

## Opinion No. 56-6512

August 23, 1956

**BY:** RICHARD H. ROBINSON, Attorney General

**TO:** Mr. Abner Schreiber, Assistant District Attorney, First Judicial District, Los Alamos, New Mexico

In reply to your letter of August 3, 1956, in which you raise the following questions;

(1) Can a person under eighteen (18) years of age operate their employer's vehicles in the course of the employer's business without a chauffeur's license and

(2) Would the employer be in violation of Section 64-13-71, N.M.S.A., 1953 Compilation, Pocket Supplement, if he so employed such a person; the following is submitted for your consideration.

In reply to question one, attention is directed to Section 64-13-33, N.M.S.A., 1953 Compilation, Pocket Supplement, which defines a chauffeur and provides:

"(c) Chauffeur. **Every person who is employed by another for the principal purpose of driving a motor vehicle** and every person who drives a school bus transporting school children or **any motor** vehicle when used for the transportation of persons or property for compensation." (Emphasis Supplied)

and Section 64-13-41, which classifies chauffeurs and provides:

"(b) No person who is under the age of eighteen (18) years shall drive any school bus transporting school children or any motor vehicle when in use for the transportation of persons or property for compensation nor in either event until he has been licensed as a chauffeur for either purpose and the license. . . ."

and sets out various restrictions.

Again at 60 C.J.S., paragraph 151, it is pointed out, even as our own statutes set it out:

"An 'operator' has been defined as any person, other than a chauffeur, who operates or drives a motor vehicle, and where the only difference made between an operator and a chauffeur is that the latter receives pay for his services, the owner may employ either an operator or a chauffeur to drive his vehicle."

The apparent intent of the Legislature is to cover those situations when the principal operation or activity of the employee is driving, and is not intended to cover those miscellaneous driving activities which are collateral to the main purpose of the employment and take up only limited portion of the working day. Thus we conclude that

an employee whose principal employment is not driving and who does only incidental and limited driving in the course of a working day would not be required to have a chauffeur's license. Attached is Opinion No. 4180, dated November 9, 1942, which covers an analogous situation and should be of some help to you. Of course, each situation would have to be evaluated as a separate matter.

In reply to your second question, the answer is No -- the employer, if within the boundaries developed above, would not be in violation of Section 63-13-71, N.M.S.A., 1953 Compilation, Pocket Supplement.

Trusting this fully answers your inquiries, we remain

By: Harry E. Stowers, Jr.

Assistant Attorney General