

Opinion No. 43-4245

February 19, 1943

BY: EDWARD P. CHASE, Attorney General

TO: Mr. Frank Young, Chief, New Mexico State Police, Santa Fe, New Mexico

We have your letter of February 6, 1943, wherein you request an opinion concerning whether or not Government owned vehicles working for and around a post office are exempt from compliance with our state law in connection with our requirements for regular brake and light inspections of motor vehicles.

The leading case on this matter is that of *Johnson v. Maryland* (1920) 254, U.S. 51, wherein it was held that a state cannot require the driver of a Government motor truck carrying the mails to procure a driver's license.

Justice Holmes in this opinion stated:

"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, 20 Sup. Ct. 574,

In *Gillespie v. Oklahoma* (1921) 257 U.S. 501, 505, the Court, citing *Johnson v. Maryland*, stated:

"The ruling as to instrumentalities of the United States on the other hand is absolute in form, and at least stricter in substance."

In *Jaybird Mining Company v. Weir* (1925) 271 U.S. 609, 613, the Court, citing *Johnson v. Maryland* and numerous other cases, stated:

"It is elementary that the Federal Government, in all its activities, is independent of state control * * *"

In *Panhandle Oil Company v. Knox*, 277 U.S. 218, 221, (1927), the Court, citing *Johnson v. Maryland* and numerous other cases, held:

"The states may not burden or interfere with the exertion of national power * * *"

In *Arizona v. California* (1930) 283 U.S. 423, 451, the Court, citing *Johnson v. Maryland*, stated:

"The United States may perform its function without conforming to the police regulations of the state." (Emphasis mine).

The case of *Johnson v. Maryland* has also been cited in connection with the rule of law above set out at the following citations:

283 U.S. 575; 286 U.S. 129; 14 F.2d 613; 17 F.2d 137; 29 F.2d 64; 38 F.2d 685; 47 F.2d 982; 73 F.2d 195; 76 F.2d 519; 78 F.2d 168; 85 F.2d 34; 92 F.2d 83.

In *Posey v. Tennessee Valley Authority* 93 F.2d 726, 727 (1937), the Court stated:

"* * *, the Authority is primarily a Governmental agency of the United States, and except as Congress may otherwise consent, is free from state regulation or control."

In view of the above, it is my opinion that mail trucks owned by the United States cannot be required to conform to our state laws in regard to brake and light inspections of such vehicles.

Trusting that the above answers your question, I am

By HARRY L. BIGBEE,

Asst. Atty. General