7135

1. UNITED STATES ARMY—CIVILIAN EMPLOYEES—OPERATION OF MOTOR VEHICLES OWNED BY UNITED STATES GOVERNMENT—HIGHWAYS OF STATE ON OFFICIAL BUSINESS—TO OPERATE SUCH VEHICLES, NOT REQUIRED TO OBTAIN MOTOR VEHICLE DRIVER'S LICENSE UNDER OHIO "DRIVER'S LICENSE LAW"—SECTION 6296-1 ET SEQ., G. C.

2. WHEN SUCH MOTOR VEHICLES NOT OWNED BY UNITED STATES—OPERATED BY CIVILIAN EMPLOYES OF ARMY—USED ON OFFICIAL BUSINESS IN COURSE OF EMPLOYMENT—DRIVER'S LICENSE REQUIRED.

SYLLABUS:

1. Civilian employes of the United States army, who in the course of their employment operate motor vehicles owned by the United States government on the highways of the state on official business, are not required to obtain a motor vehicle driver's license under authority of the "driver's license law of Ohio", Section 6296-1 et seq., General Code, in order so to operate such vehicles.

2. Civilian employes of the army must obtain a driver's license under the provisions of the "driver's license law of Ohio", Section 6296-1 et seq., General Code, in order legally to operate motor vehicles on the highways of the state when such motor vehicles are not owned by the United States and used on official business in the course of their employment.

Columbus, Ohio, September 11, 1944

Hon. Cylon W. Wallace, Registrar, Bureau of Motor Vehicles
Columbus, Ohio

Dear Sir:

Your request for my opinion reads:

"One of the provisions of the Ohio drivers license law, Section 6296-5 (b) G. C., specifically exempts drivers of motor vehicles who are in the military services from drivers license requirements when such drivers are furnished with a Drivers Permit and are operating an official motor vehicle in line of duty. There has been some contention that civilian employes of the Army are also exempt from Ohio drivers license requirements when operating a

government owned motor vehicle on official business. There has also been some contention that civilian employes of the Army may also operate other motor vehicles not government owned and not on official business without compliance with the Ohio drivers license law.

Your opinion covering these matters will be appreciated."

Section 6296-4 of the General Code reads:

"No person except those expressly exempted under sections 5, 6 and 8 of this act, shall drive any motor vehicle upon a highway in this state unless such person, upon application, has been licensed as an operator or chauffeur by the registrar under the provisions of this act."

Section 5 of the act of which such section is a part, is Section 6296-5, General Code, and reads:

"(a) No person shall be required to obtain an operator's or chauffeur's license for the purpose of driving or operating a road roller, road machinery, or any farm tractor or implement of husbandry, temporarily drawn, moved or propelled upon the highway.

(b) Every person on active duty in the military or naval forces of the United States, when furnished with a driver's permit and when operating an official motor vehicle in connection with such duty, shall be exempt from the license requirements of this act.

(c) Every person on active duty in the military or naval forces of the United States, while on leave or furlough, shall be exempt from the license requirements of this act for the period during which a state of war exists between the axis nations and the United States, and for six months thereafter, provided such person was a licensee under this act at the time he commenced such active duty."

Sections 6 and 8 of such act are now Sections 6296-6 and 6296-8 of the General Code. Such sections pertain to non-resident operators of motor vehicles and persons licensed as chauffeurs, etc. Since they are not pertinent to your inquiry, we need give no consideration to the exceptions provided in such sections.

Since civilian employes of the army are not mentioned in the exemption provisions referred to in Section 6296-4, General Code, we must

determine whether such persons are exempt by reason of the necessary implication contained in the language of the exemption provisions or by reason of the fact that it is beyond the power of the state to require persons so employed to obtain a driver's license.

As stated by Wanamaker, J., in State ex rel. v. Forney, Tax Commissioner, 108 O. S. 463, 467:

> "The rule is well and wisely settled that exceptions to a general law must be strictly construed. They are not favored in law, and the presumption is that what is not clearly excluded from the operation of the law is clearly included in the operation of the law."

Even were it not for such rule, it would appear that from the fact that the General Assembly specifically provided that persons "on active duty in the military or naval forces of the United States, when furnished with a driver's permit and when operating an official motor vehicle" shall not be subject to the license provisions of such law, it intended to include within the provisions of such act the other persons not specifically mentioned.

Such intent would further appear from subparagraph (c) of such act, which specifically exempts persons in such service when driving motor vehicles while on furlough under conditions specifically mentioned therein. It would therefore seem to me that under the circumstances mentioned in your inquiry, civilian employes are not exempt from the license provisions of the act by reason of any implication contained in the language of such act. Such fact alone is not sufficient reason to reach the conclusion that the persons mentioned in your inquiry are subject to the licensing features of the act. We must further consider whether it was within the power of the state to require such persons to procure a state license to operate motor vehicles under the conditions specified in your inquiry.

In the case of Johnson v. State of Maryland, 254 U. S. 51, the court had before it the question of whether a driver of a government truck on official business for the post office department could be required to take an examination and obtain a driver's license under a Maryland statute somewhat similar to the "driver's license law of Ohio". The court in such case held that such type of driver was not amenable to the Maryland statute. Mr. Justice Holmes, in delivering the opinion of the court

reasoned on pages 56 and 57 of such opinion as follows:

> "Of course, an employee of the United States does not secure a general immunity from state law while acting in the course of his employment. That was decided long ago by Mr. Justice Washington in United States v. Hart, Pet. C. C. 390, Fed. Cas. No. 15,316; 5 Ops. Atty. Gen. 554. It very well may be that, when the United States has not spoken, the subjection to local law would extend to general rules that might affect incidentally the mode of carrying out the employment,—as, for instance, a statute or ordinance regulating the mode of turning at the corners of streets. Com. v. Closson, 229 Mass. 329, L. R. A. 1918C, 939, 118 N. E. 653. This might stand on much the same footing as liability under the common law of a state to a person injured by the driver's negligence. But even the most unquestionable and most universally applicable of state laws, such as those concerning murder, will not be allowed to control the conduct of a marshel of the United States, acting under and in pursuance of the laws of the United States. Re Neagle, 135 U. S. 1, 34 L. ed. 55, 10 Sup. Ct. Rep. 658.
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> It seems to us that the immunity of the instruments of the United States from state control in the performance of their duties extends to a requirement that they desist from performance until they satisfy a state officer, upon examination, that they are competent for a necessary part of them, and pay a fee for permission to go on. Such a requirement does not merely touch the government servants remotely by a general rule of conduct; it lays hold of them in their specific attempt to obey orders, and requires qualifications in addition to those that the government has pronounced sufficient. It is the duty of the Department to employ persons competent for their work, and that duty it must be presumed has been performed. Keim v. United States, 177 U. S. 290, 293, 44 L. ed. 774, 775, 20 Sup. Ct. Rep. 574."

The rule therein pronounced is clarified in the opinion of Mr. Chief Justice Stone in Penn Dairies, Inc. v. Milk Control Commission of the Commonwealth of Pennsylvania, 318 U. S. 261, 269, by the following reasoning:

> "We may assume also that, in the absence of congressional consent, there is an implied constitutional immunity of the national government from state taxation and from state regulation of the performance, by federal officers and agencies, of governmental functions. Ohio v. Thomas, 173 U. S. 276, 43 L. ed. 699, 19 S. Ct. 453; Johnson v. Maryland, 254 U. S. 51, 65 L. ed. 126, 41 S. Ct. 16; Hunt v. United States, 278 U. S. 96, 73 L. ed. 200, 49 S. Ct. 38; Arizona v. California, 283 U. S. 423, 75 L. ed. 1154, 51 S. Ct. 522. But those who contract to furnish supplies or render services to the government are not such agencies and do not perform governmental functions. Metcalf & Eddy v. Mitchell,

269 U. S. 514, 524, 525, 70 L. ed. 384, 392, 393, 46 S. Ct. 172; James v. Dravo Contracting Co. 302 U. S. 134, 149, 82 L. ed. 155, 166, 58 S. Ct. 208, 114 ALR 318; Buckstaff Bath House Co. v. McKinley, 308 U. S. 359, 362, 363, 84 L. ed. 322, 324 325, 60 S. Ct. 279; and cases cited; cf. Susquehanna Power Co. v. State Tax Commission, 283 U. S. 291, 294, 75 L. ed. 1042, 1045, 51 S. Ct. 434; Helvering v. Mountain Producers Corp. 303 U. S. 376, 385, 386, 82 L. ed. 907, 913, 914, 58 S. Ct. 623, and the mere fact that non-discriminatory taxation or regulation of the contractor imposes an increased economic burden on the government is no longer regarded as bringing the contractor within any implied immunity of the government from state taxation or regulation. Alabama v. King & Boozer, 314 U. S. 1, 9, 86 L. Ed. 3, 6, 62 S. Ct. 43, 140 ALR 615, and cases cited; Baltimore & A. R. Co. v. Lichtenberg, 176 Md. 383, 4 A. (2d) 734, s. c., United States v. Baltimore & A. R. Co. 308 U. S. 525, 84 L. ed. 444, 60 S. Ct. 297."

Such jurist further observed:

"The trend of our decisions is not to extend governmental immunity from state taxation and regulation beyond the national government itself and governmental functions performed by its officers and agents We have recognized that the Constitution presupposes the continued existence of the states functioning in co-ordination with the national government, with authority in the states to lay taxes and to regulate their internal affairs and policy, and that state regulation like state taxation inevitably imposes some burdens on the national government of the same kind as those imposed on citizens of the United States within the state's borders, see Metcalf & Eddy v. Mitchell, supra (269 US 523 524, 70 L. ed. 392, 393, 46 S. Ct. 172). And we have held that those burdens, save as Congress may act to remove them, are to be regarded as the normal incidents of the operation within the same territory of a dual system of government, and that no immunity of the national government from such burdens is to be implied from the Constitution which established the system, see Graves v. New York, 306 U. S. 466, 483, 487, 83 L. ed. 927, 934, 937, 59 S. Ct. 595, 120 ALR 1466.

Since the Constitution has left Congress free to set aside local taxation and regulation of government contractors which burden the national government, we see no basis for implying from the Constitution alone a restriction upon such regulations which Congress has not seen fit to impose, unless the regulations are shown to be inconsistent with Congressional policy. Even in the case of agencies created or appointed to do the government's work we have been slow to infer an immunity which Congress has not granted and which Congressional policy does not require. Reconstruction Finance Corp. v. J. G. Menihan Corp. 312 U. S. 81, 85 L. ed. 595, 61 S. Ct. 485, and cases cited; Colorado Nat. Bank v. Bedford, 310 U. S. 41, 53, 84 L. ed. 1067, 1074, 60 S. Ct.

800, and cases cited; cf. Baltimore Nat. Bank v. State Tax Commission, 297 U. S. 209, 80 L. ed. 586, 56 S. Ct. 417."

From the foregoing authorities it would appear that the following deductions may be made: (1) The state may not interfere directly with the federal government in the performance of its functions of government. (2) An employe of the United States does not, by reason of his employment, obtain a general immunity from the requirements of state statutes, even while acting in the course of his employment. (3) Where the federal government has prescribed the qualifications for operators of its motor vehicles, while carrying out its governmental functions or duties, the state government may not prescribe qualifications for such operators or require such operators to obtain a license from the state in order to engage in such employment. (4) The mere fact that the federal government has determined that a particular person has the qualifications to operate one or more of its motor vehicles in the performance of certain federal governmental functions does not deprive the state government of the right to specify the qualifications of such persons to operate other motor vehicles, or such vehicles when not engaged in such governmental business, and to require the obtaining of a license so to do.

Specifically answering your inquiry, it is my opinion that:

1. Civilian employes of the United States army, who in the course of their employment operate motor vehicles owned by the United States government on the highways of the state on official business, are not required to obtain a motor vehicle driver's license under authority of the "driver's license law of Ohio", Section 6296-1 et seq., General Code, in order so to operate such vehicles.

2. Civilian employes of the army must obtain a driver's license under the provisions of the "driver's license law of Ohio," Section 6296-1 et seq., General Code, in order legally to operate motor vehicles on the highways of the state when such motor vehicles are not owned by the United States and used on official business in the course of their employment.

Respectfully,

THOMAS J. HERBERT
Attorney General