Carriers—Board of Railroad Commissioners—License—Motor Vehicles.

Owners of automobiles not engaged in the business of a carrier but who operate their cars in going to and from their work and carry their friends who are also going to and from work, and are working at the same place, and where they do so merely as an incident to their work and as an accommodation to their friends, not offering to carry all, do not come within the provisions of Chapter 154, Laws of 1923, and are not required to take out a license, even though a charge is made for the service.

Board of Railroad Commissioners,
Helena, Montana.

Gentlemen:

You have requested an interpretation of certain provisions of the Motor Vehicle Law passed by the Legislature in 1923.

It appears that certain persons, who reside in Roundup and who are employed at coal mines outside of the city limits, own and operate their own automobiles and carry their friends and fellow workers to and from work, making one round trip each day, for which service they receive compensation.

Any individual may operate his private car under such circumstances and may carry his friends or others incidentally without violating any of the provisions of Chapter 154, Laws of 1923, even though a charge is made for the service. This chapter is an Act entitled: "An Act Providing for the Supervision and Regulation of the Transportation of Persons and Property for Compensation Over Any Public Highway in the State of Montana by Motor Vehicles."

The words "for compensation" are, by the Act, defined to mean "transportation of any person for hire in any motor vehicle." The Act was not intended to require a license for the use of motor vehicles operated on a non-commercial basis over the highways of the state, but was intended to require a license from common carriers only.

A common carrier is defined by Section 7846, Revised Codes of 1921, as:

> "Everyone who offers to the public to carry persons, property, or messages, excepting only telegraphic or telephonic messages, is a common carrier of whatever he thus offers to carry."

Other definitions are:

> "Anyone who holds himself out to the public as ready to undertake for hire or reward the transportation of goods from place to place, and so invites custom of the public, is in the estimation of the law a common carrier." Lloyd v. Haugh, etc., Storage, etc. Co., 223 Pa. 148, 154, 72 A. 516, 21 L. R. A. N. S. 188.
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> "One who, by virtue of his calling, undertakes, for compensation, to transport personal property from one place to another for all such as may choose to employ him." Jackson Architectural Iron Works v. Hurlbut, 158 N. Y. 34, 38, 52 N. E. 665, 70 Am. S. R. 432.
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> And see list of cases cited under Note 35 in 10 C. J. 39.

From the foregoing, it is apparent that these persons are not common carriers and do not offer to carry all but only those who may occasionally and incidentally ride with them to and from work.

"Private carriers are those who make their own contracts, not making it their vocation nor holding themselves out to the public ready to act for all who desire their services."

See also: Varble v. Bigley, 14 Bush (Ky.) 698, 703, 29 Am. R. 435;
Allen v. Sackrider, 37 N. Y. 341.

It is, therefore, my opinion that owners of automobiles who are not engaged in the business of a carrier, but who operate their cars in going to and from their work and carry their friends who are also going to and from work and are working at the same place, where they do so merely as an incident to their work and as an accommodation to their friends, not offering to carry all, do not come within the provisions of the Act and are not required to take out a license, even though a charge is made for the service.

Very truly yours,
WELLINGTON D. RANKIN,
Attorney General.