

Opinion No. 42-4180

November 9, 1942

BY: EDWARD P. CHASE, Attorney General

TO: Mr. Al S. Roughton, Director Driver's License Division Bureau of Revenue Santa Fe, New Mexico

{*271} This will acknowledge receipt of your letter of November 6, 1942, in which you ask the following question:

{*272} "Is a person operating a motorcycle with or without a side car obliged to purchase a chauffeur's license when such vehicle is used to make deliveries either part or full time; the driver receiving remuneration for his service of making such deliveries."

Section 1, subsection (g), Chapter 110, Laws of 1937, defining "chauffeur" is as follows:

"(g) 'Chauffeur'. Every person who is employed for the principal purpose of operating a motor vehicle, and every person who drives a motor vehicle while in use as a public or common carrier of persons or property."

Under this section it will be seen that there are two questions to be determined: (a) Is a motorcycle, with or without a side car, a motor vehicle within the provisions of this section? (b) Is the employment of the person such that he comes within the contemplation of this section?

Taking up the first question, reference is made to subsections (a) and (b), Section 1, Chapter 110, Laws of 1937, which sections define "vehicle" and "motor vehicle" as follows:

"(a) 'Vehicle.' Every device in, upon or by which any person or property is or may be transported or drawn upon a public highway, excepting devices moved by human power or used exclusively upon stationary rails or tracks.

"(b) 'Motor Vehicle.' Every vehicle, as herein defined, which is self-propelled."

Under these subsections, it would seem that a motorcycle is a "motor vehicle," since it is a self-propelled device upon which persons and property may be transported on a public highway so that the operator thereof would be treated the same as though he were driving an automobile for the purpose of determining whether he is a chauffeur.

As to the second portion of this question, a person making deliveries would not be a public or common carrier under Section 1, Subsection (g), Chapter 110, Laws of 1937, if he makes deliveries for only one or more business establishments and does not extend his service to the general public. This is true since under both Section 2, Chapter 124,

Laws of 1937, which defines common carrier, and under the common law, it is necessary that a person extend his service to the general public to be a common or public carrier. Hence, a person making deliveries on a motorcycle for one or more business establishments is not a chauffeur unless he is employed principally for that purpose.

In view of the foregoing, it is my opinion that a person employed to make deliveries on a motorcycle, either with or without a side car, is a chauffeur if he is employed for this purpose full time, and is not a chauffeur if only so employed part time, unless the principal purpose of his employment is to make deliveries on such motorcycle, which fact would have to be determined in each individual case.

By ROBERT W. WARD,

Asst. Atty. General