

LICENSES:  
DRIVER'S LICENSE:  
CHAUFFEUR'S LICENSE:

An employee of a manufacturing company who regularly drives a company owned pick-up truck, with tools and instruments, with tool chests mounted in the bed of the pick-up truck for performance of his various tasks, and who also carries replacement parts in the back of the pick-up, who makes the rounds of the various machines which he must inspect and service at least once a week regularly drives a commercial motor vehicle of another, that he is acting as a chauffeur as defined in the third definition of Section 302.010 (1), RSMo Supp. 1967, and may be prosecuted for a misdemeanor if he so operates such vehicle without having a proper chauffeur's license.

OPINION NO. 218

May 14, 1968

Honorable John P. Ryan  
State Senator - District 8  
Missouri Senate  
7636 Lydia Street  
Kansas City, Missouri 64131



Dear Senator Ryan:

We have your request for an official opinion of this office as follows:

"It has come to my attention that certain law enforcement officials, including the highway patrol, have taken a position which appears to me to be somewhat questionable with relation to interpretation of the chauffeur's license statutes of the State of Missouri. The pertinent sections to which I would direct your attention are Sections 302.101, sub-paragraph (1) defining the word 'chauffeur'; and sub-paragraph (3) defining the term 'commercial motor vehicle'.

The specific factual situation which I would like to have considered involves the operation of a pick-up truck by a full time employee of a large employer in Kansas City, Missouri. The employer is in the business of manufacturing numerous products for sale. The physical location of the production spots of the employer is such that to get from one part of the production plant to other parts of the production plant the motor vehicle involved must go over public streets. Thus, different products are produced in different places which requires the use of public roadways in order to get from one point to the other. The

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production involved has several technical aspects and much of the operating equipment requires the regular attention of a highly trained technician to service, after regular inspection, the various pieces of machinery. In some instances the operators of the machinery are capable of performing the inspection and service and repair tasks, but with relation to other facets of the operation a skilled technician is necessary. This technician is furnished by the company with a company owned pick-up truck. He has the necessary tools and instruments in tool chests mounted in the bed of the pick-up truck for performance of his various tasks. He also carries replacement parts in the back of the pick-up truck so that he will not have to go back to the main parts center at the largest of his employer's plants. He makes the rounds of the various machines which he must inspect and service at least once a week.

On at least one occasion a highway patrolman has advised him he must have a chauffeur's license in order to continue the operation as described. This appears to be contrary to the intent of the law to the undersigned.

The employee obviously is not carrying passengers or property for hire, nor is he actually carrying freight or merchandise. He is carrying only equipment and parts belonging to his employer for use on other machinery belonging to the employer.

In light of several opinions cited in the pocket supplement of Vernon's Annotated Missouri Statutes, particularly opinion #227 (Burlison), dated August 5, 1964; and opinion #82 (Siefert) dated April 23, 1952; and opinion #88 (Tatum) dated July 6, 1953, it would appear that the interpretation should be that the described employee need not have a chauffeur's license."

Section 302.010, RSMo Supp. 1965, is as follows:

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

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"(1) 'Chauffeur', an operator who operates a motor vehicle in the transportation of persons or property, and who receives compensation for such services 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;

\* \* \* \* \*

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

You mentioned in your request, Opinion No. 82, April 23, 1952, to the Honorable William Siefert, Representative, copy of which is attached. We do not believe that this opinion is determinative of the request inasmuch as the conclusion therein in discussing Section 302.010, which was effective January 1, 1952, was as follows:

"It is therefore the opinion of this department that a contractor who uses his own motor truck to carry workers and their material to the place of the contract work does not need a chauffeur's license."

The party driving the vehicle in question in your request is not the owner of the vehicle but regularly operates a commercial motor vehicle of another person in the course of or incident to his employment.

The facts in Opinion No. 82 to Representative Siefert are as follows:

"The small trucks I have reference to are not for hire but only to carry workers and their material to their place of work, for example, a painting contractor driving his own truck."

You mentioned the opinion of October 14, 1953, to the Honorable Stewart E. Tatum, copy of which is attached, which is not applicable to your request, supra, for an opinion of this office, such opinion dealing with motor emergency vehicles and privately owned cars of the Sheriff of Jasper County. The

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opinion deals with the Section 304.420, 1949 Mo. R. S., 304.022, R. S. Mo. 1949, subsection 3 and 4, and since the vehicles mentioned in your request are not emergency vehicles, this opinion has no relevancy to your request.

You mentioned Opinion No. 227, dated August 5, 1964, to the Honorable Bill D. Burlison, copy of which is attached hereto, in which a request for requirement of Chauffeur's Licenses under Section 302.010, RSMo 1959, is made.

The factual statement in such opinion request, (Burlison), states,

"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. . . ." (Emphasis added).

Under the facts of the situation you have set out, the employee mentioned in your request operates regularly a motor vehicle belonging to his employer, carrying his employer's property for repairs and maintenance and as you factually state he regularly operates the vehicle as an incident of his employment, but whose principal occupation is not the operating of such motor vehicle. This same opinion, (Opinion No. 227, August 5, 1964, Burlison), page 2 states,

"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 employee's duties and a license would be required."

The conclusion of this opinion held that sheet metal workers who infrequently use their owner's truck to pick up new parts or materials, being the worker who can most easily be spared from the job, at the time be designated to make such trip are not required to have a "chauffeurs' license" in order to

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operate such trucks. We are of the opinion there is a factual difference in your request, and that the opinion is not determinative of your request.

A chauffeur is defined in paragraph (1) of Section 302.010, RSMo Supp., 1967, as:

"(1) 'Chauffeur', an operator who operates a motor vehicle in the transportation of persons or property, and who receives compensation for such services 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 vehicles;"

A commercial motor vehicle is defined in paragraph (3) of the foregoing section as:

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

Section 302.010 (1), supra, provides three definitions, each containing a different criteria for determining whether the operator of a motor vehicle should be classified as a chauffeur. These classifications are separate and distinct and an operator may be classed as chauffeur if he qualifies under any one of them.

Section 302.020 (1), RSMo Supp. 1967, is as follows:

"--1. It shall be unlawful for any person, except those expressly exempted by section 302.080, to:

(1) Operate, as a chauffeur, any vehicle upon any highway in this state unless he has a valid license as a chauffeur under the provisions of this chapter;"

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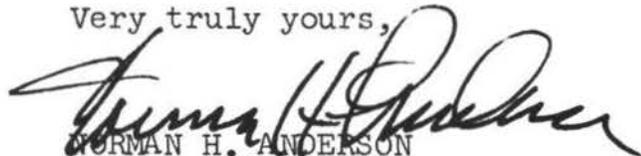
We believe that under the factual situation you have presented that the person as set out in your request, is operating a commercial motor vehicle, is a chauffeur; and he may be prosecuted for a misdemeanor, within the purview of said sections supra.

CONCLUSION

The opinion of this office is that an employee of a manufacturing company who regularly drives a company owned pick-up truck, with tools and instruments, with tool chests mounted in the bed of the pick-up truck for performance of his various tasks, and who also carries replacement parts in the back of the pick-up, who makes the rounds of the various machines which he must inspect and service at least once a week regularly drives a commercial motor vehicle of another, that he is acting as a chauffeur as defined in the third definition of Section 302.010 (1), RSMo Supp. 1967, and may be prosecuted for a misdemeanor if he so operates such vehicle without having a proper chauffeur's license.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Arnold Brannock.

Very truly yours,



NORMAN H. ANDERSON  
Attorney General

Enclosures: Op. 82 - 4-23-52 - Siefert  
Op. 88 - 10-14-53 - Tatum  
Op. 227 - 8-5-64 - Burlison