

MOTOR VEHICLES: Government employee delivering parcels in Government service not required to have chauffeur's or any other license.

September 18, 1934.



Mr. J. Ernest Douglass
Acting Postmaster
Warrensburg, Missouri

Dear Sir:

This is to acknowledge your letter of September 11, 1934, as follows:

"Is a man employed by the Government in the Postal Service System, whose duty is delivering Parcel Post Parcels, requiring a truck in this disposition, required to have a drivers license?"

"This truck is let by contract to the Government at a stipulated sum.

"Please give me your opinion at the very earliest possible moment."

The narrow question presented in your letter concerns the right of the State to exact a license fee from an employee of the Government. Article I, Chapter 41, R. S. Mo. 1929, and Amendments pertain to motor vehicles and provides, among other things, for the licensing of chauffeurs and registered operators, each, in order to be licensed must possess certain qualifications and pay a stipulated fee.

In our opinion the State cannot exact a fee from such Government employee or require him to take out a license to drive the truck when done in the course of his employment for the Government, and as authority for such holding we rely upon the case of William E. Johnson, Plff. in Err., v. State of Maryland, 65 L. Ed., 126, Sup. Ct. U. S. We quote from the opinion of the Court delivered by Mr. Justice Holmes:

"The plaintiff in error was an employee of the Postoffice Department of the United States, and, while driving a government motor truck in the transportation of mail over

a post road from Mt. Airy, Maryland, to Washington, was arrested in Maryland, and was tried, convicted, and fined for so driving without having obtained a license from the state."

And further,

"The facts were admitted, and the naked question is whether the state has power to require such an employee to obtain a license by submitting to an examination concerning his competence and paying \$3, before performing his official duty in obedience to superior command."

And further,

"Here the question is whether the state can interrupt the acts of the general government itself. With regard to taxation, no matter how reasonable, or how universal and indiscriminating, the state's inability to interfere has been regarded as established since *M'Culloch v. Maryland*, 4 Wheat. 316, 4 L. ed. 579. The decision in that case was not put upon any consideration of degree, but upon the entire absence of power on the part of the (56) states to touch, in that way, at least, the instrumentalities of the United States (4 Wheat. 429, 430), and that is the law today."

And further,

"Of course, an employee of the United States does not secure a general immunity from state law while acting in the course of his employment. That was decided long ago by Mr. Justice Washington in *United States v. Hart*,"

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And further,

"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 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. *Keim v. United States*, 177 U. S. 290, 293, 44 L. ed. 774, 775, 20 Sup. Ct. Rep. 574.

"Judgment reversed.

"Mr. Justice Pitney and Mr. Justice McReynolds dissent."

Yours very truly

James L. HornBostel
Assistant Attorney General.

APPROVED:

(Acting)
Attorney General.

JLH:H