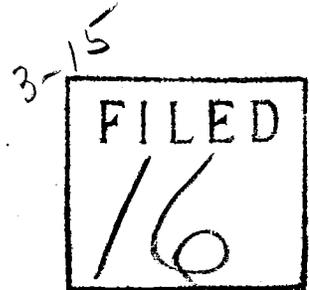


CHAUFFEURS: May operate on certificate furnished by Commissioner of Motor Vehicles pending issuance of metal tags. Metal tags, when issued must be conspicuously displayed.

March 14, 1941

Hon. Paul N. Chitwood
Prosecuting Attorney
Reynolds County
Centerville, Missouri



Dear Sir:

We are in receipt of your request for an opinion, dated March 10, 1941, which reads as follows:

"Section 8372, R. S. Missouri, 1939, paragraph (a) 7(b) sets out the procedure for registration of chauffeurs in this state. Paragraph (c) states that the Commissioner of Motor Vehicles shall, upon acceptance of an application, and the fulfillment of the other necessary requirements, mail the applicant a metal chauffeur's badge, with certain inscriptions. This badge must be worn or displayed on the person of the applicant while he is driving or operating a motor vehicle, as chauffeur.

"Recently our sheriff has demanded of some drivers of motor trucks here in this county, to see their badges, but he has been shown a receipt from the Commissioner of the Motor Vehicle Department, showing the applicants have paid their money, and that while their applications and pictures have been

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accepted, yet their chauffeurs badges have not been received.

"Now, I would like your opinion as to whether or not these truck drivers are violating the law by not having chauffeur's badges upon or about their persons at the time they are operating trucks. It may be true that it is not their fault that they do not have the badges to display when requested, but it appears that the law makes no provision for such matters; at least they should refuse to drive until they had received their badges.

"Your opinion on this matter is requested at your earliest possible convenience, as we have a case now pending wherein these points have been raised."

If a person desiring to operate a motor vehicle as a chauffeur makes an application under provisions of Section 8372 R. S. Missouri, 1939, and is furnished a badge, there can be no question that he is required to wear the same "upon his clothing in a conspicuous place at all times when he is operating a motor vehicle on the highway." Such requirement is clearly and unequivocally expressed in the statute.

However, the question now under consideration, is the situation where the applicant has complied with all the requirements of Section 8372, supra, but the Commissioner has failed to furnish such applicant a metal badge.

It is the well settled rule in this State that if a person makes an application for a license and such license is wrongfully refused, he cannot set

out the wrongful refusal as a defense in a prosecution for operating without a license. State v. Meyers, 63 Mo. 324; State v. Skinner, 119 S. W. (2d) 82.

Under the provisions of Section 8372, supra, the Commissioner is required to issue first a certificate of registration, upon being satisfied as to the competency and good character of the applicant, as well as the payment of a fee of three dollars, and secondly, after the issuance of the certificate of registration he is required to furnish a badge without further charge.

Therefore, we are not confronted with the situation where the officer has wrongfully refused to issue a certificate, but having issued the certificate, he has failed to furnish the applicant with a badge. Thus the rule set out above relating to the wrongful refusal of a license, although it might apply in a situation where the Commissioner refused to issue the certificate, it would have no application to the present inquiry. That is, if the Commissioner wrongfully refused to grant a certificate to an applicant who had duly complied with the provisions of Section 8372, supra, he could not set up, as a defense in a prosecution for driving without a certificate of registration, the fact that he had done all that was required of him. However, as stated heretofore the further duty of the Commissioner after he issues the certificate of registration, is to provide a badge. The statute then requires the applicant to display such badge but only after same is furnished him.

The rule pertaining to the display of motor plates is set out in 42 C. J., Sec. 1328 at page 1340, and reads as follows:

"When the owner of a motor vehicle has complied with every requirement of the statute necessary to entitle

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him to receive the number plates from the proper official, and he fails to receive them only because such official is unable to furnish them, such facts constitute a defense to a charge of operating the vehicle without having the number plates displayed." State v. Gish, 168 Iowa 70, 150 N. W. 37, Ann. Cas. 1917 B. 135.

See also 5 Amer. Jur. Sec. 779, p. 920.

Likewise, in the present situation, if the official is unable to furnish the badges, the applicant, having been granted his certificate of registration, should be allowed to operate.

CONCLUSION.

Therefore, it is our opinion, that if the Commissioner of Motor Vehicles is unable to immediately furnish a metal chauffeur's badge he may issue a certificate which will entitle the holder thereof to operate on the same pending the issuance of a metal badge. When such metal badge is received by the applicant the same must be worn or conspicuously displayed on his person.

Respectfully submitted,

APPROVED:

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LMB:RW