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MOTOR VEHICLES, REGISTRAR—HAS LEGAL AUTHORITY TO ISSUE TEMPORARY INSTRUCTION PERMITS TO PERSONS UNDER SIXTEEN YEARS OF AGE—SECTION 6296-8 G. C.—NO PROVISION AS TO MINIMUM AGE OF APPLICANTS—MINOR.

SYLLABUS:

The registrar of motor vehicles has legal authority to issue temporary instruction permits to persons under sixteen years of age under the provisions of Section 6296-8, General Code, since said section contains no provision with respect to the minimum age of applicants.

Columbus, Ohio, July 13, 1946

Hon. Frank M. Quinn, Registrar, Bureau of Motor Vehicles
Columbus, Ohio

Dear Sir:

Your request for my opinion reads:

“Calling your attention to the Drivers License Law since the law was amended in 1941 this Bureau has been refusing to issue Temporary Instruction Permits to applicants under sixteen years of age. However, restricted licenses have been issued to applicant fourteen or fifteen years of age in so-called deserving cases where the applicants or applicant’s parents prove to the Registry that a real need for such a license exists. No restricted licenses have been issued for purely pleasure purposes. When it is proved to the satisfaction of the Registrar that a restricted license is in order the fourteen or fifteen year old applicant is furnished with what we call a ‘Restricted Temporary Instruction Permit’ which is good only to undergo the required drivers license examination. If such applicant passes the examination successfully which includes an actual driving test a so-called regular restricted operators license is issued setting forth the restrictions.

This Bureau has numerous requests for the issuance of a temporary instruction permit to persons under sixteen years of age in order that such person may be taught to drive.

Will you give us your opinion as to whether or not the Registrar has the authority to issue Temporary Instruction Permits to applicants under sixteen years of age?”

The "driver's license law" of this state as effective October 1, 1936 and codified as Sections 6296-1 to 6296-38, General Code, both inclusive, was enacted by the Ninety-first General Assembly (116 O. L., Pt. 2, p 33). This law remained in force and effect as originally enacted until September 5, 1941 on which date certain provisions thereof became operative in their amended form (119 O. L. 701). It might further be noted that said law was also thereafter amended (120 O. L. 289).

Section 6296-4, General Code, which is now in force as originally enacted, reads as follows:

"No person except those expressly exempted under sections 5, 6 and 8 (6296-5, 6296-6 and 6296-8) of 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 registrar under the provisions of this act."
(Parenthetical matter added.)

It is unnecessary, for the purposes of this opinion, to consider either Section 6296-5 or 6296-6. However, your attention is directed to Section 6296-8, General Code, which originally provided:

"The registrar, or the deputy registrar, upon receiving from any person an application for a temporary instruction permit, may, in his discretion, issue such a permit entitling the applicant, while having such permit in his immediate possession, to drive a motor vehicle upon the highways when accompanied by a licensed operator or chauffeur who is actually occupying a seat beside the driver. Such permit shall be issued in the same manner as *operator's* or *chauffeur's* licenses are issued, upon forms to be furnished by the registrar. *At the expiration of such instruction permit, the permit holder shall be eligible for examination under this act.* The registrar shall have power to promulgate and enforce rules governing the use of such instruction permits."
(Emphasis added.)

This section, as amended effective September 5, 1941, and as presently in effect, now reads:

"The registrar, or the deputy registrar, upon receiving from any person an application for a temporary instruction permit, may, in his discretion, issue such a permit entitling the applicant, while having such permit in his immediate possession, to drive a motor vehicle upon the highways when accompanied by a licensed operator or chauffeur who is actually occupying a seat

beside the driver. Such permit shall be issued in the same manner as *operators'* and *chauffeurs'* licenses are issued, upon forms to be furnished by the registrar. *No such permit shall be granted for a period to exceed 6 months.* The registrar shall have power to promulgate and enforce rules governing the use of such instruction permits." (Emphasis added.)

In quoting this section I have indicated by emphasis the change that was made in the wording thereof. It is to be seen that in said section as amended the words "operator" and "chauffeur" were changed from the singular possessive to the plural possessive. It is also to be seen that the section now provides a temporary instruction permit may not be granted for a period in excess of six months.

The driver's license law as originally enacted was heretofore the subject of consideration by the United States Circuit Court of Appeals for the Sixth Circuit in *United States Guarantee Co. v. Seff, et al.* (March 6, 1941) 117 Fed. (2d) 985; 20 O. O. 175.

That case involved a review of the judgment of the District Court in a declaratory judgment proceeding that had been instituted by an insurance company which had sought relief from liability to defend certain damage actions. It is disclosed that at the time of the happening of an accident the assured's son, who was operating an automobile listed in the policy of insurance, was between fifteen and sixteen years of age. The boy was not accompanied at the time by a licensed operator as required by then Section 6296-8, General Code. After stating in the opinion that young Seff was unquestionably violating this section for the reason that he was not accompanied by a licensed operator, the court then proceeded to say :

" * * * It is all important to observe, however, that *the Ohio statute with respect to the issuance of a temporary instruction permit is in nowise conditioned upon the age of the applicant.* In terms, the statute applies to 'any person.' It is a law of general applicability and not a law limited to persons of any particular age. * * *

"We agree, also, with the conclusion below that no provision is found in the Ohio Drivers' License Law, Sections 6296-1 to 6296-38, General Code, which makes it unlawful solely on account of age, for any person under sixteen years of age to drive an automobile on the state highway."

Also touching on the matter under consideration is the case of *Russo v. State of Ohio* (Sept. 19, 1938) 28 Abs. 21, 14 O. O. 34. That case involved the constitutionality of an ordinance of the city of Cleveland which provided that no person under the age of eighteen years should operate an automobile on the streets of said city. The defendant had been charged with contributing to the delinquency of his seventeen year old stepson in that he permitted the boy to operate an automobile in Cleveland contrary to the provisions of the aforementioned ordinance. It appears that the minor involved, after due examination by the proper official, had been granted a driver's license from the Bureau of Motor Vehicles of this state. It was contended that the ordinance was in conflict with the general law of the state of Ohio and the court so found. The court said:

“ * * * The state driver's license law, Section 6296, General Code, and subsections thereof, authorizes the licensing of operators of automobiles in the state of Ohio without regard to age, except that the registrar is required to examine every applicant for automobile driver's license who is under the age of eighteen (18) years as to his qualifications to drive an automobile.”

(It is believed the court in referring to Section 6296 had in mind Section 6296-1, General Code.)

Said case was appealed to the Supreme Court but on December 14, 1938 was ordered dismissed for the reason that no debatable constitutional question was involved.

At that time Section 6296-7, General Code, provided in part as follows:

“(a) No *chauffeur's* license shall be issued to any person under the age of eighteen years.” (Emphasis added.)

In paragraphs (b), (c), (d) and (e) reference is made to those persons to whom neither an operator's nor chauffeur's license should be issued but at no place is there any reference to age.

It might further be noted, however, that then Section 6296-11, General Code, provided in part as follows:

“(a) The registrar shall examine every applicant for an operator's or chauffeur's license before issuing any such license, except as otherwise provided in subdivisions (b), (c) and (d) of this section.”

I come now to Sections 6296-7 and 6296-11 as presently in force and effect. The former provides in part as follows:

“(a) No chauffeur’s license shall be issued to any person under the age of sixteen years and no operator’s license shall be issued to any person under the age of sixteen years, *except that the registrar may issue a restricted license as hereinafter provided to any person who is fourteen or fifteen years of age.*”

(Emphasis added.)

Section 6296-11 now provides in part as follows:

“(a) The registrar shall examine every applicant for an operator’s or chauffeur’s license before issuing any such license, except as otherwise provided in subdivisions (b), (c) and (d) of this section.”

It will therefore be observed that by reason of the amending of Section 6296-7 the present minimum age limitation in connection with the issuance of an operator’s license is sixteen years. However the section under consideration does authorize the issuance of a “restricted license” to a minor who is fourteen or fifteen years of age. But it is patent that the exception in the section relates to a restricted *operator’s license*. There is no language therein that contemplates the issuance of a restricted temporary instruction permit. I do not, however, desire to leave the impression that the registrar of motor vehicles is without legal authority to issue a so-called “restricted temporary instruction permit.” While that question need not be specifically decided, it seems to me that the discretionary power conferred upon the registrar by virtue of the provisions of Section 6296-8 would authorize such action on his part. It is likewise unnecessary for me to decide precisely what restrictions may be imposed in connection with the issuance of the restricted license authorized by Section 6296-7.

It is clear that in amending Section 6296-7, General Code, the General Assembly had the right to fix a minimum age limitation with respect to the issuance of an operator’s license. While an automobile is not *per se* a dangerous instrumentality it can readily become such while being operated by a minor under sixteen years of age. In fact it can become such while being driven by an unskilled operator no matter of what age. But a line of demarcation necessarily had to be established at some age and the General Assembly saw fit to fix sixteen as the minimum. It

may be urged that a minimum age limitation would be desirable with respect to temporary instruction permits. However, thus far no legislative action has specifically fixed the same. It must be conceded that the amending of Section 6296-8 in 1941 did not attempt to accomplish that result. Consequently the case of *United States Guarantee Co. v. Seff, et al.*, supra, is clearly applicable at this time in so far as it was therein held that said section contained no age limitation. But it does not follow that a minor, no matter of what age, is entitled as a matter of right to a temporary instruction permit.

In connection with the issuance of temporary instruction permits it might be pointed out that Section 6296-8 expressly provides that the applicant must be accompanied by "a licensed operator or chauffeur who is actually occupying a seat beside the driver". This provision is applicable in all instances and has no connection or relation whatever to age. Accordingly, a person who has arrived at the age where he would be entitled to an unqualified permit may not legally operate an automobile under a temporary instruction permit unless so accompanied. Since a licensed operator or chauffeur is required to accompany the applicant the safety and welfare of the public is protected. It might also be pointed out that, since an operator's license can legally be issued to a minor who is sixteen years of age who has successfully passed an examination (see Section 6296-12, General Code), it would seem to follow that the law contemplates such minor may legally learn how to operate an automobile prior to attaining that age. If I were to conclude that temporary instruction permits may not be issued to minors under sixteen years of age, then such age limitation would, in many instances, prove to be meaningless. Possibly a minor would be obliged to learn how to operate an automobile through means that were not legal in order to pass the required examination which is a condition precedent to obtaining an operator's license.

I am of the view that the language of Section 6296-8 General Code, authorizes the registrar of motor vehicles to use his sound discretion with respect to imposing an age limitation in connection with temporary instruction permits. Furthermore, that section as initially enacted as well as in its present form authorizes the registrar "to promulgate and enforce rules governing the use of instruction permits". It seems to me that the General Assembly contemplated such age limitation would be less than sixteen. This conclusion is based in part upon the fact that it specifically

authorized the issuance of restricted operators' permits to minors fourteen or fifteen years of age. See Section 6296-11, General Code. I do not mean to suggest, however, that fourteen years should be fixed as such minimum age. That is a matter for the determination of the registrar.

In specific answer to your inquiry it is therefore my opinion that the registrar of motor vehicles has legal authority to issue temporary instruction permits to persons under sixteen years of age under the provisions of Section 6296-8, General Code, since said section contains no provision with respect to the minimum age of applicants.

Respectfully,

HUGH S. JENKINS
Attorney General