

MOTOR VEHICLES--LICENSE TAX: Employees of Federal instrumentalities are not required to have a Missouri certificate as a registered operator of an automobile.

January 3, 1936.

Honorable B. M. Casteel, Supt.  
State Highway Patrol  
Jefferson City, Missouri



Dear Colonel:

This is to acknowledge your letter relative to the request of Captain Thomas L. Leigh of Troop C. Kirkwood, Missouri. Captain Leigh's letter is quite lengthy and we refrain from quoting same.

The facts presented show that an employee of the Federal Land Bank, an instrumentality of the Government, was arrested for not being a registered operator within the provisions of Section 7766 R. S. Mo. 1929, and the narrow question for determination being whether or not said employee is subject to the provisions of the aforesaid Statute. It is our opinion that an employee of the Federal Land Bank, when driving an automobile belonging to said Federal Land Bank, and on business for the Federal Land Bank, is not required to have a certificate as a registered operator, neither may the State impose a condition requiring him to become a registered operator. In other words said employee is not amenable to the provisions of Section 7766 R. S. Mo. 1929.

The Federal Land Bank is an instrumentality of the United States. See Federal Land Bank of Columbia v. State Highway (S. C. 1934) 173 S. E. 284.

The Supreme Court of the United States, speaking through Mr. Justice Holmes, in Johnson v. State of Maryland 254 U. S. 51, upon facts analogous to the present facts, said the following:

"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

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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."

Captain Leigh in his letter says the following:

"In this connection I would refer the Attorney General to his own opinion of April 18, 1933, on the question of whether or not a privately owned truck hauling mail under contract is required to have a state license."

The opinion referred to by Captain Leigh held that an automobile privately owned and used under contract with the Government to haul mail must have a State license. However, it is to be kept in mind that there is a vast difference between a privately owned truck used under a contract with the Government and an automobile owned by an instrumentality of the Government and used by an employee of the Government in the performance of his governmental duties. A contract hauler would not be an employee and therein lies the distinction.

Yours very truly

WM. ORR SAWYERS  
Assistant Attorney General.

APPROVED:

JOHN W. HOFFMAN, Jr.  
(Acting) Attorney General.

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