



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Hon. Julian Montgomery
State Highway Engineer
Austin, Texas

Dear Sir:

Opinion No. 0-2105

Re: Definition of the terms "legal right of possession" and "legal right of control" in the Motor Registration statute.

We are in receipt of your letter of March 20, 1940, in which you request an opinion of this department on the following questions set out therein:

"1. Is a truck or bus driver employed by the week or month to drive a truck or bus for the title owner thereof, and who is subject to transfer from one vehicle to another, or from one county to another, or to discharge by or at the will of the title owner, the 'owner' of such vehicle for registration purposes?

"2. Is a local ticket agent of a bus company, such as may be found in each town through which bus lines regularly operate in Texas, the 'owner' of the buses of his company for registration purposes?

"(a) Would the same rule apply to local agents of freight lines?

"3. Is the district or branch manager of an oil refining company, or a wholesale grocery concern the 'owner' of the vehicles definitely assigned to that district or branch for registration purposes?"

Honorable Julian Montgomery, page 2

Article 6675a-1 of Vernon's Annotated Civil Statutes provides, in part, as follows:

"(1) 'Owner' means any person who holds the legal title of a vehicle or who has the legal right of possession thereof, or the legal right of control of said vehicle."

Article 6675a-2 of Vernon's Annotated Civil Statutes provides, in part, as follows:

"Every owner of a motor vehicle, trailer or semi-trailer used or to be used upon the public highways of this State, and each chauffeur, shall apply each year to the State Highway Department through the County Tax Collector of the County in which he resides for the registration of each such vehicle owned or controlled by him, or for a chauffeur's license, for the ensuing or current calendar year or unexpired portion thereof;
* * *"

This department ruled in Opinion No. O-2050 that under the registration statutes a motor vehicle could be registered in either the county of the legal title holder's residence or in the county of residence of a person who has the legal right of control or legal right of possession over the motor vehicle. You are now concerned with the definition of the terms "legal right of possession" and "legal right of control" for purposes of determining what individuals might come within such definition.

In defining the terms "legal right of possession" and "legal right of control" it is necessary to look to the statutes in which the same are used. Said terms do not have a set definition in law but can only mean a certain thing because of the sense in which they are used in a particular statute.

The term "legal possessor" is defined in Words & Phrases (5th Series), Ch. 3, p. 947, as follows:

"Phrase 'legal possessor', as referred

to in section 184 of the Lien Law not intended to mean every person who might be legally or lawfully in possession. The term was used in the sense of one who, but for the reservation of strict legal title in conditional vendor, or the giving of a strict legal title to a chattel mortgagee, would have the status of a full and unqualified owner. General Motors Acceptance Corporation vs. Baker, 291 NYS 1015, 1019, 161 Misc. 238."

In line with the above quotation it is our opinion that the bare physical possession of a motor vehicle by an individual does not for registration purposes put him in the category of one who has the legal right of possession or the legal right of control over the motor vehicle. The Supreme Court of Indiana in the case of WILLIAMS vs. STATE, 75 N.E. 875, states as follows in this connection:

"It is said in Bishop's New Criminal Law, Sec. 824: 'Where any person, whether servant or not, has the bare charge or care of another's effects, "legal possession," observes East, 'remains in the owner, and the party may be guilty of trespass and larceny in fraudulently converting the same to his own use.'"

Another definition of the term "legal possessor" was given by the Supreme Court of California in the case of QUIST vs. HILL, 99 Pac. 204. The court stated as follows:

"What is meant by the term (legal possessor of the property' in the section is one who has the right by virtue of his possession to originally contract with reference to the manufacture, alteration, or repair thereof, such as, for example, a lessee or pledgee of the property; some one having a possession coupled with a right of property so that he can contract with reference to it respecting any of the matters enumerated in

the section."

The case of BAUGHMAN vs. MILSTONE, 125 Atl. 69, is authority for the fact that under the motor vehicle registration statutes it is necessary for the person seeking to register a motor vehicle to hold his interest in said vehicle not only temporarily but with some degree of permanency. The court stated as follows:

"In Berry on Automobiles (3rd Ed.) Sec. 255, cited by appellant, it is said:

"A statute requiring the "owner or custodian" of an automobile to register the same within a certain number of days after "acquiring" it, has reference to persons having an independent and permanent interest in an automobile, and does not include a servant or a person having only temporary control thereof."

"It is a cardinal principle that statutes must be construed reasonably and with reference to the purposes sought to be accomplished by them.

"Section 134 of article 56 of the Code, as amended by Laws 1920, c. 503, defined 'owner' as follows:

"The term 'owner' shall include any person, firm, association or corporation owning a motor vehicle or having the exclusive use thereof, under contract of purchase, lease, hiring or rental thereof, or otherwise."

"To hold that the Legislature meant to include in this definition a person hiring an automobile for a few hours or days would impute to it an intention to prohibit the use of such vehicle by any one whose possession was to continue for only such a short time, for obviously it would be impracticable, or at least unreasonable, to require registration

Ion. Julian Montgomery, page 5

or titling by such a person. It would, of course, equally prohibit the business of owning automobiles for hire."

In looking to the purpose behind the legislative definition of the term "owner" it is our opinion that the legislature intended to provide a method whereby motor vehicles which are stationed in a particular county for the greater portion of a registration year in the possession and control of an individual who is a resident of that county, who has all the rights in the motor vehicle that the owner would have with the exception of legal title could be registered in the county of such individual's residence. With this legislative purpose in mind it is our opinion that the terms "legal right of possession" and "legal right of control" mean something more than the actual physical possession by an agent or servant. We think that the terms imply such possession or control to be with a degree of permanency through out the registration year and not as a temporary matter. A person who can be classed as having either legal right of possession or legal right of control would be one who would see that the motor vehicle is kept in repair and is operated in good condition, and would be entrusted with its care. In other words, our opinion of said terms would preclude a person who has only the physical possession or physical control of a motor vehicle, but would include a person who has all rights in the motor vehicle as to its control and operation, use and management but who does not have legal title. Our definition is further qualified that such possession or control would have to be of a permanent nature or not one subject to being divested at any time by the legal titleholder within the reasonable expectation of the parties at the time of the registration of the motor vehicle. In line with the above discussion we will endeavor to answer the questions you have propounded.

In answer to your first question it is our opinion that a truck or bus driver who is employed under the state of facts which you submit would not qualify as one having the legal right of possession or legal right of control so as to be considered an "owner" for

purposes of motor vehicle registration.

In answer to your second question it is our opinion that a local ticket agent of a bus company would not have a legal right of possession or legal right of control over the busses which regularly pass through his town. The exception to this would be a case where by some instrument in the form of a lease or bailment, said ticket agent would be given such legal right of control or legal right of possession. In this connection, however, such an instrument drawn up for purposes of evasion of the motor vehicle registration law above quoted would not of itself suffice to make such person an "owner" within the meaning of the registration statute. We think that the same rule would apply to the local agents of freight lines as would apply to local ticket agent of a bus line. It is conceivable, however, that the local agent of a freight line under the rules stated previously might be considered an "owner", for registration purposes, of the pick up trucks permanently stationed in his county over which he is given legal right of control or legal right of possession.

In answer to your third question it is our opinion that if the facts were such as to bring a district or branch manager with the rules and qualifications set out previously that he could be an owner of the vehicles of his company for registration purposes. We believe that the statutes were designed to allow the motor vehicles belonging to a company which were permanently located in a particular county and therein under the complete control and supervision of an agent or branch manager who was a resident of said county to allow the registration of such motor vehicles in said county. We think this would be true even though the vehicles located in that county were also used in adjoining counties but were under the control and possession and supervision of this branch agent in the central county.

Whether or not a person qualifies as an owner under the motor registration statutes would in each case

Hon. Julian Montgomery, page 7

depend upon the particular facts. It is our opinion however that the rules and qualifications set out previously should comprize the correct legal test to which the facts must comply before a person would be so qualified as an "owner" for registration purposes.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By

Billy Goldberg

Billy Goldberg
Assistant

BG:ob

APPROVED MAR 22, 1940

Gerard Mann
ATTORNEY GENERAL OF TEXAS

