

Opinion No. 42-4029

February 21, 1942

BY: EDWARD P. CHASE, Attorney General

TO: Mr. C. R. Anderson Assistant District Attorney Carlsbad, New Mexico

{*161} Your letter of February 19, 1942, requests an opinion of this office as to whether or not employees of the United States Government, and more particularly those working for the Civilian Conservation Corps in this state, may drive government-owned vehicles upon the public highways of this state without first obtaining state operator's or chauffeur's licenses. You have also asked whether a license is needed by these same persons if they operate government-owned motor vehicles exclusively in a National Park.

New Mexico's Uniform Operator's and Chauffeur's License Act, being Chapter 110, Laws of 1937, as amended by Chapter 156, Laws of 1939, does not make an exemption in favor of government employees {*162} operating government-owned trucks.

In 1920 the Supreme Court of the United States decided that a postal employee operating a government - owned truck carrying mail on a postal road from Maryland to the District of Columbia could not be compelled by the state to obtain a license by submitting to an examination concerning his competence, and paying \$ 3.00 before performing his official duty in obedience to superior command. *Johnson vs. State of Maryland*, 254 U.S. 51, 41, S. Ct. 16 65 L. ed. 126, 20 Mich. L. R. 265, 21 Col. L. R. 93, 34 Har. L. R. 434, 7 Va. L. Rev. 311, 30 Yale L. J. 426.

Mr. Justice Holmes, delivering the opinion of the Court, said in part:

"Of course an employee of the United States does not secure a general immunity from state law while acting in the course of his employment. That was decided long ago by Mr. Justice Washington in *United States vs. Hart*, Pet. C. C. 390. 5 Ops. Atty. Gen. 554. It very well may be that, when the United States has not spoken, the subjection to local law would extend to general rules that might affect incidentally the mode of carrying out the employment -- as, for instance, a statute or ordinance regulating the mode of turning at the corners of streets. *Commonwealth vs. Closson*, 229 Massachusetts, 329. This might stand on much the same footing as liability under the common law of a State to a person injured by the driver's negligence. But even the most unquestionable and most universally applicable of state laws, such as those concerning murder, will not be allowed to control the conduct of a marshal of the United States acting under and in pursuance of the laws of the United States. *In re Neagle* 135 U.S. 1.

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 vs. United States*, 177 U.S. 290, 293."

Johnson vs. Maryland, *supra*, is still the law. See also *Ex Parte Willman*, 277 F. 819 and *Crosby vs. District of Columbia*, 2 F. (2d) 925.

As to whether or not the Civilian Conservation Corps is a federal instrumentality, there can be no doubt. In the case of *United States vs. Query, et al*, 211 Fed. Supp. 784, it was held that a Civilian Conservation Corps camp exchange, established pursuant to statutory authority and operated for the welfare of the camp's enrollees, is a federal instrumentality, not subject to the license tax imposed by state statute on the privilege of selling certain articles, and not subject to the supervision of the State Tax Commission.

In view of the foregoing, it is my opinion that a government employee, particularly a member of the Civilian Conservation Corps, while driving a government-owned motor vehicle upon the public highways of this State, performing {^{*163}} his official duty in obedience to superior command, cannot be required to obtain a state motor vehicle operator's license for the reason that such licensing constitutes an interference with a federal governmental function. But, as pointed out in the law review articles cited above, a driver of a federal car may be arrested for reckless driving and other operators of motor vehicles may be licensed by a state under its exclusive police powers.

In view of the answer to your first question, it now becomes unnecessary to answer the second.