

Applying the principles discussed in my former opinion, and the conclusions there reached on a somewhat similar set of circumstances, together with the authorities there referred to, I am of the opinion that the board of education in this case cannot lawfully recognize and pay Mr. "A" for his services, as a moral obligation.

In specific answer to your questions, therefore, I am of the opinion:

1. No legal obligation exists against the board of education of Ottawa Hills Village School District for the payment to Mr. "A" for services rendered by him in the preparation of plans and sketches for a school building made in pursuance of the resolution of the board adopted March 5, 1928.

2. The answer to the first question renders unnecessary an answer to this question.

3. The board cannot lawfully recognize and pay Mr. "A"'s claim as a moral obligation.

4. In view of the answers to the former questions this question needs no answer.

Respectfully,

GILBERT BETTMAN,  
*Attorney General.*

1443.

CHAUFFEUR'S LICENSE—OPERATOR OF SCHOOL BUS TRANSPORTING PUPILS AND EMPLOYEE OPERATING MOTOR VEHICLE MUST POSSESS.

SYLLABUS:

1. *An operator of a school bus used to transport pupils to and from a school-house is a chauffeur within the meaning of Section 6290, General Code, and should be registered after having made application and successfully passed an examination as to qualifications as set forth in Section 6302, General Code.*

2. *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.*

COLUMBUS, OHIO, January 24, 1930.

HON. CLARENCE J. BROWN, Secretary of State, Columbus, Ohio.

DEAR SIR:—This is to acknowledge receipt of your letter of January 23, which is as follows:

"Will you kindly render this office an opinion upon the following question:

Is an operator of a school bus, who is under contract with the board of education to transport pupils to and from a school house, required to be licensed as a chauffeur when such operator is the owner of the motor vehicle?"

I am also in receipt of two other requests for opinions involving a consideration of the same sections of the General Code. These requests will be answered herein. The letter of Hon. H. E. Culbertson, Prosecuting Attorney of Ashland County, Ohio, requests my opinion upon the question of whether or not county

and township truck drivers are required to possess chauffeur's licenses in order to operate trucks and other motor vehicles of the county and township. Hon. Howard M. Nazor, Prosecuting Attorney of Ashtabula County, Ohio, requests my opinion upon the question of whether or not everyone operating a motor vehicle for hire or everyone who is an employee of another operating the motor vehicle of the employer must be licensed as a chauffeur.

Section 6302, General Code, provides as follows:

"A person operating a motor vehicle, as chauffeur, shall file, by mail or otherwise, with the Secretary of State, or his duly authorized agent, upon blanks prepared under the authority of the Secretary of State, an application for registration. The Secretary of State shall appoint examiners and cause examinations to be held at convenient points throughout the state, as often as may be necessary.

Before any certificate of registration is granted, the applicant shall pass such examination as to his qualifications as the Secretary of State shall require. No chauffeur's certificate of registration shall be issued to any person under sixteen years of age. Every application for certificate of registration as chauffeur shall be sworn to before some officer authorized to administer oaths, and must contain the name and address of the applicant, together with a statement that he is of sound mind and memory and physically competent to operate a motor vehicle, together with a description of the vehicle, the trade name and kind or kinds of motor vehicles he is competent to operate, and whether or not such applicant has been convicted of violating a provision of this chapter or the penal statutes relating thereto, giving the date or place of such conviction, and the provisions of law so violated. Such said application for registration as chauffeur of a motor bicycle, motorcycle or motor tricycle shall be accompanied with a registration fee of one dollar, and such said application for registration as chauffeur of any other motor vehicle shall be accompanied by a registration fee of three dollars."

Section 6303, General Code, relates to non-residents registered as chauffeurs in the state of their residence. Section 6304, General Code, provides that the Secretary of State shall keep a book or index of applications for registration as chauffeurs and shall forward a list of such chauffeurs as are registered and such additions thereto as may be made from time to time, in a like manner as registered motor vehicles, to the county clerk of each county in this state. Section 6305, General Code, provides that upon registration of a chauffeur, the Secretary of State shall issue to him a metal badge as therein set forth.

There appears no exceptions in the General Code to the requirement of Section 6302, supra, that a person operating a motor vehicle as a chauffeur shall file application for registration and pass an examination as therein provided. Attention is directed to Section 12624, General Code, which is as follows:

"Whoever operates a motor vehicle as a chauffeur, without filing in the office of the Secretary of State the application required by law and paying the legal fee therefor, shall be fined not more than fifty dollars or suspended from the right to apply for registration as a chauffeur for one year, or both."

Section 12625, General Code, provides for an additional penalty for subsequent offenses.

It remains to be determined who are chauffeurs within the meaning of Section 6302, *supra*. The law contained no definition of the word prior to 1925 at which time Section 6290 was amended by the 86th General Assembly. This section, as then amended and as now in force and effect, is part of the same chapter containing Section 6302, *supra*. It provides insofar as is pertinent as follows:

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

\* \* \* \* \*

14. ‘Operator’ includes any person who drives or operates a motor vehicle upon the public highways.

15. ‘Chauffeur’ means any operator who operates a motor vehicle as an employee or for hire.

\* \* \* \* \*

Considering first the question presented in your letter, in the event the operator of a school bus is the owner of the motor vehicle used to transport pupils to and from school and is engaged in such transportation under contract with the board of education, I do not believe such operator may be said to be an employee of the board, since he is acting in the capacity of an independent contractor. The definition of chauffeur, however, as contained in paragraph 15 of Section 6290, *supra*, does not only include the operator of a motor vehicle as an employee, but also includes one who operates a motor vehicle for hire. I am of the view that any operator who operates a motor vehicle for hire is a chauffeur within the meaning of the section regardless of who owns the motor vehicle operated by him. In other words, if a motor vehicle is operated for hire, the pertinent consideration is the use to which the vehicle is put and not the ownership thereof. Certainly a taxicab driver is operating a motor vehicle for hire and is a chauffeur as defined in the section regardless of who owns the taxicab. The situation is the same in the case of a school bus driver. It should be noted in passing that the driver of a school bus must also meet the requirements set forth in Section 7731-3, General Code, wherein it is provided that such driver must give bond and receive a certificate that he is of good moral character and qualified for such position. In the event a motor vehicle is not operated for hire, the question of ownership is pertinent in determining whether or not it is operated by a person as an employee.

Referring to the inquiry of the prosecuting attorneys of Ashland and Ash-tabula counties, it follows from what has been said 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 employee”.

The language of the sections of the General Code here under consideration are plain and unambiguous and any construction other than that therein placed upon such sections would be directly contrary to the clear legislative intent. It is evident that the Legislature has seen fit in the exercise of the police power for the protection of not only the public that uses the highway, but especially such persons as are transported in motor vehicles used for hire, to require that such operators of motor vehicles be qualified, examined and registered.

Specifically answering the questions before me, I am of the opinion that:

1. An operator of a school bus used to transport pupils to and from a school-house is a chauffeur within the meaning of Section 6290, General Code, and should

be registered after having made application and successfully passed an examination as to qualifications as set forth in Section 6302, General Code.

2. 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.

Respectfully,

GILBERT BETTMAN,

*Attorney General.*

1444.

PUBLICATION—DELINQUENT TAX LIST—DEMOCRATIC DAILY PAPER NOT EXISTING IN COUNTY—AUDITOR SHOULD PUBLISH SUCH LIST IN A REPUBLICAN DAILY ONLY.

*SYLLABUS:*

*Under the provisions of Section 5704, General Code, where there is a daily newspaper representing the political party casting the highest vote at the last state election, but no daily newspaper representing the party casting the next highest vote at said election, publication of delinquent tax list should be made in the one daily.*

*Under such state of facts, there is no authority for the publication of such notice in a weekly paper representing the party casting the next highest vote.*

COLUMBUS, OHIO, January 25, 1930.

HON. HOWARD M. NAZOR, *Prosecuting Attorney, Jefferson, Ohio.*

DEAR SIR:—Acknowledgment is made of your communication which reads:

“Section 5704 of the General Code of Ohio provides that ‘each county auditor shall cause a list of delinquent lands in his county to be published once a week for two consecutive weeks, between the twentieth day of December, and the second Thursday in February, next ensuing, in one daily newspaper in the English language, of the political party casting the largest vote in the state at the last general election, and in one daily English newspaper of the political party casting the next largest vote in the state at the same election, both published in the county, and of general circulation therein. If there be no such daily newspaper published in the county, then in two weekly English newspapers published and circulated therein, if there are two such papers published;’ \* \* \*

Ashtabula County has several Republican papers, some of them daily and some of them weekly newspapers, but only one Democratic paper is printed in the county, being published weekly.

Would it be proper under this section to have the delinquent tax list published in the Republican daily paper and also in the Democratic weekly paper? Your early advice on this matter will be appreciated.”

In an opinion of the Attorney General found in the Opinions of the Attorney General for the year 1920, page 558, an analysis was made of Section 5704, General Code, which then read the same as it now reads. Among other things, it is stated in said opinion that:

“Under this amendment publication of the delinquent list should be made in the newspapers and in the order following, viz.: