

Opinion No. 43-4318

June 21, 1943

BY: EDWARD P. CHASE, Attorney General

TO: Dear Mr. Jaeger: Director, Driver's License Division, Bureau of Revenue, Santa Fe, New Mexico

We have your letter of June 17th, 1943, wherein you set out a fact situation involving a man who buys coal in a certain town in New Mexico and hauls it to another town for re-sale purposes. One of such trucks is operated by this man's son, who is 15 years of age.

In view of this fact situation you ask an opinion of this office concerning whether or not such boy is a chauffeur, according to our drivers' license law, and also, whether his father is liable, under the drivers' license act, for employing a person under 18 years of age who does not have a chauffeur's license to operate his truck.

Section 68-301, New Mexico 1941 Compilation, sub-section G, defines "chauffeur" as follows:

"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."

In view of the fact situation you set out, it seems clear that the boy is employed to operate a motor vehicle. This would seem to be true regardless of whether or not the boy receives a fixed or stated compensation for his services, or whether, in fact, he receives any compensation.

Brugier v. Moussier's Administrators, 5 La. 93, 95, held that the word "employed" may mean either busy or occupied at work, or it may mean entrusted with the management of an affair.

Webster's New International Dictionary, Second Edition, defines "employ," among other things, to mean "to entrust with some duty or behest."

It would seem that here the son has certainly been entrusted with some duty and has been employed in such sense of the word.

Section 68-305 provides that no license shall be issued to any person as a chauffeur under the age of 18 years.

It is, therefore, my opinion, in view of the fact situation that you set out, that the boy cannot operate such truck without a chauffeur's license and, since his age bars him

from receiving such a license, he is unlawfully doing certain duties in violation of our motor vehicle laws.

In further response to your request, I call your attention to section 68-324, New Mexico 1941 Compilation, which provides:

"No person shall knowingly employ any chauffeur to operate a motor vehicle on the highways who is not licensed under this act."

Section 68-325, 1941 Compilation, provides that no person shall knowingly authorize or permit a motor vehicle owned by him, or under his control, to be driven by any person in violation of any of the provisions of this act.

Section 68-327 provides a specific penalty for violating the provisions of the act.

Hoping that the above fully answers your questions, I remain,

By HARRY L. BIGBEE

Asst. Atty. General