

OPERATOR'S LICENSE:
MOTOR VEHICLES:
DRIVER'S LICENSE:

Wife and minor children of a person in military service stationed in Missouri who have a valid operator's license of the state of his residence are not required to obtain an operator's license from this state.

January 24, 1963

Opinion No. 344 - 62
30 - 63



Honorable Arthur B. Cohn
Prosecuting Attorney
Pulaski County
Waynesville, Missouri

Dear Mr. Cohn:

In your letter of recent date, you requested an opinion from this office in the following language:

"Would you please furnish me with an opinion in regard to the following situation:

"No. 1 Section 302.020 makes it unlawful for any person to drive as an operator or chauffeur any vehicle upon the highways of the State of Missouri without a valid operator's license or chauffeur's license, issued by the State of Missouri.

"No. 2 Section 302.080 exempts from this law non-residents of the State of Missouri.

"Facts: A wife, son, daughter, or other dependent of a military man stationed at a military base in the State of Missouri has a valid operator's license from a sister state. The military man is a non-resident of the State of Missouri, with his home in a sister state, but the military man and the dependents physically reside in the State of Missouri.

"Question: Does the Law of the State of Missouri require the dependents of the military man to have a Missouri operator's or chauffeur's license while in the State of Missouri notwithstanding that the dependent has a valid license from a sister state which is the home of the military man."

In your letter you state that the person you have in mind is a nonresident of Missouri with a home in a sister state and is serving in military service in this state. You further state that his wife, daughter and other dependent are physically present in this state. You do not state the relationship of the dependent so this opinion will be restricted to the wife and minor children and the law as it applies to them.

Section 302.020, RSMo 1959, makes it unlawful for any person to drive a motor vehicle upon any highway of this state unless he has a valid license as an operator of a motor vehicle as required by Chapter 302, RSMo 1959.

Section 302.030, RSMo 1959, exempts certain persons from the provisions of this chapter as follows:

"(2) A nonresident who is at least sixteen 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."

Section 302.010, RSMo 1959, defines a nonresident as follows:

"'Nonresident', every person who is not a resident of this state;"

It must be noticed that under Section 302.030 that a nonresident of the state who has in his immediate possession a valid operator's license issued to him by the state of his residence is not required to have an operator's license issued by this state. Therefore, the answer to your questions will depend upon the determination of residence of the persons in question.

Ordinarily, the residence of a person in military service remains unchanged when he enters service. This is so because he acts under military orders and not of his own volition. *Oliver v. Oliver*, 325 S.W.2d 33.

At common law and in this state, a wife's domicile is that of her husband during cohabitation. *Hairs v. Hairs*, 300 S.W. 540, 222 Mo. App. 941; *Phelps v. Phelps*, 246 S.W.2d 838. Under these decisions the residence of the wife would be the same as that of her husband. Since her husband is a resident of another state, she likewise is a resident of the same state and as long as she has a valid operator's license issued to her by that state it is not necessary for her to have one from this state.

Ordinarily, the domicile or legal residence of a minor child is the same as that of the father unless the parents of the children are separated and then the child takes the domicile of the parent with whom it lives. *Beckman v. Beckman*, 218 S.W.2d 566, 358 Mo. 1029. Under the facts that you have submitted the minor children of the man in military service would have the same residence as that of their father and they are likewise nonresidents of Missouri. If the minor children are at least 16 years of age and have in their possession a valid operator's license issued by the state of residence of their father, it is not necessary for them to have an operator's license issued by this state although they are physically present and living in this state.

CONCLUSION

The wife and minor children 16 years of age or older of a nonresident man serving in the military service and who are living in Missouri while he is stationed in Missouri and who have valid motor vehicle operator's licenses issued to them by the state of his residence do not have to obtain an operator's license from this state.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Moody Mansur.

Very truly yours,

THOMAS F. EAGLETON
Attorney General