BUREAU OF MOTOR VEHICLES: ASSISTANT DIRECTOR: Owner of motor vehicle carrying property for hire required to hold chauffeur's license—operator of funeral car not required to hold chauffeur's license unless employed for the principal purpose of operating motor vehicle upon the highways.

February 5, 1944.

Opinion No. 13

Mr. R. M. Eichelsdoerfer,
Assistant Director,
Bureau of Motor Vehicles,
State House,
Indianapolis, Indiana.

Dear Sir:

Your letter of January 20, 1944, received requesting an answer to the following questions:

"If the owner of a motor vehicle, or a member of a partnership owning a motor vehicle or an official of a corporation owning a motor vehicle, operates such motor vehicle while in use as a carrier of property for hire, is it required, under the Indiana law, that such operator shall hold a chauffeur's license?

"If such motor vehicle is a funeral car, and is being used to transport a corpse, is such an operator required by law to have a chauffeur's license?

"If such motor vehicle is a funeral car and is being used to transport a corpse, and the operator of such motor vehicle is an employee of the owner, is such operator required by law to have a chauffeur's license?"

Section 47-433, Burns 1933, being Sec. 2, Ch. 58, Acts of 1939, provides as follows:

"No person, except those expressly exempted under sections three and four (Secs. 47-434, 47-435) of this act, shall drive any motor vehicle upon any highway of this state unless such person, upon application, has been licensed and is the holder of an operator's, chauffeur's, public passenger chauffeur's or conditional
license or of a beginner's permit issued by the department under the provisions of this act.”

The exemptions referred to in the foregoing statute have no application to the question submitted. These are found in Sections 47-434 and 47-435, Burns’ 1933.

Clause (g) of Section 47-432, Burns’ 1933, being Sec. 1, Ch. 58, Acts of 1939, defines the term “chauffeur” as follows:

“(g) ‘Chauffeur’. Every person who is employed for hire, for the principal purpose of operating a motor vehicle upon the highway, and every person who operates a motor vehicle while in use as a carrier of property for hire.”

Clause (a) of Section 47-443, Burns’ 1933, being Sec. 11, Ch. 58, Acts of 1939, provides as follows:

“(a) The department shall issue to every person licensed as an operator an operator’s license and to every person licensed as a beginner either a beginner’s permit or a conditional license, as the case may be and to every person licensed as a chauffeur a chauffeur’s license and to every person licensed as a public passenger chauffeur a public passenger chauffeur’s license. Every person entitled under the provisions of this act to either a chauffeur’s license or a public passenger chauffeur’s license before operating a motor vehicle as such shall apply for and receive from the department and at all times while so operating a motor vehicle as a chauffeur or public passenger chauffeur as provided for in this act shall display in plain sight a chauffeur’s or public passenger chauffeur’s badge as the case may be.”

Under the above statutory definition of the word “chauffeur” it is apparent two classes of persons are included: (1) “Every person who is employed for hire, for the principal purpose of operating a motor vehicle upon the highway,” and (2) “Every person who operates a motor vehicle while in use as a carrier of property for hire.”

It is my opinion your first question should be answered in the affirmative as such operators come clearly within the
second half of the definition of the word "chauffeur". The statute makes no exemption for owners of motor vehicles when they are "carriers of property for hire."

Your second and third questions are more serious questions. It is necessary to construe the words "carrier of property for hire" as used in the above statute.

In Volume 10, Corpus Juris, page 37, Section 1, a "carrier" is defined as follows:

"A carrier is one that undertakes the transportation of persons or movable property, and the authorities, both elementary and judicial, recognize two kinds or classes of carriers, namely, private carriers and common carriers. * * *

On page 38, Section 4, of the above authority, the rule with reference to private carriers is thus declared:

"A private carrier is one who, without being engaged in the business of carrying as a public employment, undertakes to deliver goods in a particular case for hire or reward. He may carry or not, as he deems best. He is but a private individual and is invested, like all other private persons, with a right to make his own contracts."

See also Smith v. State (1926), 199 Ind. 217, for a definition of private carriers.

The fact that the undertaker may not make any separate charge for the transportation would not take the employment out of the classification of "for hire". McBurnie v. Stelsly (1906), 97 S. W. 42, 29 Ky. L. 1191.

It then becomes necessary to determine whether a "corpse" is property within the meaning of the term as used in the motor vehicle provisions of the law. In 25 C. J. S. 1016, Section 2, the following rule is announced:

"The authorities are almost uniform in holding that there is no right of property, in a strict sense or in the ordinary use of the term, in the dead body of a human being, and after burial the body becomes part and parcel of the ground to which it is committed. The right, however, to bury a corpse, and to preserve the remains, considered in Sections 3 and 4 infra, is a legal
right which the courts recognize and protect, as a quasi-property right; and this, in the absence of statute, is the only right one may have in a dead body.”

This above authority cites the case of Meek v. State (1933), 205 Ind. 102, which holds that while there is a property right in the survivors in a dead body, the same is more in the nature of a quasi-property right, as distinguished from a general property right.

See also:

15 Am. Jur. 831, Sec. 6;
Orr v. Dayton Traction Co. (1912), 178 Ind. 40.

It is my opinion that the term “property” as used in the statute requiring chauffeurs licenses means property in the common, ordinary sense of the term, and was not intended to apply to the case of a limited quasi-property right such as may exist in a human “corpse”.

In conclusion, the answer to your second and third question depends upon whether or not the operator is an “employee for hire, for the principal purpose of operating a motor vehicle upon the highway.” If the operator falls within this definition, he should have a chauffeur’s license, otherwise not.

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PUBLIC SERVICE COMMISSION: Caboose cars in railway yards.

CABOOSE CARS: Use in railway yards—size and construction.

February 8, 1944.

Opinion No. 14

Mr. Clayton M. Bailey,
Director, Railroad Department,
Public Service Commission of Indiana,
State House,
Indianapolis, Indiana.

Dear Sir:

This is in response to your recent inquiry which calls for an interpretation of Section 4 of Chapter 60 of the Acts of 1911