February 18, 1943.

Mr. B. Lowell McDaniel, Director,
Bureau of Motor Vehicles,
State House,
Indianapolis, Indiana.

Dear Mr. McDaniel:

I have your letter of the 16th in which you request a ruling from the Attorney General "* * * as to the kind of license (Chauffeur or Operators) that should be issued to operators of vehicles owned and operated by private and municipal utilities, business corporations, Police Departments, Fire Departments and other city and state employees who are full or part time drivers of trucks, automobiles and other equipment."

Your inquiry, in other words, is "who is a chauffeur within the meaning of the Indiana License Statute?" Section 1, Chapter 71, Acts 1937, as amended by Section 1, of Chapter 58, Acts 1939, seems to place two types of operators in that category:

1. One who is employed for hire and for the principal purpose of operating a motor vehicle on a highway;
2. One who operates a motor vehicle in use as a carrier of property for hire.

The latter category presents no great difficulties in its application; but the former, in the use of the words "principal purpose" permits some latitude for dispute.

Unfortunately, since the question whether the operator of a motor vehicle in a given case is employed for the principal purpose of operating the vehicle on the highway, is a question of fact, it is impossible for me to construct a self-executing definition which will solve all cases.

As is readily apparent, employees of the same company, municipality or of the state, may require different licenses depending upon the purpose of their employment. Since in the first instance, the determination of that purpose will inevitably fall upon your Bureau, I am attaching as an appendix
some applications and considerations of the problem in other states, which it is hoped will be of some assistance.

On the part of the state and its enforcement officers, it has been pointed out that "statutes of the kind under consideration must be strictly construed and not extended by implication to persons not coming clearly within their terms." State vs. Wimmer, 186 S. E. 133, W. Va. 1936.

On the part of the individual who is in doubt concerning the type of license he should procure, it should be borne in mind that he cannot err in procuring a chauffeur's license since by statute (Sec. 7, Chap. 71 Acts 1937, as amended by Sec. 6 of Chap. 58, Acts 1939) a chauffeur's license will also confer all rights and privileges to which the holder of an operator's license is entitled.

APPENDIX

I. What is the meaning of "principal purpose"?

In this use, the word "principal" has acquired no technical legal meaning and hence may be defined as "main; lending; outstanding;" (see Webster's International Dictionary, Second Edition) as distinguished from "lesser or subordinate."

A survey of the cases in which the definition of "chauffeur" has become important will indicate that in deciding whether an operator is a chauffeur, the answers to about three questions are indicative:

1. Is it essential to the employment of the person that he be able to operate a motor vehicle?
2. Is he being paid more because of his ability to operate a motor vehicle?
3. Is motor vehicle operation only incidental to the main part of his duties?

II. How have specific situations been settled in other states?

So far as I am able to ascertain, in only one other state has the question been raised under a statute defining "chauffeur" identically with the Indiana Statute. In 1933 the Attorney General of Michigan was asked to decide whether a bakery employee, who sold goods from town to town from a truck furnished by his employer, should have a chauffeur's license. The Attorney General replied that whether the principal business of the employee was selling goods or operating a motor
vehicle was a question of fact for a court or jury to decide. See opinions of Attorney General of Michigan, 1933-1934.

Definitions under other statutes are various but similarity in treatment of the problem will be noted in most cases.

New York—People v. Davis (1915), 166 N. Y. S. 318.

A telephone trouble-man was furnished with a car to facilitate calls. His salary remained the same. In deciding that a chauffeur's license was not necessary, the court said: "The only use he made of the motor car was merely incidental to his regular employment. His duties were principally and substantially those of repairing telephones that were out of order."


An employee of the Texas Oil Company made sales and deliveries on the spot and was furnished a truck for that purpose. His pay was for his services as a solicitor and salesman. Chauffeur was defined as any person whose business or occupation was that he operated a motor vehicle for compensation, wages or hire. Deciding that the employee was not a chauffeur the court placed great emphasis on the fact that the use of the truck was incidental to his main occupation.

West Virginia—State v. Wimmer (1936), 186 S. E. 133.

A defendant was superintendent of an oil company and his duties required that he drive to various leases operated by the company. His employer furnished an automobile in which the defendant also hauled things which were needed on the job. The evidence showed that the defendant's salary was paid as a field superintendent and that his position was not dependent upon his ability to drive a car. The statutory definition of chauffeur was "any person who operates for hire, or receives pay directly or indirectly to operate * * *" a motor vehicle. The court thought that the operation of the car was incidental to his main occupation and that the defendant did not need a chauffeur's license.

Maryland—State v. Depew (1938), 1 A. 2nd 626.
An employee of the state, who was an Auditor, used a state-owned automobile to go from one assignment to another. "Chauffeur" was defined by statute as "every person operating a motor vehicle for hire as an employee of the owner thereof." The court said "Appellee was never employed as a chauffeur, but as a State Auditor, and the extent of his operation of the motor vehicle was purely incidental to the purposes of his employment, and only as a means of enabling him to make his assignments and return to his home in Baltimore."

See also Des Moines Rug Cleaning Company v. Automobile Underwriters, Inc. (1932), 245 N. W. 215 (Iowa).

GENERAL ASSEMBLY: Liability of municipality for torts committed by its employees.

MUNICIPALITY: Liability in tort action.

February 25, 1943.

Honorable James M. Knapp,
Representative Wayne County,
General Assembly,
Indianapolis, Indiana.

Dear Sir:

This is in answer to your request for an opinion as to whether a city, town, or any public department or agency of the State would be liable for injuries caused by any defect in or the failure of a railroad crossing protective device to work, or the negligence of a crossing watchman provided for by the terms of House Bill 71.

In my opinion there would be no such liability on the part of any municipality or agency or department of the State.

Cities and towns and the State Highway Commission are now authorized by statute to require by ordinance, resolution or orders, the installation by railroads of protective signal devices at certain railroad crossings, and to order watchmen maintained by railroads at certain crossings.

When a municipality or state department acts under such statutes to require such public protection it is acting in its governmental capacity in the exercise of the police power