



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

April 13, 1939

Mr. T. O. Walton, President
Agricultural and Mechanical College
College Station, Texas

Dear Mr. Walton:

Opinion No. O-470

Re: Persons employed by A. & M.
College, whose duties include
operating College owned trucks,
should obtain "chauffeur's
licenses.

This is in reply to your letter of March 10,
1939, which reads as follows:

"The College has a number of employees
whose duty it is to operate trucks or other
motor vehicles owned by the College.

"Will you please advise us whether these
employees are required to hold a chauffeur's
or driver's license in order to operate a
College-owned truck or other motor vehicle
on the public roads or state highways." *yes*

A "chauffeur" is defined in paragraph (g) of
Section 1 of Article 6637a of the Revised Civil Statutes
of Texas (as amended, Acts 1937, 45th Legislature, p.752,
ch. 369, par. 1-A) as follows:

"Chauffeur. Any person who operates a mor-
or vehicle for any purpose, whole or part time,
as an employee, servant, agent, or independent
contractor, whether paid in salary or commis-
sion; and every person who operates a motor ve-
hicle while such vehicle is in use for hire or
lease."

An "operator", commonly referred to as a "driver"
is defined in paragraph (f) of the same Act as follows:

"Operator: Every person, other than a
chauffeur who is in actual physical control of
a motor vehicle upon a highway."

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Section 2 of the Act says:

"Operators and Chauffeurs must be Licensed:
On and after April 1, 1936, no person except those expressly exempt under this Act, shall drive any motor vehicle upon a highway in this State unless such person upon application has been licensed as an operator or chauffeur by the department under the provisions of this Act."

Section 3 of the Act names those persons who are exempt from the payment of "chauffeurs" and "operators" licenses; but we do not find any words in the statute that could be construed as exempting the employees of the Agricultural and Mechanical College of Texas from payment of such licenses.

As the legislature has defined the word "chauffeur" that definition will control regardless of the meaning of the word in common parlance. *Hurt v. Cooper*, 130 Tex. 433, 110 S. W (2d) 896; 39 Tex. Jur. 200.

According to your letter the persons you ask about operate motor vehicles, and therefore they come within the statutory definition of a "chauffeur" if they operate them "as an employee, servant, agent, or independent contractor". In Attorney General's Opinion No. 0-05, dated January 5, 1939, we held that a public officer (in that case a County Commissioner) was not an employee, servant, agent, or independent contractor, and therefore did not have to obtain a chauffeur's license. But, the persons you ask about (who you refer to as employees) are clearly not public officers, and can only be considered as employees. They could not be public officers under the definition stated in the case of *Robertson v. Ellis County*, (Tex. Civ.App.) 84 S. W. 1097, as follows:

"There is quite a material difference between a public office and a public employment. As said by Chief Justice Marshall, 'Although an office is an employment, it does not follow that every employment is an office.' Mr. Kechem, in his work on Public Officers, says: 'The most important characteristic which distinguishes an office from an employment or contract is that the creation and conferring of an office involves a delegation to the individual of some of the sovereign functions of government, to be exercised by him for the benefit of the public; that some portion of the sovereignty of the country, either legislative, executive, or

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judicial, attaches for the time being, to be exercised for the public benefit. Unless the powers conferred are of this nature, the individual is not a public officer."

The same rule is adhered to in Commissioner's Court of Limestone County v. Garrett, (Tex. Comm. App.) 236 S. W. 970; and it is likewise stated in 34 Tex. Jur. 325.

You have not given us any detailed facts about the persons you ask about, but we feel sure that they are employees within the definition of the word in Webster's New International Dictionary, 2nd Ed., as follows:

"One employed by another; one who works for wages or salary in the service of an employer."

The fact that the College owns the trucks in question is immaterial. There is nothing in the statute that would permit an exemption because of that fact. On the subject of chauffeur's licenses in 42 Corpus Juris 742 it is said:

"The license contemplated is personal to the particular person who operates the motor vehicle and must be obtained by and issued to him,***."

In paragraph (b) of Section 3 of the Act it specifically exempts "every person in the service of the United States ... when operating a motor vehicle in such service." But, there is no exemption for such persons as State College employees or persons driving College owned trucks. We think the fact that some persons are exempted and these particular ones are not exempted indicates an intention to include these particular ones among those who must obtain the license

Our answer to your enquiry is that the persons you ask about, who work for Agricultural and Mechanical College of Texas, are required under the law to obtain

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a chauffeurs license in order to operate a College owned truck.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By

Cecil C. Rotsch

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Assistant

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APPROVED:

Herbert M. ...
ATTORNEY GENERAL OF TEXAS

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