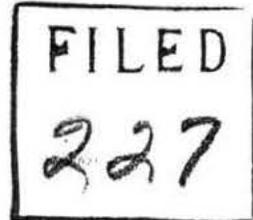


CHAUFFEURS' LICENSE:
COMPENSATION FOR SERVICES:
REGULAR OPERATION:

A sheet metal worker is not required to have a chauffeur's license to operate his employer's trucks if the trips are so occasional and infrequent that they are not part of the employee's duties.

OPINION NO. 227

August 5, 1964



Honorable Bill D. Burlison
Prosecuting Attorney
Cape Girardeau County
708 Broadway
Cape Girardeau, Missouri 63701

Dear Mr. Burlison:

This is in reply to your opinion request in which you state:

"This is an inquiry in regard to the requirement for a chauffeur's license under Section 302.010 in the following situation.

"A local sheet metal heating and air-conditioning contractor hires from twelve to sixteen men and has one or two pickup trucks. Occasionally if a particular part or piece of material will be needed while this crew is working on a job, one of the sheet metal workers who is most expendable at the time will drive the pickup truck to the parts or supply company, purchase the item needed and return it to the site of construction. This driver is paid for being a sheet metal worker and his trips will be infrequent, as the next time the situation arises a co-worker may very well run the same type of errand.

"Is this driver required to have a chauffeur's license under Section 302.010, V.A.M.S. 1959?"

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We are of the opinion that the described sheet metal workers are not chauffeurs within the meaning of the statute. Section 302.010, RSMo 1959, 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;"

This statute sets out three separate definitions for determining who is a chauffeur. It is clear that an operator does not come within the first provision of Section 302.010 unless he operates a motor vehicle in the transportation of persons or property and receives compensation therefor. It was so held in an opinion of this office, No. 88 rendered under date of July 6, 1953 to Stewart E. Tatum, a copy of which opinion we enclose.

Since the stipulated facts indicate that parts are needed only "occasionally" and the drivers are chosen by whoever is "most expendable at the time" and the duty is not assigned to any particular employee and each employee's trips are "infrequent", it is our opinion that a chauffeur's license is not required. It appears that the infrequent driving is not part of the duties and services for which the sheet metal worker is directly compensated.

This construction would seem justified by reference to the third definition in the statute in which the legislature indicates its intent with regard to driving as an "incident of other employment."

A slightly different set of facts may indicate that the workers are more than infrequent drivers on occasional trips or that the duty is assigned or sufficiently fixed that compensation is paid for the service of driving as part of the total

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employee's duties and a license would be required.

The second statutory definition would not seem involved in your request.

The third definition provides that a chauffeur is one "who regularly operates a commercial vehicle of another person in the course of or as an incident to his employment but whose principal occupation is not the operation of such vehicle." (Emphasis ours.) The sheet metal workers do not come within this definition because they are apparently not "regular" operators. *Friedman v. Maryland Casualty Co.*, 228 Mo.App. 680, 71 SW2d 491 (1934).

CONCLUSION

It is the opinion of this office that sheet metal workers who infrequently use their employer's trucks to pick up needed parts or materials, the worker who can most easily be spared from the job at the time being designated to make such trips, are not required to have a "chauffeur's" license in order to operate such trucks.

The foregoing opinion, which I hereby approve, was prepared by my assistant, C. B. Burns, Jr.

Yours very truly,



THOMAS F. EAGLETON
Attorney General

Enc.