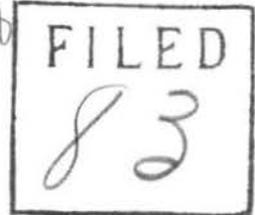


MOTOR VEHICLES: Student operator need not obtain
chauffeur's license.

March 11, 1943

Honorable Claude O. Smith
Assistant Prosecuting Attorney
Jackson County
Kansas City, Missouri



Dear Sir:

We are in receipt of your request for an opinion,
under date of March 10, 1943, which reads as follows:

"On February 18th, 1943 Trooper James F. Judkins of the State Highway Patrol arrested Elmer E. Pease, 4310 Woodland St., Kansas City, Missouri while operating a bus owned by the Kansas City Public Service Co., at or near 79th and Ward Parkway in Washington Township, Jackson County, Missouri, for not having a chauffeur's license. At the time Pease was arrested he was operating said bus as a student operator under the supervision of Henry E. Backstrom, 4504 Fairmount St., Kansas City, Missouri, who is an experienced chauffeur and who has a chauffeur's license. The owner of the bus claims Backstrom was in charge of the bus; and that they had to determine if Pease was a competent driver before he could fill out an application and request a chauffeur's license and operate their bus. At the time of the arrest Pease had a Kansas City, Missouri driver's license #165533 issued to him February 28th, 1941 and a Missouri State Driver's license # R-1197334 issued to him March 19th, 1941.

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"Will you kindly furnish this office your opinion regarding whether the statutory law of this State is to be construed to require a student operator under the facts as above stated to have a chauffeur's license."

In reading the facts set out in the above request, it first appears that the operator, Elmer E. Pease, should have obtained a chauffeur's license, for the reason that under an opinion rendered by this office, on September 22, 1939, to the Honorable James P. Finnegan, Prosecuting Attorney of the City of St. Louis, Municipal Courts Building, we held that it was an offense against the laws of this State to operate a commercial motor vehicle as a chauffeur without first obtaining a chauffeur's license. We are enclosing a copy of this opinion.

Under the facts set out in your request, the operator, Elmer E. Pease, was not regularly employed as a chauffeur for the Kansas City Public Service Company, but was merely a student and acting in a temporary capacity. Under a similar state of facts, the Supreme Court of this State, in the case of Friedman v. Maryland Casualty Company, 71 S. W. (2d) 491, held that where a grocer's employee customarily operated a delivery truck during the regular driver's absence he was not a chauffeur, and not required to be a registered vehicle operator within the Motor Vehicle Act. Under the facts in the case a boy between the age of sixteen and eighteen merely operated the delivery truck during the regular driver's absence. In your case the Public Service bus was under the control of Henry E. Backstrom, who was supervising the student. The student being not regularly employed as a chauffeur came within the holding of the above case. In that case, the court, at page 496, said:

"At the time of the collision, July, 1925, the Missouri Motor Vehicle Statute (Laws of Missouri, 1st Extra

Session, 1921, pp. 76 to 107, inclusive) was in force (now constituting chapter 41, vol. 2, R. S. Mo. 1929 (section 7758 et seq.), with such amendments as have been made (Mo. St. Ann. Sec. 7758 et seq., p. 5178)). A consideration of the entire Motor Vehicle Act will disclose (it seems to the author hereof) that three kinds of 'operators' of a motor vehicle are contemplated by the statute, first, a '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 employee operates a motor vehicle carrying passengers or property for hire' (section 3, Laws 1st Extra Session 1921, p. 77); second, a mere 'operator' defined as 'any person who operates or drives a motor vehicle.' See aforesaid Session Acts, Sec. 3, pp. 77, 78. Lower down on said page 78 a definition is given of a 'Registered operator' as '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 8 of said Session Acts, p. 83, has to do with the registration of every person who desires to operate a motor vehicle as a chauffeur, etc.; and the person so desiring to operate as a registered chauffeur, upon complying with paragraphs (a) and (b) of said section 8, shall, under paragraph (c) receive a metal badge bearing the words 'Registered Chauffeur,' etc., but 'no certificate of registration as chauffeur shall be issued to any person under the age of eighteen years.' Section 9 of said Session Acts, p. 83, provides for the

registration of every person who desires to operate a motor vehicle as a registered operator, and who complies with the provisions thereof shall receive a 'certificate of registration,' but no certificate 'as a registered operator shall be issued to any person under the age of eighteen years.'

"Other sections, for example, sections 12, 15, paragraph (h) of section 29 (pages 84, 86, 105), and perhaps others, have provisions relating respectively to 'Chauffeurs,' 'Registered Operators,' and 'Operators.' So that it is manifest that they are each in a separate and distinct class with different regulations concerning each class, and the only regulation or limitation as to age as to those who are merely 'operators' is that they must not be under 16 years of age. Paragraph (i) of section 27 of said Session Acts, pp. 103, 104. The only alleged violation of law charged against the driver of plaintiff's truck at the time of the collision is that he was under the age of eighteen years, it being conceded that he was over sixteen. But there is no provision in the Motor Vehicle Statute requiring the driver of said truck, under the circumstances shown in this case, to be a registered operator and hence to be eighteen years of age. * * * * *"

CONCLUSION

It is, therefore, the opinion of this department, that a student operator under the supervision of an operator who has a chauffeur's license for the operation of a bus

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belonging to the Kansas City Public Service Company need not first obtain a chauffeur's license while under temporary training.

Respectfully submitted

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APPROVED BY:

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