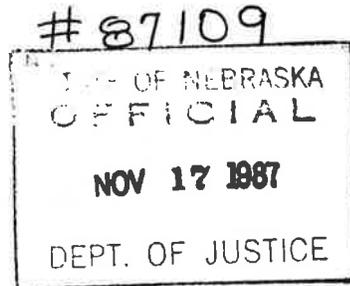


DEPARTMENT OF JUSTICE

STATE OF NEBRASKA

TELEPHONE 402/471-2682 • STATE CAPITOL • LINCOLN, NEBRASKA 68509



ROBERT M. SPIRE
Attorney General
A. EUGENE CRUMP
Deputy Attorney General

DATE: November 16, 1987

SUBJECT: Supervision of Persons Driving With A Learner's Permit Pursuant to Neb.Rev.Stat. §60-407(4)

REQUESTED BY: Holly Jensen, Former Director
Department of Motor Vehicles

WRITTEN BY: Robert M. Spire, Attorney General
Yvonne E. Gates, Assistant Attorney General

Question: Is it necessary that a person driving with a learner's permit be accompanied by a driver licensed in Nebraska.

Conclusion: Yes. We have reviewed existing statutes and Attorney General Opinion No. 115 issued November 15, 1967 and conclude that the answer remains the same. It must be a Nebraska Licensed Operator.

Neb.Rev.Stat. §60-407(4) provides in pertinent part:

Any person who has attained the age of fifteen years or more may obtain a learners permit from the county treasurer which shall be valid for a period of twelve months and he or she may operate a motor vehicle on the highways of this state if he or she is accompanied at all times by a licensed operator who is at least nineteen years of age and who is actually occupying the seat beside the driver or, in the case of a motorcycle or moped, if he or she is within visual contact with and under the supervision of, in the case of a motorcycle, a licensed motorcycle operator or, in the case of a moped, a licensed motor vehicle operator.
[underscoring added]

Nowhere in the motor vehicle Operators Licensed Act are the terms "licensed operator", "licensed motorcycle operator" or "licensed motor vehicle operator" defined. However, statutes pertaining to the same subject matter should be construed together. Additionally, the Legislature is presumed to have in mind all

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previous legislation upon the subject. The Nebraska Rules of the Road, Neb.Rev.Stat. §39-601 et. seq., define terms which provide insight into the intended meaning. They state:

(2) Driver's license shall mean any operator's or chauffeur's license or any other license or permit to operate a motor vehicle issued under the laws of this state, including:

(a) (Any temporary license or instruction permit;

(b) The privilege of any person holds a valid license;

(c) Any nonresident's operating privilege as defined in sections 39-601 to 39-6,122; and

(d) An employment driving permit issued as provided by this act;

* * *

(57) Nonresident shall mean every person who is not a resident of this state;

(58) Nonresident's operating privilege shall mean the privilege conferred upon a nonresident by the laws of this state pertaining to the operation by such person of a motor vehicle, or the use of a vehicle owned by such person, in this state;

(59) Operator or driver shall mean any person who drives or is in actual physical control of a vehicle;

(60) Operator's license shall mean any license to operator vehicle issued under the laws of this state;

It is clear that non-residents have a driver's license in this state only to the extent they operate their own or someone else's vehicle in this state. They are not considered licensed when they are not actually operating the vehicle.

In Boker v. Luebbe, 198 Neb. 282, 252 N.W.2d 297 (1977) the Nebraska Supreme Court stated:

"The purpose of this section [60-407(4)] is obviously to insure that persons learning to drive are supervised and directed by a responsible adult." Id. at 300. In Kremlacek v. Sedlacek, 190 Neb. 460, 209 N.W.2d 149 (1973), the same court held that the negligence of the driver with the learner's permit could be imputed to the licensed driver supervising him. Since a non-resident is not a licensed driver unless actually operating the vehicle the only individuals permitted to supervise the learners are those holding an operator's license. An operator's

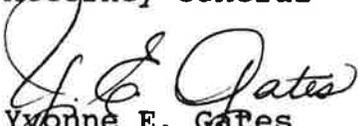
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license is one issued by this state.

Moreover, the Department of Motor Vehicles has regulated, as stated in the Nebraska Driver's Manual, "[w]hen learning to drive for an operator's license, you must be accompanied by a Nebraska licensed operator who is at least 19 years of age and who is occupying the seat beside the driver." A state agency's interpretation of its own regulation should be given significant weight, and although a question of law is involved, the interpretation should be accorded great deference. Smith v. Sorensen, 748 F.2d 427, certiorari denied 105 S.Ct 2116, 471 U.S. 1054, 85 L.Ed.2d 480. Therefore, we conclude that an operator licensed in Nebraska is required when a vehicle is operated by an individual with a valid learners permit.

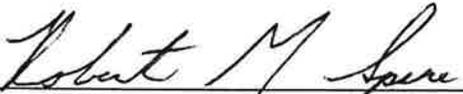
Sincerely,

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13-03-03

APPROVED:



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