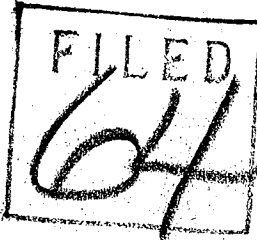


MOTOR VEHICLES:)
TEMPORARY INSTRUCTION)
PERMITS:)
) Director of Revenue unauthorized under Pro-
) visions of Section 302.130 RSMo Cumulative
) Supplement 1953, to issue temporary instruc-
) tion permit to operate motor vehicle, until
) applicant has satisfactorily passed the eye
) and written examination required by Section
) 302.173 RSMo Cumulative Supplement 1953.



December 27, 1955

Honorable M. E. Morris
Director of Revenue
State of Missouri
Jefferson Building
Jefferson City, Missouri

Dear Sir:

This department is in receipt of your recent request for an official opinion which reads as follows:

"The operators of Driver's License schools in Saint Louis would like to give Driver's training simultaneously with instruction on the law, et cetera, for the written test.

"We have thought Section 302.130 indicated it would be necessary for an applicant for Driver's License to have completed the eye and written tests before the applicant could drive.

"Our question now is whether or not an application may be applied for and a temporary instruction permit for sixty days may be issued prior to the time the eye test and written tests have been completed."

We understand the inquiry to be whether or not a temporary instruction permit to operate a motor vehicle can be issued to an applicant prior to the time the eye test and written test have been completed.

All statutory references herein are to the Revised Statutes of Missouri, Cumulative Supplement 1953, unless otherwise specified.

Section 302.171, provides the form and contents of an application for operator's or chauffeur's licenses and Section 302.173 requires an applicant for such license to submit to, and satisfactorily pass the examination referred to in said section before he can be issued a license. The latter section reads as follows:

"1. Any applicant for an operator's license, or chauffeur's license, who does not possess a valid operator's or chauffeur's license issued pursuant to the laws of this state shall be examined as herein provided. Any person who has failed to renew his operator's license or chauffeur's license on or before the date of its expiration or within sixty days thereafter must take an examination. No applicant for a renewal license shall be required to submit to any examination of his ability to safely operate a motor vehicle over the highways of this state unless the facts set out in such renewal application or record of convictions on the expiring license, or the records of the director show that there is good cause to authorize the director to require the applicant to submit to such examination. Such examination shall be conducted in the county where the applicant resides within sixty days from the date of the application. Reasonable notice of the time and place of such examination shall be given the applicant by the person or officer designated to conduct same. It shall include a test of the applicant's natural or corrected vision, his ability to understand highway signs regulating, warning or directing traffic, his practical knowledge of the traffic laws of this state, and an actual demonstration of ability to exercise due care in the operation of a motor vehicle. If the director has reasonable grounds to believe that an applicant is suffering from some known physical or mental ailment which ordinarily would interfere with the applicant's fitness to operate a motor vehicle safely upon the highways, he may require that such examination include a physical or mental examination by a licensed physician of the applicant's choice, at the applicant's expense, to determine such fact. The director shall prescribe regulations to insure uniformity in the examinations and in the grading thereof and shall prescribe and furnish all forms to the members of the highway patrol and to other persons authorized to conduct examinations as may be necessary to enable such officer or person to properly conduct such examination. The records of such examinations shall be forwarded to the director who shall not issue any license hereunder, either as a chauffeur or as a motor vehicle operator, if in his opinion the applicant is not qualified to operate a motor vehicle safely upon the highways of this state.

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"2. The director of revenue shall delegate the power to conduct the examinations required under this section to any member of the highway patrol, to any school instructor, teacher, or public officer qualified to give driving examinations, or to any other person so qualified who is employed by any established association or corporation which has for its object, in whole or in part, the promotion of safety in the operation of motor vehicles, when he finds, after due investigation, that such person is so qualified to conduct such examination. The powers delegated to any such examiner may be revoked at any time by the director of revenue upon notice."

Section 302.177, authorizes the director of revenue to issue operator's or chauffeur's licenses to all applicants who have submitted a satisfactory application and met all the requirements of Chapter 302.

Section 302.130, authorizes the director of revenue to issue temporary instruction permits under the conditions mentioned in said section and which reads as follows:

"1. Any person who, except for his lack of instruction in operating a motor vehicle, would otherwise be qualified to obtain an operator's license under this chapter may apply for and the director shall issue a temporary instruction permit entitling the applicant, while having such permit in his immediate possession, to drive a motor vehicle upon the highways for a period of sixty days, but any such person, except when operating a motorcycle, must be accompanied by a licensed operator or chauffeur who is actually occupying a seat beside the driver.

"2. The director, upon proper application, in his discretion, may issue a restricted instruction permit effective for a school year or more restricted period to an applicant who is enrolled in a driver training program approved by the state department of education, even though the applicant has not reached the age of sixteen years but has passed the age of fifteen years. Such instruction permit shall entitle the applicant, when he has such permit in his immediate possession, to operate a motor vehicle

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on the highways, but only when an instructor approved by the state department of education is occupying a seat beside the driver.

"3. The director in his discretion, may issue a temporary driver's permit to an applicant for an operator's license permitting him to operate a motor vehicle while the director is completing his investigation and determination of all facts relative to such applicant's rights to receive an operator's license. Such permit must be in his immediate possession while operating a motor vehicle, and it shall be invalid when the applicant's license has been issued or for good cause has been refused."

From these two sets of statutes it is plain that a temporary instruction permit is not an operator's or chauffeur's license to operate a motor vehicle and that the two types of licenses are alike only in one respect, and that is to permit the holder of either license to drive a motor vehicle upon the State highways during the period for which the license was issued and while it is in effect.

A chauffeur's license permits the holder to operate a motor vehicle upon any or all of the highways of the State for a period of one year from the date of issuance and said license must be carried by the holder at all times he is operating a motor vehicle. The fee for such license is \$3.00 payable in advance.

An operator's license permits the holder to drive a motor vehicle upon any or all of the public highways of the State, and is issued for a period of three years and must be carried at all times the holder is operating a motor vehicle. The fee for such license is \$1.00 payable in advance. Operator's or chauffeur's licenses may be suspended or revoked by the director of revenue for the causes mentioned in Chapter 302, at any time upon the statutory procedure being followed.

Upon examining the provisions of Section 302.130, we find the director of revenue may issue a temporary instruction permit to any person, who except for his lack of instruction in operating a motor vehicle, would otherwise be qualified to obtain an operator's or chauffeur's license. Said permit is issued for a period of sixty days and allows the holder to operate a motor vehicle upon the public highways. Only when he is in possession of such license, which is then in effect, and when the licensee is accompanied by a licensed operator or chauffeur who occupies a seat beside the driver, can he legally operate a motor vehicle upon the public highways.

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Within his discretion the director of revenue may issue a restricted instruction permit, effective for a period not in excess of a school term, to an applicant who is past fifteen and has not reached sixteen years of age, and who is enrolled in a driver training program approved by the State Department of Education. The licensee must carry the license with him and is entitled to operate a motor vehicle upon the State highways if a licensed operator or chauffeur approved by the State Department of Education accompanies such driver. The license fee is twenty-five cents payable in advance, and permits the holder to operate a motor vehicle for the period for which it was issued.

Section 302.020 makes it unlawful to operate a motor vehicle upon the public highways without a license, and inexperienced drivers will find it very difficult to become experienced ones without being permitted to drive vehicles upon said public highways. It is believed the legislative intent in the enactment of Section 302.130 supra, was for the purpose of affording a remedy by which inexperienced student drivers might lawfully operate motor vehicles upon the public highways while receiving their driver education.

Section 302.130 supra, does not specifically provide that an applicant for a temporary instruction permit shall submit to and satisfactorily pass an eye test and a written examination, demonstrating his ability to drive a motor vehicle, similar to the provisions of Section 302.173 supra, before the director of revenue is authorized to issue the temporary permit. However, it is believed that such was the legislative intent and purpose in the enactment of the section and that such intent appears from the following language expressed in Section 302.130 supra: "Any person who, except for his lack of instruction in operating a motor vehicle, would otherwise be qualified to obtain an operator's license under this chapter may apply for and the director shall issue a temporary instruction permit ***."

We construe this section as requiring all applicants for a temporary instruction permit to possess the qualifications required of applicants for operator's and chauffeur's licenses as provided by said Chapter 302 RSMo Cumulative Supplement 1953, unless exempted therefrom by statute. We have previously noted that Section 302.173, supra, requires applicants for operator's or chauffeur's licenses to successfully pass the eye test and written examination, and that Section 302.130 supra does not exempt applicants for the temporary permits from all the requirements of Section 302.173. The only exemption is that applicants for temporary permits are not required to have been instructed in the operation of motor vehicles. It is believed that such an applicant must possess all the other qualifications of applicants for operator's or chauffeur's licenses.

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In answer to the inquiry of the opinion request it is our thought that the director of revenue is unauthorized to issue a temporary instruction permit to an applicant prior to the time he has passed his eye test and written examination authorized by Section 302.173.

CONCLUSION

It is the opinion of this department that the director of revenue is unauthorized under the provisions of Section 302.130, RSMo Cumulative Supplement 1953, to issue a temporary instruction permit to operate a motor vehicle to an applicant who has not satisfactorily passed the eye test and written examination required by Section 302.173, RSMo Cumulative Supplement 1953.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Paul N. Chitwood.

Yours very truly,

JOHN M. DALTON
Attorney General

PNC/ma/bi