

MOTOR VEHICLES: Under Section 7759, R.S. Mo. 1929, an owner of an automobile dealing as an independent contractor is not an operator or chauffeur.

September 7, 1938

Honorable Louis V. Stigall
Chief Counsel
State Highway Department
Jefferson City, Missouri

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Dear Sir:

This is to acknowledge receipt of your letter of September 1, 1938, requesting an opinion from this department, which reads as follows:

"There has arisen a difference of opinion among police officers regarding the interpretation of the word 'chauffeur' in Section 7759, R. S. Mo. 1929. In some instances officers and prosecuting attorneys take the position that a person owning his own automobile who purchases products at one point, pays for them and then resells them at other points in the state, is a chauffeur within the meaning of said section. It is our belief that such a person is not a 'chauffeur' even though he may have regular routes and make regular deliveries to the same merchants, so long as he purchases and pays for the commodities and resells them. We recognize that if the merchant had ordered and was paying for the commodity, the car operator would be a chauffeur within the meaning of Section 7759.

"Under the circumstances outlined, we shall be pleased to have a ruling from you regarding this matter."

Section 7759, R. S. Mo. 1929, defines the word "chauffeur" as follows:

"Wherever in this article, or in any proceeding under this article, the following words or terms are used, they shall be deemed and taken to have the meanings ascribed to them 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. * * * *"

Under this definition, a chauffeur is an operator who operates a motor vehicle in the transportation of persons or property, and who is paid compensation for services in wages, salary, commission or fare, or who as owner or employe operates a motor vehicle carrying passengers or property for hire. Neither of the above definitions, according to the wording, covers the case where the owner of his own automobile purchases products at one point, pays for them and resells them at other points in the state. He is known as an independent contractor and receives his pay in the nature of a profit and not as a compensation for hire.

In 59 C. J., page 952, it is said:

"The intention of the legislature is to be obtained primarily from the language used in the statute. The court must impartially and without bias review the written words of the act, being aided in their interpretation by the canons of construction. Where the language of a statute is plain and unambiguous, there is no occasion for construction, even though other meanings could be found; and the court cannot indulge in speculation as to the probable or possible qualification which might have been in the mind of the legislature, but the statute must be given effect according to its plain and

obvious meaning." (Citing Gendron v. Dwight Chapin & Co., (App.) 37 S. W. (2d) 486; Betz v. Kansas City So. R. Co., 284 S. W. 455; 314 Mo. 390; Grier v. Kansas City, C. C. & St. J. Ry. Co., 228 S. W. 454, 286 Mo. 523.

No decision has been rendered in this state at this time which interprets that part of Section 7759, supra, as above set out, but in the State of Texas, in the case of Matthews v. State, 85 Tex. Cr. 469, 214 S. W. 339, the court held:

"Where a statute, requiring a license to operate a motor vehicle as a chauffeur, defines the term 'chauffeur' as any person whose business or occupation is that of operating a motor vehicle for compensation, wages, or hire, in order to bring a person within the class of chauffeur he must operate the motor vehicle as such for compensation, wages, or hire, and this has direct relation to his employment to run the vehicle itself for hire, and not as incident to the delivery of goods, wares, and merchandise for his employer."

Also, in the case of Commonwealth v. Cooper, 19 Pa. Dist. 271, 277, 37 Pa. Co. 277, the court said:

"As far as the automobile industry and users of motor-vehicles are concerned, it would only be by a strained and unnatural construction and foreign to the accepted usage that the term 'chauffeur' could be made to include operators other than employees for hire. The 'National Association of Automobile Manufacturers' and the 'American Automobile Association' use the word 'chauffeur' to mean 'an operator for hire,' and it is the opinion of the court that the word, as we believe we have shown, has always been used in that sense in dealing with motor-vehicle legislation."

In the case of *In re Automobile Licenses*, 19 Pa. Dist. 271, 37 Pa. Co. 46, the deputy Attorney General in commenting on the definition of the word "chauffeur", said that it meant one who operates an automobile or motor vehicle, but under our statute it specifically sets out that a chauffeur, to be designated as such, must be one who operates an automobile for hire by way of wages, salary, commission or fare.

In the case of *People v. Ritter*, 120 Misc. 852, 200 N.Y.S. 816, the court said:

"Where one who owns a truck which he uses to deliver bread and other products, which he purchases at a discount from a named bakery and sells to his own customers, has an owner's license, carries his own liability insurance, and the name of the bakery does not appear on the truck, he was an independent contractor, and not an 'employee,' within a statute requiring a chauffeur's license of any person driving a motor vehicle as an employee or for hire."

This case practically sets out the same state of facts as described in your request.

CONCLUSION

In view of the above authorities, it is the opinion of this department that under Section 7759, R. S. No. 1929, the owner of an automobile who purchases products at one point, pays for them, and then resells them at other points in the state is an independent contractor, and not an employee, and should not be considered a chauffeur under said section.

Respectfully submitted

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APPROVED:

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