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MOTOR VEHICLES OWNED BY UNITED STATES, THIS STATE, OR ANY POLITICAL SUBDIVISION OF STATE, OR ANY MUNICIPALITY—DRIVERS, SECTION 6298-91 GC NOT SUBJECT TO PROVISIONS OF MOTOR VEHICLE SAFETY RESPONSIBILITY ACT—REQUIREMENT, REPORTING OF ACCIDENT, SECTION 6298-17 GC, AND DEPOSITING OF FINANCIAL SECURITY—SECTIONS 6298-23 THROUGH 6298-41 GC.

SYLLABUS:

By virtue of the provisions of Section 6298-91, General Code, drivers of motor vehicles owned by the United States, this state, or any political subdivision of this state, or any municipality therein are not subject to the provisions of the Motor Vehicle Safety Responsibility Act requiring (1) the reporting of accidents, as provided by Section 6298-17, General Code, and (2) the depositing of financial security, as provided by Sections 6298-23 to 6298-41, inclusive, General Code.

Columbus, Ohio, March 26, 1953

Hon. R. E. Foley, Registrar, Bureau of Motor Vehicles  
Columbus, Ohio

Dear Sir:

I have before me your communication which, in effect, requests my opinion as to whether, in view of the language of Section 6298-91, General Code, the drivers of motor vehicles owned by the United States, the state,

a political subdivision of the state or a municipality who are involved in an accident, as defined by the Motor Vehicle Safety Responsibility Act, while driving such vehicle are required (1) to forward a written report of such accident to the Registrar, as provided by Section 6298-17, General Code, and (2) to deposit with the Registrar the amount of security determined by the Registrar, as provided by Sections 6298-23 to 6298-41, General Code.

The Motor Vehicle Safety Responsibility Act, Sections 6298-1 to 6298-93, General Code, was enacted by the 99th General Assembly on May 24, 1951, to take effect on March 1, 1953. In general, that portion of the Act here under consideration requires that the driver (and in the event of physical incapacity of the driver, the owner) of a motor vehicle involved in an accident resulting in personal injury or death, or damage to the property of one person in excess of \$100, shall file a written report of such accident with the Registrar. It provides that the Registrar shall determine the amount of security sufficient, in his judgment, to satisfy judgments against the driver or owner resulting from such accident (with a maximum requirement of \$5,000 for bodily injury to or death of one person in one accident, \$10,000 for bodily injury to or death of two or more persons in one accident, and \$5,000 for property damage in one accident.) In making this determination, the Registrar does not determine who was to blame for the accident, his sole function being to appraise, in money, the damage or injury resulting from the accident.

In case the driver or owner is not wholly covered by an insurance policy or bond, failure to deposit the required security in money or bonds of the United States, the State of Ohio, or a political subdivision of the State of Ohio results in suspension of the driver's license of such person and the registration of all motor vehicles owned by such person, be he the driver or the owner.

Other portions of the Act provide for the suspension of the registration of owners whose drivers' licenses are suspended by a court upon conviction of an offense enumerated in Section 6296-17, General Code, and for the suspension of both driver's license and registration upon failure to satisfy certain judgments arising out of the ownership, maintenance or use of a motor vehicle. For the purposes of this opinion, however, these other portions of the Act need not concern us.

Section 6298-91, General Code, to which you have directed my attention, reads:

“This act shall not apply with respect to any motor vehicle owned by the United States, this state or any political subdivision of this state or any municipality therein.”

In view of the fact that the Act provides, in certain cases, for the suspension of the registrations of motor vehicles, as well as the suspension of drivers' licenses, for failure to deposit the required security, it becomes readily apparent that the questions you present involve a consideration of whether the above quoted language has reference only to the application of the Act to suspension of registrations, or has reference also to the application of the Act to the suspension of drivers' licenses and the requirement of reporting accidents.

There certainly could be no dispute as to the fact that the language of Section 6298-91 is somewhat ambiguous. It states that the Act, not just certain sections of the Act but the entire Act, shall not apply *with respect to any motor vehicle* owned by certain governmental units. It may be argued that this language does not say that the Act does not apply to the *drivers* of such vehicles, but neither does it say that it shall not apply with respect to the *owners* of such vehicles.

A detailed consideration of all of the language of the Act, and a comparison of its specific provisions with those of somewhat similar acts in force in other states, leads me to the conclusion that the driver of a government vehicle is not required, by the terms of the Act, to comply with the provisions of Section 6298-17 or Sections 6298-23 to 6298-41, inclusive, General Code. My reasons for such conclusion follow.

1. The Act does not purport to regulate motor vehicles *per se*. Instead, all of its provisions are directed at the *drivers* and *owners* of certain motor vehicles. The provisions of the Act relating generally to the requirements that a person deposit security following an accident, if he is not already protected by an insurance policy or bond, are contained in Sections 6298-23 to 6298-41, General Code. Section 6298-23, reads:

“The provisions of sections 6298-23 to 6298-41, inclusive, shall apply to the *driver* and *owner* of any *motor vehicle which* is in any manner involved in a motor vehicle accident within this state.”  
(Emphasis added.)

Note the use of the word “which” in the above quotation. The sentence, as it stands, speaks of the motor vehicle itself as being “involved in a motor vehicle accident.” The requirements as to the deposit of security which

follow apply to the drivers and owners. Such requirements, however, do not come into play until we first find that a motor vehicle, within the meaning of the Act, is involved in a motor vehicle accident. Section 6298-23, of course, is a part of "This act," as referred to in Section 6298-91. Let us put the two sections together. They then would read:

"The provisions of sections 6298-23 to 6298-41, inclusive, shall apply to the driver and owner of any motor vehicle which is in any manner involved in a motor vehicle accident within this state. This act (this section) shall not apply with respect to any motor vehicle owned by the United States, this state or any political subdivision of this state or any municipality therein."  
(Parenthetical matter added.)

As these two sections are read in *pari materia* and so joined together, I believe it clear that the exception as to government owned vehicles in Section 6298-91 necessarily applies to a "*motor vehicle* which is in any manner involved in a motor vehicle accident within this state," as referred to in Section 6298-23. Thus, it would appear to follow that neither the driver nor the owner of a government owned motor vehicle would be a "driver and owner of any motor vehicle which is in any manner involved in a motor vehicle accident" within the scope of the Act, and that neither would be subject to the provisions of Sections 6298-23 to 6298-41 relative to the requirement of depositing financial security.

2. Section 6298-29, General Code, provides, *inter alia* that the requirements as to security shall not apply "To any police officer who while responding to an emergency call assumes custodianship of a motor vehicle and is the driver thereof at the time of the accident." Since a police officer driving a municipally owned police cruiser does not *assume* custodianship of a motor vehicle, such vehicle being assigned to him in the regular course of his duties, it is clear that this provision was inserted into the Act in order to relieve policemen from the requirements of depositing financial security because of an accident while driving a privately owned vehicle commandeered by such policemen. Could it be said that the General Assembly intended to exempt a policeman-driver from the requirements of depositing financial security while driving a commandeered privately owned vehicle, while at the same time requiring a policeman-driver of a municipally owned police cruiser to make such deposit? I do not think so. And, yet, such would be the necessary result unless the policeman-driver of a municipally owned motor vehicle is exempted from the requirements

of depositing financial security by virtue of the provisions of Section 6298-91, even though by virtue of the provisions of Section 3714-1, General Code, such policeman would not be personally liable for injury, death or property damage caused while engaged in the operation of such motor vehicle in responding to an emergency call.

3. Section 6298-92, General Code, permits any person in whose name more than twenty-five motor vehicles are registered, with the approval of the Registrar, to qualify as a self-insurer. This section authorizes the Registrar to issue a certificate of self-insurance "upon the application of any such person who is of sufficient financial ability to pay judgments obtained against such person."

It will be noted that a self-insurer is not required, by the provisions of Section 6298-92, to guarantee the payment of judgments obtained against the *driver* of a motor vehicle owned by such self-insurer. And, yet, under the provisions of Section 6298-27, both the *driver* and *owner* are relieved from the requirements of depositing financial security "to the extent that the owner of the motor vehicle at the time of the accident was a self-insurer."

The exemption of both the driver and the owner of a motor vehicle owned by a self-insurer, even though the self-insurer is only required to demonstrate sufficient financial ability to pay judgments obtained against *himself*, would indicate that the General Assembly considered the various units of the government as being, in effect, self-insurers with sufficient financial ability to take care of injury or damage caused by the operation of their vehicles.

In reaching this conclusion, I am fully cognizant of the fact that not all governmental units are subject to suit for damages arising from the operation of their motor vehicles. In the case of municipal corporations, the provisions of Section 3714-1, General Code, impose such liability, with the exception of police and fire vehicles. In the case of counties, no statutory liability is imposed, although under the provisions of Section 2412-3, General Code, the county commissioners are authorized to procure policies of insurance insuring their officers and employes against liability occasioned by the operation of a county owned motor vehicle. In the case of the state, the injured party is relegated to file a claim with the Sundry Claims Board as provided by Section 270-6, General Code. Suits against the Federal government are specifically authorized by the Federal Tort Liability Act.

Even though as to the state and counties the injured party may not successfully maintain a suit, the General Assembly, by the enactment of Section 6298-91, does not appear to have made any distinction between the governmental units. All are placed in the same category.

4. In the State of Illinois, drivers of government vehicles are required to deposit financial security. The Illinois act, however, does not contain language similar to Section 6298-91. Instead, it provides that the penalties for failure to deposit security shall not apply "to such *owner* if the motor vehicle involved in such accident was owned by the United States, this state, or any political subdivision of this or any municipality therein." Smith-Hurd Illinois Annotated Statutes, Section 581(c)7. The difference between the language of the Illinois statute and the language of the Ohio statute is quite apparent. If it were the intent of the General Assembly of Ohio to exempt only the *owners* of government vehicles from the application of the Act, it would seem that the language of the Illinois statute would have been employed.

The Minnesota act contains language almost identical to that of Section 6298-91. It reads:

"This act does not apply with respect to any motor vehicle owned and operated by the United States, this state or any political subdivision of this state, or any municipality therein." (Minn. Stat., 1945, Section 170.51.)

The Attorney General of Minnesota, in Opinion No. 632-a-12, rendered June 27, 1945, held that the act was applicable to *drivers* of government owned vehicles. The Minnesota Supreme Court, however, in the case of *City of St. Paul v. Hoffman*, 223 Minn. 76, held:

"L. 1945, c. 285, Sec. 31 (Minn. St. 1945, Sec. 170.51), the safety responsibility act, exempting motor vehicles owned and operated by the United States, this state, any political subdivision thereof, or any municipality therein from the application of the act, must be construed to exclude the drivers of such vehicles from suspension of their drivers' licenses under the provisions of the act. \* \* \*"

I quote from the opinion of Loring, C. J.:

"\* \* \* The purpose of the act was to effect financial responsibility to injured persons. The city is liable for injuries inflicted by negligent acts performed in the discharge of its corporate or pro-

prietary functions. (Citing cases) In cases involving the proprietary functions of cities, it would be futile to require additional security to the public. City employes are personally liable for their negligence when engaged in the performance of the city's governmental functions. (Citing cases) The city is authorized by statute, but not required, to cover its employes against liability in such cases. Minn. St. 1945, Sec. 471.42, 471.43. It seems quite obvious to us that Sec. 31 was inserted in the act to relieve municipalities, and others that are exempted, from embarrassment in the performance of their functions by finding the discharge of such functions hampered by the lack of licensed drivers.

"If the law is to completely achieve its avowed purposes, the legislature could either waive governmental immunity from suit in negligence cases the United States has done in the Federal Tort Claims Act (U.S.C. Public Law 601, Title IV, 79th Congress, 28 USCA, Sec. 921) which the legislature could do not only in behalf of the state but of cities and other governmental subdivisions, or it could require such municipalities or subdivisions to cover their drivers with insurance. We therefore hold that the trial court was right in holding the drivers of vehicles owned or operated by the city exempt from the provisions of the act."

It should be pointed out that the Minnesota act does not provide for the suspension of registration of any motor vehicles, but only subjects the drivers and owners of such vehicles to loss of drivers' licenses. It may be urged, therefore, that the Ohio Act could be distinguished and that a conclusion similar to that reached by the Minnesota Supreme Court should not be followed in Ohio.

Let us, however, compare the language of the Ohio Act with the State of New York act. The New York act provides that:

"This article, except sections ninety-four f, \* \* \* shall not apply \* \* \* to any motor vehicle owned by the United States, the state or any political subdivision thereof." (McKinney's Consolidated Laws of New York, 62-A, Article 6A, Sec. 94ff.)

Section 94f, referred to in Section 94ff, contains language similar to that of Section 6298-17 requiring the reporting of accidents. The New York Attorney General, in 1942 Opinions of the Attorney General, page 241, held that while by virtue of Section 94f drivers of government vehicles were required to report accidents, by virtue of Section 94ff the other provisions of the New York act did not apply to motor vehicles owned by the United States, the state or any political subdivision thereof.

Section 1277.33, Pennsylvania Statutes Annotated, contains identical language to that of Section 6298-91. I am informed by the office of the Attorney General of Pennsylvania that while no opinions or court decisions have been issued as to this matter, it is the administrative practice of the Pennsylvania officials not to require the drivers of government owned vehicles to deposit financial security.

As heretofore noted, it would seem that if the General Assembly intended to require the drivers of government vehicles to deposit financial security, such purpose easily could have been accomplished by the use of the language of the Illinois statute. The interpretation of language either somewhat similar or identical to that of Ohio by the states of Minnesota, New York and Pennsylvania would seem to support the view previously expressed that the Ohio Act does not require the drivers of such government vehicles to deposit financial security.

5. I turn now to a discussion of whether drivers of such government vehicles are required to report accidents under the terms of Section 6298-17, General Code.

In this connection I should state that I have been informed by the office of the Attorney General of Pennsylvania that it has been the administrative practice of that state to require such reporting. Without regard to whether such conclusion is or is not supported by the Pennsylvania act, I am unable to reach the same conclusion as to the Ohio Act.

Section 6298-17, like Section 6298-23, heretofore referred to, speaks of the driver "of any motor vehicle which is in any manner involved in a motor vehicle accident." I have previously concluded that by virtue of the language of Section 6298-91, the provisions of Section 6298-23 would not be applicable to the driver of a government owned vehicle. The same reasons would apply equally to any interpretation of Section 6298-17.

It should be pointed out that Section 6298-91, as originally introduced, in addition to containing its present language, provided:

"\* \* \* nor, except for sections 6298-17 and 6298-79, with respect to any motor vehicle which is subject to the requirements of sections 614-99 and 614-115 of the General Code."

Sections 614-99 and 614-115, General Code, have reference to certain motor vehicles under the control of the Public Utilities Commission. It is clear,



by the use of the words "except for sections 6298-17 and 6298-79" that the drivers of such vehicles would have been required to report accidents, had such language been adopted, even though they would not have been required to deposit financial security. In this respect the language would have been somewhat similar to that of the State of New York, except that no provision for reporting would have been made for drivers of government vehicles. It is clear, therefore, that the authors of the original bill recognized that the broad language of Section 6298-91 would exempt drivers from reporting accidents unless it contained an exception as to Section 6298-17. The statute, as adopted, contains no such exception.

While there would seem to be little question as to the desirability of compelling drivers of government owned vehicles at least to report such accidents, it does not appear that the General Assembly has done so by the actual language employed. If it were the intention of the General Assembly so to do, the language of the New York statutes stands as a model for accomplishing such purpose.

Another consideration which leads me to this conclusion is the fact that by virtue of Section 6298-85, General Code, the failure to report a motor vehicle accident may be punished by a fine not to exceed \$100. Thus, the failure to report is made a crime. It is fundamental that criminal statutes must be strictly construed and that no person can be convicted for the violation of a criminal statute in the absence of a statute which, by clear and unambiguous language, defines the crime.

In view of the foregoing, I am impelled to the conclusion that by virtue of the provisions of Section 6298-91, General Code, drivers of motor vehicles owned by the United States, this state, or any political subdivision of this state, or any municipality therein are not subject to the provisions of the Motor Vehicle Safety Responsibility Act requiring (1) the reporting of accidents, as provided by Section 6298-17, General Code, and (2) the depositing of financial security, as provided by Sections 6298-23 to 6298-41, inclusive, General Code.

Very truly yours,

C. WILLIAM O'NEILL  
Attorney General