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October 3, 1985

Mr. E. Dean Tisdale
Idaho Transportation Department
Statehouse Mail

THIS IS NOT AN OFFICIAL ATTORNEY GENERAL OPINION
AND IS SUBMITTED SOLELY TO PROVIDE LEGAL GUIDANCE

Re: Request for Definition of "Chauffeur"

Dear Mr. Tisdale:

Your letter of June 25, 1985 asks the attorney general to interpret the statutes in the Idaho Code that define the term "chauffeur." You state that confusion exists as to whether the term "chauffeur" covers "driver salesmen" who operate pop, beer and bread trucks, and drivers who own or lease their own trucks transporting exempt commodities such as sand and gravel, timber and agricultural products. The examples cited present variations based on (a) whether the driver owns the vehicle; (b) whether the driver owns the items being hauled; and (c) whether the items hauled are "exempt" products.

A history of the pertinent statutes is helpful. Idaho Code section 49-347 states:

> "Chauffeur," wherever used in this chapter, shall be taken to mean any person operating motor vehicles on the public highway for hire.

Section 49-347 has remained unchanged since 1925. If it were the last word, there would be no difficulty in answering the questions posed by your letter. This statute is

all-encompassing. It draws no distinction between those who drive their own vehicles and those who drive vehicles owned by another. Nor does it distinguish between types of goods hauled. Under its plain language, any person who operates a motor vehicle on the public highway for hire is a "chauffeur." However, the compiler's notes accompanying the statute observe that, "This section is probably superseded by § 49-303(c)." It is our opinion that the compiler's note is correct.

Section 49-303(c) was enacted in 1935. In its original version, "chauffeur" was defined as:

> 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.

This definition pulls back from the all-encompassing wording of the 1925 statute by drawing several distinctions. Under the 1935 definition in §§ 49-303(c), one is a "chauffeur" if one meets either of two conditions. The first condition stresses the driver's employment status. In order to be a chauffeur, a person must be employed for the principal purpose of operating a motor vehicle. It thus appears that a self-employed operator might not qualify. Second, regardless of ownership or employment, a person engaged in public or common carriage is a chauffeur. It thus appears that private hauling might not result in chauffeur status.

Both of these readings are reinforced by subsequent amendments to section 49-303(c).

> Chauffeur.--Every person who is employed by another for the principal purpose of driving a motor vehicle and every person who drives a motor vehicle while in use as a public contract or common carrier of persons or property.

The underlined words were added in 1951. The first condition now makes clear the legislative intent to distinguish between those who are self-employed and those who are employed by another. It is only the latter who are chauffeurs.

Second, the terms "contract" and "common" carrier are terms of art coined by the same 1951 legislature in its revision of the Motor Carrier Act in the Public Utilities Law, ch. 8, title 61. These terms are distinguished from another term of art coined in 1951, viz., "private" carrier. Every person who engages in contract or common carriage, regardless of ownership or employment status, is a chauffeur. These two terms are defined at Idaho Code §§ 61-801(f) and (g) as follows:

> f. The term "common carrier" means any person, which holds itself out to the general public to engage in the transportation by motor vehicle in commerce in the state of Idaho of passengers or property or any class or classes thereof for compensation, whether over regular or irregular routes.
>
> g. The term "contract carrier" means any person which, under individual contracts or agreements, engages in the transportation, other than transportation referred to in paragraph (h), by motor vehicle of passengers or property in commerce in the state for compensation.

By contrast, a "private carrier" was defined by the 1951 legislature in Idaho Code § 61-801(h) as:

> [A]ny person not included in the terms "common carrier" or "contract carrier" who or which transports in commerce in the state by motor vehicle property of which such person is the owner, lessee, or bailee, when such property is for the purpose of sale, lease, rent, or bailment, or in the furtherance of any commercial enterprise.

Thus, as matters stood for three decades after the 1951 amendment to section 49-303(c), the extent of the term "chauffeur" was clear. The term covered "every person" who was employed by another for the principal purpose of driving a motor vehicle, <u>regardless of the type of carriage engaged in</u>. It also covered "every person" engaged in common or contract carriage, <u>regardless of the status of ownership of vehicle or goods</u>.

The story does not end there. In 1982, the Idaho Legislature enacted H.B. No. 645, "repealing sections 49-301 through 49-306, Idaho Code" and "amending ch. 3, title 49, Idaho Code, by the addition of a new section 49-301, Idaho Code, to provide definitions." Idaho Sess. Laws, ch. 95, p. 185.

As a result of the 1982 amendments, section 49-301(2) of the Idaho Code now defines "chauffeur" as:

> a person who is employed by another for the principal purpose of driving a motor vehicle and a person who drives a motor vehicle while in use as a public contract or common carrier of persons or property.

The new definition poses a problem. Under section 49-303(c), as it existed from 1951 to 1982, it was clear that every person employed by another primarily to drive a motor vehicle and every person engaged in common or contract carriage was a chauffeur. The plain language of the statute--"every person who . . . and every person who . . ."--left no doubt that a person was a chauffeur who met <u>either</u> of these two conditions. The wording of the new definition--"a person who . . . and a person who . . ."--makes it possible to argue that one must meet <u>both</u> conditions in order to be a chauffeur. Under this reading, a person would not be a chauffeur unless he or she was <u>both</u> employed by another <u>and</u> engaged in common or contract carriage. In short, anyone <u>who</u> owned his or her own rig would be exempt from "chauffeur" status, even though engaged in common or contract carriage for compensation on the public highways of the state of Idaho.

It is our opinion that the legislature did not intend this result by its amendment of Idaho Code § 49-303 in 1982. For one thing, the language of the amendment itself does not require such a reading. The new definition does not identify a single "person" and then enumerate two conditions to be met. Rather, the statute identifies two conditions under either of which "a person" shall be a chauffeur.

More importantly, there is no indication that the 1982 legislature intended to work any significant change in the definition of "chauffeur" by its amendments to section 49-303. The purpose of the 1982 amendments was to "transfer the administration of certain functions from the Department of Law

Enforcement to the Idaho Transportation Department." Idaho Sess. Laws, ch. 95, p. 185. The result was a complete recodification of statutes spread throughout titles 40, 49, 61 and 67 of the Idaho Code. Significantly, the 1982 legislature did not announce, as did the 1951 legislature, that it was "amending section 49-303, Idaho Code, to redefine a chauffeur." Chapter 183, Idaho Sess. Laws, 1951 (emphasis added).

Finally, as a matter of public policy, it is inconceivable that the 1982 legislature would have intended to exempt all those who own their own rigs from qualifying as a "chauffeur," even though they might be engaged in common or contract carriage. The preamble to the 1951 statute states:

> The legislature, being mindful that the operation of motor vehicles on the highways of the sate of Idaho is a privilege and not a right, and that control of the granting, exercise and use of such privilege is necessary in order to insure that the public highways of the state shall be safe for the transportation of persons and property, reaffirms its belief that the privilege of operating motor vehicles on the public highways shall not be extended to persons not properly qualified to hold and exercise such privilege . . . .

Id. The 1951 preamble merely "reaffirms" an existing policy. That policy of insuring the safety on public highways has not been abrogated by the amendment of the underlying statute in 1982.

We conclude, in direct response to the questions posed by your letter, that nearly all operators whose livelihood depends on the transportation of persons or goods must have a chauffeur's license. This includes all contract and common carriers and their employees. Nothing in the statutory history leads us to conclude that carriage of "exempt" commodities (such as sand and gravel, timber or agricultural products) would serve to exempt the carrier from status as a chauffeur.

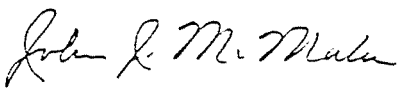
Among commercial haulers, the only persons exempt from chauffeur status under Idaho Code § 49-303(2) are those who are self-employed and who transport property of which they are the

"owner, lessee, or bailee, when such property is for the purpose of sale, lease, rent or bailment, or in the furtherance of any commercial enterprise." Idaho Code § 61-801(h). A bailee is one who bears the risk of loss if the goods being transported are lost or destroyed while in his or her possession.

In most instances, "driver salesmen" will be chauffeurs. Again, the only exception would be for a driver salesman who was self-employed and who was the owner, lessee or bailee of the goods being transported.

I hope this has answered the questions posed by your letter. If you need further information, please contact me.

Sincerely,



John J. McMahon
Chief Deputy Attorney General

JJM/cjm