

MOTOR VEHICLES: Employees of WPA operating motor vehicles in the transportation of persons or property are not required to provide themselves with a chauffeur's or registered operator's license.

March 19, 1940.

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Captain A. D. Sheppard
Commanding Missouri State Highway Patrol
Jefferson City, Missouri

Dear Sir:

We are in receipt of your letter of March 9th, wherein you state as follows:

"This department would like to have opinions rendered covering the following conditions:

- "1. A laborer is hired by the day to drive a truck owned by a contractor doing WPA work. The driver receives his wages from the contractor. Is he required to provide himself with a chauffeur's or registered operator's license?
- "2. A laborer is hired by the day to drive a truck which is leased from a private individual and used in WPA work. The laborer receives his wages from the WPA. Is he required to provide himself with a chauffeur's or registered operator's license?
- "3. A laborer owns and drives his own truck doing WPA work and is paid for his services by a contractor who has contracted for a portion of this work. Is he required to provide himself with a chauffeur's or registered operator's license?

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- "4. A laborer owns and drives his own truck doing WPA work and is paid for his services by the WPA out of Federal funds. Is he required to provide himself with a chauffeur's or registered operator's license?"

Section 7759 R. S. Mo. 1929, defines the terms "chauffeur" and "registered operator" as follows:

"'Chauffeur.' An operator (a) 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 (b) who as owner or employe operates a motor vehicle carrying passengers or property for hire. *****

"'Registered operator.' An operator, other than a chauffeur, who regularly operates a 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. *****"

Section 7765 R. S. Mo. 1929, provides for the registration of chauffeurs in part as follows:

"(a) Every person desiring to operate a motor vehicle as a chauffeur shall file in the office of the commissioner a statement containing *****"

"(b) Upon the filing of such statement and photographs, if the commissioner is satisfied as to the competency *****", he shall assign to him a number and upon the payment of a fee of \$3.00 he shall issue and deliver to such applicant a certificate of registration which shall contain *****"

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Section 7766 R. S. Mo. 1929, provides for the registration of registered operators in part as follows:

"(a) Every person desiring to operate a motor vehicle as a registered operator shall file in the office of the commissioner a statement containing *****"

"(b) Upon the filing of such statement and the payment of a fee of \$3.00, the commissioner shall issue and deliver to the applicant a certificate of registration, which shall contain *****"

Section 7783 R. S. Mo. 1929, provides in part as follows:

"(a) *****Chauffeurs and registered operators shall at all times carry, subject to inspection, the registration certificate furnished by the commissioner."

In the case of Goldstein vs. Sommerville, 10 New York Sup. (2d) 747 l. c. 748, the court in holding that the Works Progress Administration was a Federal Agency and its employees had the same immunity enjoyed by all other agencies and instrumentalities of the U. S. A. said;

"The Works Progress Administration is a Federal agency. United States v. Owlett, D. C., 15 F. Supp. 736. As such instrumentality it is immune from suit in a state court. Manufacturers Trust Co. v. Ross, 252 App. Div. 292, 299 N.Y.S. 398; United States v. Owlett, supra. In the last cited case it was said, 15 F. Supp. page 741: "Since the Works Progress Administration is admittedly a federal agency, that agency, its employees and records must have the same immunity which is enjoyed by all other

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agencies and instrumentalities of the United States of America, such as the post office, the Army or the Navy."

In the case of Johnson vs. Maryland 41 Supreme 16, 254 U. S. 51, 65 Law Edition 126, State of Maryland arrested one Johnson, an employee of the Post Office Department of the U. S., while driving a governmental truck in the transportation of mail. He was convicted and fined for driving without having obtained a driver's license. The court upon reversing the judgment and holding that the applicant did not have to obtain a state driver's license said:

"It seems to us that the immunity of the instruments of the United States from state control in the performance of their duties extends to a requirement that they desist from performance until they satisfy a state officer, upon examination, that they are competent for a necessary part of them, and pay a fee for permission to go on. Such a requirement does not merely touch the government servants remotely by a general rule of conduct; it lays hold of them in their specific attempt to obey orders, and requires qualifications in addition to those that the government has pronounced sufficient. It is the duty of the Department to employ persons competent for their work, and that duty it must be presumed has been performed."

From the above cases we conclude that persons employed by the WPA to operate motor vehicles in the transportation of persons or property are not required to obtain a chauffeur's or registered operator's license.

In order to answer your questions it is essential that we determine in each case whether the laborer is an employee of the WPA or the contractor.

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In the case of *Simmons vs. Kansas City Jockey Club* 334 Mo. 99, 66 S. W. (2d) 119 l. c. 124, the court defines the word "employee" thus:

"Further contention is made that plaintiff's instruction No. 2 is erroneous. The instruction is short. It reads as follows: 'The jury are instructed that by the word "employee" as used herein means a person employed to labor for the pleasure or interest of another or one employed to render service or assistance in some trade or vocation and one over which the employer retains the right to direct the manner in which the work shall be done, and not only what shall be done, but how it shall be done and who the employer has a right to hire and discharge.' This instruction correctly defines the word 'employee.' 39 C. J. 33, 35."

In the case of *Taylor vs. City of Los Angeles* 84 Pac. (2d) 242 l. c. 243, a crew was engaged in the removal of an old abandoned concrete stone drain from a ditch on a street in Los Angeles. A spark from a jack hammer operation caused an explosion of accumulated gas, resulting in plaintiff suffering serious burns. The work was being done as a WPA project, and it was sought to hold the city liable for the injuries.

The court in holding that the work was done under the rules and regulations of the Emergency Relief Administration over which the city had no control and therefore not liable said:

"Courts have judicially noticed the fact that the primary objective of the Federal Emergency Relief Appropriation Act of 1935 (15 U.S. C.A 728 note) was not to benefit particular municipalities or localities, but to provide relief for unemployment. By contributing a small part of the necessary expense and by contributing the services of a superintendent and a small number of employees the City of Los Angeles was able to obtain

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the benefit of this project. It was not, however, city work of which the city had control, but was under the rules and regulations of the Emergency Relief Administration. *Hoover v. Independent School Dist.*, supra; *Shelton v. City of Greeneville*, 169 Tenn. 366, 87 S. W. (2d) 1016; *Todaro v. City of Shreveport*, supra.'

"The allegations of plaintiffs' complaint clearly recited a state of facts from which the trial court properly concluded, not only that no cause of action was stated against defendant City of Los Angeles, but also that no purpose could be served by permitting an amendment.

"The judgment is therefore affirmed."

CONCLUSION

(1) From the facts stated in case 1, we assume that the WPA does not have the right to hire, discharge, or control the party, and therefore we are of the opinion that a laborer who receives his wages from the contractor and is hired by the day to drive a truck owned by the contractor doing WPA work is required to provide himself with a chauffeur's or registered operator's license.

(2) From the facts stated in case 2, we assume that the WPA has the right to hire, discharge, and control the party, and we are therefore of the opinion that a laborer who receives his wages from the WPA and is hired by the day to drive a truck which is leased from a private individual and used in WPA work is not required to provide himself with a chauffeur's or registered operator's license.

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(3) From the facts stated in case 3, we assume that the WPA does not have the right to hire, discharge or control the party, and we are therefore of the opinion that a laborer who owns or drives his own truck doing WPA work, and is paid for his services by a contractor who has contracted for a portion of the work is required to provide himself with a chauffeur's or registered operator's license.

(4) From the facts stated in case 4, we assume that the WPA has the right to hire, discharge and control the party and are therefore of the opinion that a laborer who owns and drives his own truck doing WPA work and is paid for his services by the WPA is not required to provide himself with a chauffeur's or registered operator's license.

Respectfully submitted,

MAX WASSERMAN
Assistant Attorney General.

APPROVED BY:

COVELL R. HEWITT
(Acting) Attorney General.

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