his home State or country may operate a motor vehicle in this State either as an operator or chauffeur, except any such person must be licensed as a chauffeur hereunder before accepting employment as a chauffeur from a resident of this State.

"4. Any nonresident who is at least eighteen (18) years of age, whose home State or country does not require the licensing of operators, may operate a motor vehicle as an operator only, for

a period of not more than sixty (60) days in any calendar year, if the motor vehicle so operated is duly registered in the home State or country of such nonresident.

"5. Inmates of the Department of Penal Institutions selected by the Board and Warden who have not been convicted of a motor vehicle felony as follows--driving while intoxicated, failing to stop after an accident and disclosing his or her identity, or driving a motor vehicle without the owner's consent--may operate State owned trucks for the benefit of the Institution, provided, that such inmate operator shall be accompanied by a guard in the said truck."

The provision found as paragraph (5) of the exemption statute was added thereto at the first session of the General Assembly following the rendition of the opinion in Department of Penal Institutions et al. v. Wymore, 165 S.W. (2d) 618. In the opinion mentioned, the Supreme Court of Missouri had held that the Act was applicable to all state officers. In the course of the opinion, the following language appears, l.c. 620:

"The terms of the Act are broad enough to include state officers and they are not expressly exempted by the Act or by any other law. By Section 8374, Revised Statutes Missouri 1939, amended by Session Acts of 1941, page 446, Mo.R.S.A., Section 8374, the motor vehicle itself, when state or municipally owned, is exempted from registration and license, but there is no exemption as to the operator of the vehicle. On the contrary, that section expressly grants to municipalities the power to 'regulate the speed and use of such motor vehicles.' It is unlikely that the general assembly intended to grant to municipalities the power to regulate the operation of publicly owned motor vehicles and to deny that power to the state. The fundamental purpose of the Drivers' License Act seems to require the inclusion of state officers as well as other persons. There is just as much danger to the public in the operation of a state owned car as one which is privately owned. * * * *"

The fact that the subsequent action taken by the General Assembly had the effect only of relieving from the Missouri drivers' license law inmates of the Department of Penal Institutions selected by the Board and Warden, when operating state owned trucks under restricted conditions, is strongly indicative of the intent of the General Assembly to not further exempt other state employees. From the above we are persuaded to the view that employees of the State of Missouri are required to comply with the drivers' license law of the state. The particular type of license required--registered operator, chauffeur or operator--will, of course, be dependent upon the type of employment of such employees.

What has been said above we think equally applicable to members of the State Highway Patrol. However, we note that you have specifically requested our opinion as to the exact type of license such members should procure; and we, therefore, have extended our consideration of the matter to the end that this phase of your inquiry may be answered.

The following definitions found in Section 8443, R. S. No. 1939, we deem pertinent:

"(e) Operator. Every person, other than a chauffeur or registered operator, who is in actual physical control of a motor vehicle upon a highway.

"(f) '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 employee operates a motor vehicle carrying passengers or property for hire.

"(F-1) '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."

Giving due regard to the fact that State Highway Patrol members are not employed primarily to drive motor vehicles, but that such operation is an incident to the employment of those members of the Patrol who are assigned automobiles or

motorcycles, we believe that such operations are within the category of those to whom the definition of "registered operator" applies. We think that, therefore, the members of the State Highway Patrol whose employment is such as to require the operation of a motor vehicle as an incident of their employment must obtain a license as a "registered operator."

Having determined that the employees of the State of Missouri and the members of the Missouri State Highway Patrol must comply with the drivers' license law of the state, we next consider the applicability of the Motor Vehicle Safety Responsibility Act, which is found in House Bill No. 317 of the 63rd General Assembly to such employees of the state and to members of the State Highway Patrol. The Act by its terms applies to all owners and operators of motor vehicles. The only exemption clause found therein is paragraph (b) of Section 4, reading as follows:

"Notwithstanding anything else herein contained, this Act shall not apply with respect to any motor vehicle owned by the United States, the State of Missouri, or any political subdivision of this State, or any municipality therein, nor shall this Act apply to any common carrier or contract carrier whose operators are subject to the jurisdiction of and are regulated by the Interstate Commerce Commission or the Public Service Commission of Missouri, or by regulatory ordinances of the municipalities served by such common or contract carrier, and which shall have satisfied any applicable requirements concerning bond, insurance or proof of financial responsibility imposed by the regulatory authority having jurisdiction over the carrier's operations."

You will note that we have underscored a portion of the quoted exemption clause. We have done so for the reason that it might be contended that this portion would serve to exempt the drivers of such motor vehicles referred to therein from the operation of the Act. We do not believe that it has this effect, however, as reference to the Act itself discloses that the exemption clause follows immediately after paragraph (a) of Section 4, which reads as follows:

"The commissioner also shall suspend the license and all registration certificates or cards and registration plates issued to any person upon receiving authenticated report, as hereinafter provided, that such person has failed for a period of 30 days to satisfy any final judgment in amounts and upon a cause of action, as hereinafter stated."

Also, immediately following the exemption clause, we find paragraph (a) of Section 5, reading as follows:

"The suspensions required in Section 4 shall remain in effect and no other motor vehicle shall be registered in the name of such judgment debtor nor any new license issued to such person for the vehicle involved unless and until such judgment is satisfied or stayed and the judgment debtor gives proof of financial responsibility in future, as hereinafter provided, except under the conditions as herein stated in the next succeeding sections."

It is our belief that by reason of finding the exemption clause in juxtaposition to the quoted portions of the Act relating to the registration certificates of motor vehicles, the underscored portion of the exemption clause relates solely to those provisions. This would, of course, be but in accord with a practical application of the Act, as it would be an absurd action of the General Assembly to write a law which would have the effect of destroying the right of the State of Missouri to use its own motor vehicles merely because a driver thereof had suffered the loss of his right to operate a motor vehicle.

You will note that nothing contained in the quoted exemption clause has the effect of relieving employees of the State of Missouri or members of the State Highway Patrol from the provisions of the Act. In the premises, we believe that the cited portion of the opinion in Department of Penal Institutions et al. v. Wymore, 165 S. W. (2d) 618, 1. c. 620, quoted supra, to be applicable in the construction of the statute.

CONCLUSION

In the premises, we are of the opinion that:

(1) Employees of the State of Missouri are required to comply with the drivers' license law of the state, the particular type of license required being determined by the nature of the employment;

(2) Members of the Missouri State Highway Patrol are required to comply with the drivers' license law of the state, and in view of the nature of their employment and use of motor vehicles in connection therewith, the proper license being that of a "registered operator"; and

(3) The provisions of the Motor Vehicle Safety Responsibility Act, being House Bill No. 317 of the 63rd General Assembly, are applicable to employees of the State of Missouri, including the members of the Missouri State Highway Patrol.

Respectfully submitted,

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APPROVED:

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