

MOTOR VEHICLES: Motor Car Salesmen ~~not~~ required to register as registered operator under motor vehicle act.

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May 15, 1934.

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Hon. Al J. Stack
Assistant Prosecuting Attorney
St. Louis County
Clayton, Missouri

Dear Mr. Stack:

Acknowledgment is herewith made of your request for an opinion of this office reading as follows:

"Enclosed please find letter, dated October 8th, from Mr. B. Sherman Landau, a St. Louis lawyer, in which he asks an opinion with reference to the obligation of automobile salesmen to take out a registered operator's license.

It appears to be the view of the State Highway Department and of the License Collector's office that a salesman demonstrating an automobile for a dealer must take out a registered operator's license or that he must register.

However, in view of the insistence of this attorney, who has been here on another occasion on this question, we would like to have the opinion of your office." * * *

An examination of the suggestions of Mr. B. Sherman Landau, referred to in your letter indicates that the issue involved is the necessity for some thirty or more salesmen of a motor sales company of St. Louis to obtain registered operator's licenses because of their operation of the motor vehicles owned by the motor sales company. Section 7759 R. S. Mo. 1929, defines the terms as used in the Motor Vehicle Act. Under this section an "Operator" is defined as:

"Any person who operates or drives a motor vehicle."

We find "Registered Operator" to be:

"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 7766 R. S. Mo. 1929, refers to the registration of operators and provides in part:

"Every person desiring to operate a motor vehicle as a registered operator shall file in the office of the commissioner a statement containing his name, age and address, and the trade name and motive power of the motor vehicle he is competent to operate, on a blank to be furnished by the commissioner for that purpose, which shall be indorsed by two citizens of this state who are registered motor vehicle owners, who shall certify to the correctness of the facts stated in such application and the good character of such applicant.

Section 7783 R. S. Mo. 1929 provides in part:

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

"(e) * * * No person whose certificate of registration * * * as a registered operator has been revoked shall operate any motor vehicle on the highways of this state during the period for which said revocation is effective."

"(f) * * * No person operating or driving a vehicle on the highway knowing that an injury has been caused to a person or damage has been caused to property, due to the culpability of said operator or driver * * * shall leave the place of said injury, damage or accident without stopping and giving his name * * * and * * * registered operator's number, * * * to the injured party or to a police officer, * * * *"

The foregoing references are a few of the many in which registered operators are mentioned in the Motor Vehicle Act. Considering these together it is very apparent that this Act is a police measure enacted for the protection of the traveling public and others. We have no way of knowing what was in the mind of the Legislators with reference to what persons the defined words "Registered Operators" were to encompass except by the definition given and the apparent object and purpose of the legislation. A careful research fails to reveal any judicial construction of the term "Registered Operators". From a consideration of the foregoing quoted statutes and others in the motor vehicle act which have bearing upon the duties, obligations, rights and privileges of registered operators, it is apparent that this legislation was intended to throw up every safe guard possible for the protection of life and property at the hands of the operators of motor vehicles and to set up and establish a competent system for keeping a check on operators of motor vehicles in this State. Other portions of this act require registration of owners of motor vehicles and registration of chauffeurs, whose primary employment is the operation of motor vehicles. By making these various requirements an effort has been made to insure that only persons who are capable and competent are permitted to operate motor vehicles on the public highways as an incident to their employment. This being the purpose of the act, an interpretation must be placed upon it which will effect this purpose and remedy the evil which was sought to be corrected.

As Judge Lamm once said "The reason of the law is the life of the law". State ex rel. vs. Becker, 233 S. W. 641, l. c. 649:

"There is a familiar maxim uniform in its application that the reason of the law is the life of the law.* * * *By reason of the law we mean of course the occasion or moving cause for its enactment. This is the touch stone of correct interpretation.* * *"

Applying the reason of this enactment to the instant facts it would be hard to conceive of the situation wherein the law could be more effectively applied to carry out the purpose of the enactment. While the operation of a motor vehicle is not the primary purpose of the employment of an automobile salesman, it is certainly incident thereto, and consumes a great portion of his time. Automobile salesmen are constantly called upon to operate motor vehicles upon the highways and, as stated in Mr. Landau's letter, they are

often required to operate various and numerous makes of cars. It is quite certain that there is a great necessity that they be competent to drive these cars, before operating them upon the public highways. The instant case also falls within the statutory requirement that one who operates a motor vehicle of another "regularly" and "incidental" to his employment, is required to register.

The word "incidental" or the phrase "as an incident to" as applied to services rendered in connection with employment, has received judicial construction. We refer to the case of *The Robin Goodfellow*, 20 F. (2d) 924, 1. c. 925:

"* * * 'Incidental,' obviously, means depending upon or appertaining to something else as primary. 'Burrill's Law Dictionary defines 'incident' as 'belonging or appertaining to; following; depending upon another thing as more worthy.' * * * A thing may be necessarily or inseparably incident to another, or usually so.' Webster defines it thus: 'Something necessarily appertaining to or depending on another, which is termed the principal.' *Thomas v. Harmon*, 46 Hun (N.Y) 75, 77.' 4 Words and Phrases, First Series, p. 3494.

Lord Dunedin, in *Trustee of Harbor of Dundee v. Nicol*, (1915) H.L.A.C. 550, said: 'Incidental', in my view, means incident to the main purpose of the main business.' * * *

The word "regularly" as used in Section 7759 with reference to registered operators means in accordance with some consistent or periodic practice. *Green vs. Bennet*, 128 Atlantic, 20; 102 Conn. 1.

We cannot concede that Mr. Landau has placed the proper construction upon this act in contending that the act contemplates that to fall within its term a person must operate the same motor vehicle at all times. It is true that in most instances a registered operator would be operating the same vehicle over a considerable length of time. However, it could not be contended that a salesman traveling for his employer who might be called to operate two or three different makes of motor vehicles in the course of a year would not be required to register as a registered operator

Hon. Al. J. Stack.

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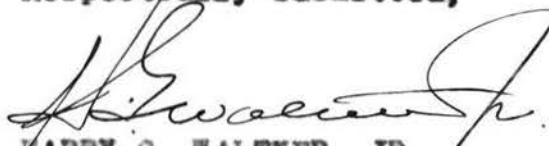
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merely because he did not operate the same vehicle during the entire license term. A distinction between that case and the instant case is simply one of degree. If in the course of employment the salesman is required to operate all makes of motor vehicles he should certainly be competent to operate before proceeding upon the public highways of the state, and in this instance his license or registration certificate should recite that he is competent to operate all makes of motor vehicles.

CONCLUSION.

It is therefore the opinion of this office than an automobile salesman operating motor vehicles owned by his employer is required to register as a registered operator under the provisions of the Motor Vehicle Act.

Respectfully submitted,


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Assistant Attorney General.

APPROVED:

ROY McKITTRICK,
Attorney General.

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