

Although there is no provision for making pro rata distribution to a county which did not qualify by employing a county highway engineer at the first of a calendar year, but did qualify at a later date, it is the apparent intent of the Legislature that the distribution of either the \$5,000.00 or \$2,500.00 is on an annual basis. It is noted that the funds appropriated for the county highway engineer fund out of the motor vehicle highway account, are a continuing fund which is available for distribution until the end of the calendar year when it reverts to the motor vehicle highway account. This is governed by Burns' 36-1132, *supra*. Reconciling all provisions of the statute, the Legislature's intent would appear to be that the fund or a pro rata share could be distributed in 1964 and subsequent years in the event a county qualified to receive distribution after the first of January. There is no provision requiring the county to employ and pay an engineer a full year before distribution could be made to that county, and, in fact, by the money being made available in April and reverting on December 31 if not used, a contrary intent is expressed.

In summary thereof, it is my opinion that a county highway engineer may be employed at any time subsequent to August 12, 1963, but the State of Indiana will not contribute towards the payment of any of his salary until after January 1, 1964. The payments made by way of a grant-in-aid subsidy are to be made available for use by the county in paying his annual salary during the same year in which the services are performed.

OFFICIAL OPINION NO. 62

December 10, 1963

Hon. William C. Christy
State Senator
7106 Grand Avenue
Hammond, Indiana

Dear Senator Christy:

Your recent letter requesting an Official Opinion from this office has been received and reads, in pertinent part, as follows:

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“One of our Industries requires an employee to drive gasoline trucks of various makes and models, back and forth across Indianapolis Boulevard, a State Highway, several times during the day. This employee does not have Chauffeur’s license.

“Should he have Chauffeur’s license? And would he personally be liable if there was an accident on Indianapolis Boulevard?”

The Acts of 1945, Ch. 304, Sec. 49, as amended, as found in Burns’ (1963 Supp.), Section 47-2701, prescribes, in part, that:

“(a) No person, except those hereinafter exempted, shall drive any motor vehicle upon a highway in this state unless such person has a valid license as an operator or chauffeur under the provisions of this act * * *.

“(b) No person shall drive a motor vehicle as a chauffeur unless he holds a valid chauffeur’s license * * *.”

A chauffeur’s license is defined similarly by the provisions of the Acts of 1945, Ch. 304, Sec. 2, as amended, as found in Burns’ (1963 Supp.), Section 47-2402 (aa) and by the Acts of 1947, Ch. 159, Sec. 2, as amended, as found in Burns’ (1952 Repl.), Section 47-1045 (f).

Burns’ 47-2402 (aa), *supra*, reads:

“(aa) Chauffeur. Every person who is employed for hire by another for the principal purpose of operating a motor vehicle and every person who drives any motor vehicle upon a public highway, when in use for the transportation of property for hire.”

Burns’ 47-1045 (f), *supra*, provides:

“(f) Chauffeur. Every person who is employed for hire for the principal purpose of operating a motor vehicle upon the public highways; and every person who operates a motor vehicle while in use as a carrier of passengers or property for hire; and every person who drives or operates a motor vehicle while in use

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as a school bus for the transportation of pupils to or from school.”

It would seem clear that the Legislature, in considering the requirements for the issuance of chauffeurs' licenses, anticipated that any person employed for hire for the principal purpose of operating a motor vehicle upon the public highways or for the purpose of operating a motor vehicle on a public highway, which vehicle is to be used for the transportation of property for hire, should have a chauffeur's license, and this same concept has been before the General Assembly in 1945, 1947, 1951 and 1955.

Therefore, in answer to your first question it is my opinion that an employee hired for the principal purpose of driving a truck on, including back and forth across, a state highway should have a chauffeur's license.

With respect to the second question in your letter, liability for damages arising out of an accident in which a motor vehicle, truck or otherwise, is involved, would necessarily be dependent upon a consideration of all the facts and circumstances surrounding the accident. Thus, it would be impossible, under the form of your second question to state categorically whether or not the driver would be personally liable. This is the type of situation which, in its entirety, would and should be placed before a court to determine the question of such liability.

OFFICIAL OPINION NO. 63

December 11, 1963

Hon. Joseph W. Harmon
State Representative
133 East Chestnut Street
Corydon, Indiana

Dear Representative Harmon:

Your recent letter requesting my Official Opinion has been received, and, in pertinent part, reads as follows: