

CHAUFFEUR'S Traveling salesmen operating company cars are not required
LICENSE: to have chauffeur's license.

JOHN M. DALTON

XXXXXXXXXX



July 6, 1953

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J. C. Johnsen

Honorable Stewart E. Tatum
Prosecuting Attorney
Jasper County
Joplin, Missouri

Dear Sir:

This will acknowledge your letter of June 22nd, 1953, requesting an opinion of this office concerning whether or not traveling salesmen, and similar employees are required to have chauffeurs' licenses when driving company cars. You submitted the following facts:

"This is an inquiry in regard to the requirement for a chauffeur's license under Sec. 302.010 upon the following facts:

"X Company, a Missouri corporation, owns twenty-six two-door sedan automobiles; twenty of these cars are used by the corporation's Sales Department and assigned to the salesmen as transportation through the sales area, however, no sales merchandise is carried by the said salesmen in said car, but samples may be carried, and at infrequent intervals another corporate employee ride with the salesmen on his regular trip. The remaining six said cars are assigned to the Production, or Engineering, or Accounting Departments and are used by the personnel thereof for inspection trips from the general office of the company to the various factories of the company, two of which are in Missouri, one in Kansas, and one in Oklahoma, and it is seldom that more than one such corporate employee travels in the automobile at one time.

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"The query on the above set of facts is, are the drivers in either of the above instances required to have a chauffeur's license. It is the opinion of this writer that they are not in either instance."

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Section 302.010, RSMo. 1949, Laws Mo. 1951, page 679, 680, provides as follows:

"Definitions.--When used in this chapter the following words and phrases mean:

"(1) 'Chauffeur', an operator 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 who as owner or employee operates a motor vehicle carrying passengers or property for hire; or who regularly operates a commercial 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; * * * *"

"Commercial motor vehicle" is defined in subsection 3 of the same section as follows:

"(3) 'Commercial motor vehicle', a motor vehicle designed or regularly used for carrying freight and merchandise, or more than eight passengers; * * *"

Section 302.020, RSMo 1949, Laws Mo. 1951, p. 679, 680 provides:

"Operation of motor vehicle without license unlawful.--It shall be unlawful for any person to:

"(1) Drive as a chauffeur any vehicle upon any highway in this state unless such person has a valid license as a chauffeur under the provisions of this chapter, or to

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From a consideration of the above statutory provisions it appears that the definition of the word chauffeur has three divisions, each containing a different criteria for determining whether or not the operator of a motor vehicle is to be classified as a chauffeur. The first provides that one "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" (Emphasis supplied) is a chauffeur. It appears from the facts submitted that the traveling salesmen or similar employees do not come within this provision of the definition, since the compensation they receive is not paid to them for services performed in driving the car, but is paid to them for the performance of their other duties, specifically for the selling of the merchandise vended by the employer. This conclusion is buttressed by the fact that in the third division of this definition to be discussed hereinafter, the Legislature when it desired to include driving as an incidental to other employment, used the language clearly indicating such intent.

The second division of this definition provides that a chauffeur is "an operator . . . who as owner or employee operates a motor vehicle carrying passengers or property for hire." It is clear that the drivers in your statement of facts do not carry either passengers or property for hire.

The third subdivision of the definition provides that a chauffeur is an operator ". . . who regularly operates a commercial 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."

The traveling salesmen about whom you ask would come within this subdivision of this definition, if the vehicles which they operate were commercial vehicles within the definition of the statute. However, the statute specifically defines commercial vehicle as "a motor vehicle designed or regularly used for carrying freight and merchandise, or more than eight passengers." It is clear that the automobiles used by the traveling salesmen were not used or designed for carrying more than eight passengers; we further observe that the company cars operated by these salesmen are two-door sedans, and it is clear that they are not designed for carrying freight and merchandise. Further, from your statement of facts, it appears that they are not regularly used for carrying freight, and further, that any personal property that is carried by the salesmen is in the nature of samples and would not be classified as merchandise, since by your statement of facts it appears that the property which is for sale is not carried by the salesmen, for delivery at the time of sale. It is, therefore,

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concluded that the motor vehicles involved, do not come within the statutory definition of the phrase "commercial motor vehicle," and that therefore the salesmen who drive these cars do not come within the third subdivision of the definition of the term chauffeur.

CONCLUSION

From the above discussion it is the conclusion of this office that the traveling salesmen and similar employees who operate as stated in your submission of facts, do not come within the definition of the word "chauffeur" and that therefore they are not required to procure a chauffeur's license before they may lawfully operate a motor vehicle under the provisions of Section 302.020, Laws Mo. 1951, and that they may lawfully operate such motor vehicles with a license as an operator.

The foregoing opinion which I hereby approve was written by my assistant, Mr. Fred L. Howard.

Yours very truly,

JOHN M. DALTON
Attorney General

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