

Juvenile Court and has been committed to an institution, under the provisions of the General Code relating to Juvenile Courts, the jurisdiction of the Juvenile Court over such child is a continuing jurisdiction, and it has authority to vacate its original order or modify the same, or make such further and additional orders in relation thereto as to it may seem just and proper."

Based upon the foregoing situations and discussion, it is my opinion:

1. Where a Juvenile Court has taken jurisdiction of a dependent child, the change of the residence of the father while such child is a ward of the Juvenile Court does not divest the court of its jurisdiction.

2. Such jurisdiction continues until the child is twenty-one years of age unless terminated by reason of the permanent commitment of such child, in accordance with the provisions of Section 1643 of the General Code.

In view of the conclusions hereinbefore reached, it is believed unnecessary to more specifically answer the questions which you propound.

Respectfully,

GILBERT BETTMAN,
Attorney General

1691.

CHAUFFEUR'S LICENSE—MUNICIPAL SAFETY DIRECTOR, SUPERINTENDENT OR ENGINEER OF WATERWORKS, POLICE AND FIRE DEPARTMENT MEMBERS NEED NOT REGISTER—TEST FOR DETERMINING WHAT EMPLOYEES ARE CHAUFFEURS.

SYLLABUS:

1. *When the director of public safety of a municipality or the superintendent or any engineer of the waterworks of such municipality operates municipally owned motor vehicles, he is not a chauffeur within the meaning of Section 6290, General Code, and is not required to be so registered.*

2. *The operation of a motor vehicle of the employer by an employe, which operation is incidental, intermittent and secondary to his employment for some other purpose, does not necessarily make such employe a chauffeur within the meaning of the law.*

3. *Police patrols or fire trucks belonging to or used by the police or fire departments of a municipality are not motor vehicles within the meaning of the law relating to the registration of chauffeurs, and, therefore, members of such police or fire departments assigned to operate such patrols or trucks are not chauffeurs within the meaning of the law and are not required to be so registered.*

COLUMBUS, OHIO, March 28, 1930.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—Your letter of recent date is as follows:

"The second branch of the syllabus of Opinion No. 1443, year 1930, reads:-

'Any person who is employed for the purpose of operating a motor

vehicle and so operates a motor vehicle, must be registered as a chauffeur.'

Municipal corporations furnish automobiles for the use of various officers and employes and in addition own and operate motor trucks in connection with street repairs, cleaning, etc. With few exceptions, fire and police apparatus has been motorized, and members of the fire department and police officers are assigned as drivers.

Question 1. Must officers of a municipal corporation, such as the Director of Public Service and Safety, have a chauffeur's license in connection with the operation of municipally owned motor vehicles?

Question 2. Must employes, such as the superintendent of the water works, engineers, etc., have chauffeur's licenses to operate municipally owned motor vehicles?

Question 3. Must chauffeur's licenses be obtained by members of the fire and police departments of the municipality who operate motor vehicles, that is, motor driven fire trucks, police patrols, etc.?"

The second branch of the syllabus of Opinion No. 1443, quoted in your letter, was responsive to a question submitted by the prosecuting attorney of Ashland County as to whether or not county or township truck drivers are required to possess chauffeurs' licenses, or in other words, whether or not such truck drivers are chauffeurs within the meaning of the law, since every person who operates a motor vehicle as a chauffeur must be registered as provided in Section 6302, General Code. In this opinion, I pointed out that "When a truck driver, delivery car driver or any other person is *employed to operate* a motor vehicle belonging to the employer, be it a county, township, corporation or natural person, he is clearly a chauffeur within the meaning of the section here under consideration. *A person employed to operate a motor vehicle belonging to the employer* certainly operates it 'as an employe'."

In the first two questions which you present, it is obvious that the director of public service, the superintendent and engineers of the waterworks are not employed to operate motor vehicles of the municipality in the sense that a truck driver is employed for that purpose. Of course, such officials or employes may operate such vehicles incidentally in the performance of their duties. The question for determination then becomes whether or not a person who is employed primarily for some service to be rendered to the employer other than the operation of the employer's motor vehicles is "employed to operate a motor vehicle belonging to the employer", notwithstanding the fact that incident to such person's employment, he may be called upon from time to time to operate such motor vehicle. As pointed out in Opinion No. 1443, a chauffeur is defined in Section 6290, General Code, as "Any operator who operates a motor vehicle as an employe * * * ." Perhaps a strict construction of this language might lead to the conclusion that whenever an employe operates a motor vehicle belonging to his employer in connection with his employment, notwithstanding the fact that such operation may be purely incidental to the duties he was employed to perform, such person is operating that motor vehicle "as an employe" and is, therefore, a chauffeur within the meaning of the law. I am unable to subscribe to such strict construction. The sections of the law relating to registration of chauffeurs are penal sections, but must nevertheless be construed to carry out the obvious intent of the Legislature and be given a reasonable construction. Lewis Sutherland's Statutory Construction, Vol. II, p. 974, contains the following statement:

"A penal statute should be construed to carry out the obvious intention

of the Legislature, and be confined to that. Every case must come not only within its letter but it should be given a rational construction."

Again at p. 981, this same author lays down the following rule, in support of which numerous authorities are cited:

"A penal statute should receive a reasonable and common sense construction, * * * . The principle of strict construction does not allow a court to make that an offense which is not such by legislative enactment; but this does not exclude the application of common sense to the terms made use of in an act in order to avoid an absurdity which the Legislature ought not to be presumed to have intended."

I do not believe that it is possible to lay down an all inclusive rule which would define with absolute nicety the exact point when a person ceases to be chiefly employed as an operator of a motor vehicle and may be said to be employed for some other purpose. In the determination of such a question, situations constantly arise which must be decided upon a consideration of all the facts surrounding them. Several tests may be mentioned which, I think, are pertinent to the determination of when an employe who operates his employer's motor vehicle may be said to be a chauffeur within the meaning of the law, although no one of them is necessarily dispositive of each case. It may be pertinent to consider whether or not the employe, as a necessary part of his employment, regularly operates his employer's motor vehicles or whether he operates it intermittently, and incidentally to his other duties. It may be pertinent to consider whether the employe operates such motor vehicle for the purpose of transporting himself only or whether he operates it for the purpose of transporting persons or for the purpose of transporting things belonging to his employer or to others. Another pertinent consideration may be the portion of the employe's time devoted to such transportation and the relation thereof to his other duties. There are other tests and considerations which may, perhaps, be very properly weighed in fairly determining who are and who are not chauffeurs as defined by the Legislature. In the last analysis, this law should be given a rational and common sense construction. Since the rendition of my opinion holding that a person employed as a truck driver operates his employer's motor vehicle "as an employe" and is, therefore, a chauffeur within the meaning of the law, I have been advised that in various localities throughout the state the contention has been made that it necessarily follows that whenever any employe operates his employer's motor vehicle in connection with his employment he is, therefore, a chauffeur and required to be registered as such. As previously indicated, I cannot subscribe to this view, for the reason that whether or not a person is a chauffeur is a question of fact to be determined in each case, by a reasonable application of the principles hereinbefore set forth.

Applying the foregoing considerations to your first and second questions, I am clearly of the opinion that when the director of public safety of a municipality or the superintendent or any engineer of the waterworks of such municipality operates municipally owned motor vehicles, he is not a chauffeur within the meaning of Section 6290, General Code, and is not required to be so registered.

I am further of the opinion that the operation of a motor vehicle of the employer by an employe, which operation is incidental, intermittent and secondary to his employment for some other purpose, does not necessarily make such employe a chauffeur within the meaning of the law.

In your third question, you refer to the drivers of police patrols and fire trucks. Section 6290, General Code, provides in part as follows:

"Definitions of terms, as used in this chapter and in the penal laws, except as otherwise provided:

1. 'Vehicle' means everything on wheels or runners, except vehicles operated exclusively on rails or tracks, and vehicles belonging to any police department, municipal fire department, volunteer fire department or salvage company organized under the laws of Ohio or used by such department or company in the discharge of its functions.

The provisions of this chapter shall apply to equestrians, horses hitched to vehicles and led horses in the same manner as to vehicles.

2. 'Motor vehicle' means any vehicle propelled or drawn by power other than muscular power, except road rollers, traveling power plants not designed for or employed in general highway transportation, traction engines and agricultural tractors.

* * * * *

Since police patrols and fire trucks belonging to or used by the police or fire department of a municipality are not vehicles within the meaning of the law, they are not, of course, motor vehicles. Since a chauffeur is an operator who operates a motor vehicle as an employe or for hire, it follows that the law with reference to the registration of chauffeurs has no application to members of the police or fire departments of the municipality assigned to operate police patrols or fire trucks belonging to or used by such departments.

Respectfully,

GILBERT BETTMAN,
Attorney General.

1692.

APPROVAL, BONDS OF GENEVA VILLAGE SCHOOL DISTRICT,
ASHTABULA COUNTY—\$20,000.00.

COLUMBUS, OHIO, March 28, 1930.

Industrial Commission of Ohio, Columbus, Ohio.

1693.

APPROVAL, ABSTRACT OF TITLE TO LAND OF F. V. KIRSCHNER IN
ADAMS COUNTY, OHIO.

COLUMBUS, OHIO, March 28, 1930.

HON. CARL E. STEEB, *Secretary, Ohio Agricultural Experiment Station, Columbus, Ohio.*

DEAR SIR:—You have submitted for my examination and approval an abstract of Title, Warranty Deed, Encumbrance Estimate No. 125, Controlling Board