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PATROL, STATE HIGHWAY—WITHOUT AUTHORITY TO ARREST DRIVER OF UNITED STATES MAIL TRUCK—WITHOUT POSSESSION OF OPERATOR'S LICENSE REQUIRED OF MOTOR VEHICLE OPERATORS IN OHIO.

SYLLABUS:

The State Highway Patrol is without authority to arrest a driver of a United States mail truck for not possessing the operator's license required of motor vehicle operators in this state.

Columbus, Ohio, June 17, 1949

Col. George Mingle, Superintendent, Ohio State Highway Patrol
Columbus, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“Sometime past we arrested the driver of a U. S. Mail Truck for failing to have an Ohio driver's license.

“The District Attorney of the Northern Section then corresponded with Attorney General Hugh S. Jenkins relative to this arrest.

“We received a communication from the Attorney General setting forth part of a citation of *Johnson v. Maryland*, 254 U. S. 51. This citation is somewhat confusing and we would appreciate if you would inform us whether or not an arrest is permissive where the operator of a U. S. Mail Truck does not have a driver’s license.”

Section 6296-4, General Code, requires a license as operator or chauffeur of all persons except those exempt under the provisions of Sections 6296-5, 6296-6 and 6296-8 of the General Code. The exemptions referred to in Sections 6296-5, 6296-6 and 6296-8 of the General Code relate to persons operating farm or road equipment temporarily upon the highways, persons on active duty in the military or naval forces, non residents, and persons holding temporary instruction permits.

Section 1183-2, General Code, relates to the duties and powers of the state highway patrol and provides in part :

“It shall be the duty of the state highway patrol to enforce the laws of the state relating to the registration and licensing of motor vehicles ; *to enforce on all roads and highways, notwithstanding the provisions of section 6297 of the General Code, the laws relating to the operation and use of vehicles on the highways*; to enforce and prevent the violation of the laws relating to the size, weight, and speed of commercial motor vehicles and all laws designed for the protection of the highway pavements and structures on such highways ; * * * ” (Emphasis added.)

The emphasized portion of the above quoted statute provides the authority for the highway patrol to arrest those persons not having operator’s or chauffeur’s license.

From the foregoing, it is seen that drivers of United States mail trucks, as such, are not, either specifically or by implication, exempt from obtaining an operator’s license. It is also seen that the patrol has sufficient authority to make arrests for failure to have an operator’s license. The question thus presented is, whether the State of Ohio, acting under its police power, may prescribe regulations for the post office department, an agency of the Federal government.

This question is squarely decided in the case referred to in your letter, i. e., *Johnson v. Maryland*, 254 U. S. 51, 65 L. Ed. 126. In that case the court made the following statements at pages 127 and 129 of 65 L. Ed. :

P. 127: "State ownership of roads confers no power to create conditions and terms upon which the Federal government may use them in discharge of its constitutional functions. * * *"

P. 129: "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."

The above case involved the conviction by the state of Maryland of a post office employe who was driving a mail truck without having obtained a license, as required by the laws of the state of Maryland. This case has never been reversed or modified.

Therefore, in specific answer to your question, it is my opinion that the state highway patrol is without authority to arrest a driver of a United States mail truck for not possessing the operator's license required of motor vehicle operators in this state.

Respectfully,

HERBERT S. DUFFY,
Attorney General.