

CCHAUFFEUR LICENSE:
COMMERCIAL VEHICLES:
DRIVERS LICENSE:
MOTOR VEHICLES:
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A van-type vehicle designed to accommodate eight people and regularly used as a courtesy car by motels to transport not more than eight guests to and from the airport is not a "commercial vehicle" as defined in Section 301.010 (1) RSMo 1959, and is not required to be licensed as such.

An employee of a motel which regularly uses these vehicles for such purpose is acting as a chauffeur as defined in the second classification of Section 302.010 (3) RSMo Supp., 1965, and may be prosecuted for a misdemeanor if he so operates such a vehicle without possessing a valid chauffeur's license.

OPINION NO. 95

June 6, 1967

Honorable Thomas A. David
Director of Revenue
Department of Revenue
Jefferson Building
Jefferson City, Missouri



Dear Mr. David:

This is in answer to your request for an official opinion of this office on the questions raised in the letter from Colonel Raymond W. Hensley, Superintendent of Police, St. Louis County, which reads as follows:

"As a result of many motels located within the unincorporated area of St. Louis County now using a wide variety of van-type vehicles as courtesy cars for transporting passengers to and from the airport to their respective locations, this Department respectfully requests an opinion as to the type of license required for these vehicles.

To further clarify these vehicles, they are described as Ford Falcon Club Wagons, Chevrolet Suburban Custom Sport Vans or Chevrolet Sport Van Deluxe, all designed to accommodate eight persons. These vehicles normally carry some type of lettering pertaining to the particular organization operating them. Most are licensed as passenger automobiles and we are wondering if they are required to have a truck plate.

In connection with the operation of the aforescribed vehicles, we would further like an opinion as to what type license

is required by the operators. Is an operator's license sufficient, or must they have in their possession a chauffeur's license? Most of the drivers are not specifically assigned to this particular type operation, but do it as a supplement to their normal job at the motel, such as bus boy, door man, or in some cases even a maintenance man."

Discussing first the question of whether an operator driving these van-type vehicles is required to have a valid chauffeur's license, Section 302.020, RSMo 1959, provides:

"It shall be unlawful for any person to:

"(1) Drive as a chauffeur any vehicle upon any highway of this state unless such person has a valid license as a chauffeur under the provisions of this chapter, * * *"

A chauffeur is defined in paragraph (1) of Section 302.010, RSMo Supp., 1965, as:

"(1) 'Chauffeur', an operator who operates a motor vehicle in the transportation of persons or property, and who receive compensation for such services in wages, salary, commission or fare; or who as owner or employee operates a motor vehicle carrying passengers or property for hire; or who regularly operates a commercial 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 vehicles;"

Section 302.010 (1) provides three definitions, each containing a different criteria for determining whether the operator of a motor vehicle should be classified as a chauffeur. These classifications are separate and distinct and an operator may be classed as chauffeur if he qualifies under any one of them.

The second definition is "an operator * * * who as owner or employee operates a motor vehicle carrying passengers or property for hire." It is clear that an employee of a motel who operates a motor vehicle carrying guests to and from the

airport is one, who acting as an employee, operates a motor vehicle carrying the passengers. The only question is whether these vehicles are being operated for hire within the meaning of the statute.

In determining the meaning and application of the provisions of the statute to the question presented, we should ascertain the legislative intent from the words used if that is possible, and in so doing give to such words their plain and ordinary meaning so as to promote the object and manifest purpose of the statute. *Baker v. Brown's Estate*, Mo. Supp., 294 S.W. 2d 22, 25. See *City of Kirkwood v. Allen*, Mo. Banc., 399 S.W. 2d 30, 36.

The purpose of statutes regulating and effecting automobile traffic on the highways is the promotion of the safety of the public. *Barbiere v. Morris*, Mo. Supp., 315 S.W. 2d 711; *Dinger v. Burnham*, Mo. Supp., 228 S.W. 2d 696. The reason for requiring chauffeurs and operators to be licensed is to insure the competency of the operators of motor vehicles in the interest of public safety. 60 C.J.S., *Motor Vehicles*, Section 148, p. 472.

The qualifications necessary to obtain a chauffeurs license in Missouri are higher than for an ordinary drivers license. Applicants for a chauffeurs license are given a more stringent examination. Also, a chauffeurs license remains in effect for only one year, as opposed to three years for regular operator's licenses. Section 302.177, RSMo Supp., 1965. This requires persons holding a chauffeurs license to renew it every year and submit to the vision examination required by Section 302.175, RSMo Supp., 1965. It also enables the director of revenue, when good cause is shown, to require an applicant to submit to a complete examination as provided by Section 302.173, RSMo Supp., 1965. It is clear that for reasons of highway safety, the legislature has strengthened the licensure requirements of those persons who operate a motor vehicle which transports passengers or merchandise for hire, within the definition provided by Section 302.010. In determining whether the vehicles, operating under the circumstances you describe are for hire, and thus whether the operator is operating as a chauffeur, we must be mindful of the purpose of the legislature in requiring a special license for a chauffeur.

The passengers being carried are guests of the respective motels and these guests pay not only for the room accommodations but for all of the services provided by the motel. Transportation to and from the airport constitutes such a service. It is a convenience to the guests for which they would otherwise have to pay in the form of taxi and limousine fares. It also

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may save a substantial amount of time and trouble which might be necessary in calling and arranging for taxi or limousine service. In many places this courtesy car transportation service is advertised at the airport and often is mentioned in the advertising literature to induce persons to patronize the respective motels.

Under the facts you have stated, this is not a situation where a motel will, on a rare occasion or an emergency, provide transportation to one of its guests to or from an airport. It apparently is a regular service available to any one staying or planning to stay at the motel, provided by vehicles designed for the transportation of passengers and operated by the employees of the motel.

It is true that these vehicles are not "for hire" in the sense that they are available to the general public for a fixed price on a specific service. Nevertheless, the use of these vehicles is provided for paying guests of the hotel and payment for such use must be said to be included in the price charged for their accommodations.

It is also true that the operators may be employed and compensated primarily for other duties, and one operator might not "regularly" operate the vehicle in the course of or as an incident to his employment, but neither requirement is made in the second definition of the statute.

Inasmuch as we believe that the persons you describe are chauffeurs under the second definition of Section 302.010 (1), it is not necessary to discuss whether they also may be so classified under either the first or third definition in the statute.

Your next question is whether these van-type vehicles are required to be registered as commercial motor vehicles. This term is defined in Section 301.010 (1), RSMo 1959, as follows:

"(1) 'Commercial motor vehicles', a motor vehicle designed or regularly used for carrying freight and merchandise, or more than eight passengers;"

These requirements are in the disjunctive and a motor vehicle may be classed as a commercial motor vehicle if it falls within one of four categories, i.e.; (1) (2) if it is designed for carrying either freight and merchandise or more than eight passengers; or, (3) (4) it is regularly used for carrying freight and merchandise, or more than eight passengers.

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From the facts you have given us it is clear that the van-type vehicles are neither designed nor regularly used for carrying more than eight passengers. You state that the vehicles are designed to accommodate eight persons, and nothing in your letter indicates that more than eight persons are regularly being carried in these vehicles.

Nor do we believe that such vehicles are designed or regularly used for carrying freight or merchandise. The meaning of the word design was discussed in *State v. Lasswell*, Mo.App., 311 S.W.2d 356, wherein the Court said, l.c. 358:

"[6] 'Designed' has been defined as 'appropriate, fit, prepared, or suitable' and also as 'adapted, designated, or intended.' * * * When applied to property 'designed' ordinarily refers to the purpose for which it has been constructed * * *, and the purpose contemplated and intended by the manufacturer, not the purchaser, usually becomes the controlling factor. * * *"

The Court goes on to say, l.c. 359:

" * * * the determinative issue was * * * whether his pickup was 'a motor vehicle designed * * * for carrying freight and merchandise' * * *, i.e., whether it was suitable and adapted for the purpose, intended by the manufacturer, of the transportation of goods and tangible articles of commerce, whatever they might have been. Of course, the purpose to which we refer is the primary or dominant purpose, as distinguished from a secondary or incidental one. * * *"

We must assume that in addition to passengers, the vehicles also regularly carry a substantial amount of their baggage. However, the primary or dominant purpose of both the design of these vehicles and their regular use is the transportation of passengers. The carrying of baggage is secondary or incidental to this purpose. The fact that the transportation of passengers to and from an airport incidentally requires the carrying of their baggage does not in itself change the primary purpose or use of the vehicle from a passenger carrier to a carrier of freight or merchandise.

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For the foregoing reasons it is our opinion that unless evidence is obtained that the vehicles in question are being regularly used to carry more than eight passengers or freight other than the baggage of passengers, it is not a commercial vehicle and is not required to be licensed as such.

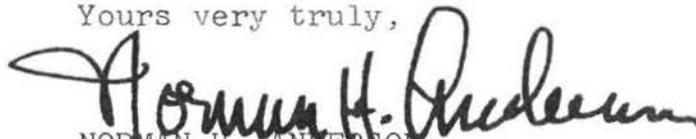
CONCLUSION

A van-type vehicle designed to accommodate eight people and regularly used as a courtesy car by motels to transport not more than eight guests to and from the airport is not a "commercial vehicle" as defined in Section 301.010 (1), RSMo 1959, and is not required to be licensed as such.

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The foregoing opinion, which I hereby approve, was prepared by my Assistant, John H. Denman.

Yours very truly,


NORMAN H. ANDERSON
Attorney General