

*Ted Wright*



DEPARTMENT OF LAW  
OFFICE OF THE  
**Attorney General**  
STATE CAPITOL  
Phoenix, Arizona 85007

BRUCE E. BABBITT  
ATTORNEY GENERAL

January 10 1978

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**ARIZONA ATTORNEY GENERAL**

Mr. Philip Thorneycroft  
Assistant Director  
Motor Vehicle Division  
Arizona Department of Transportation  
1801 West Jefferson  
Phoenix, Arizona 85007

Re: 78-3 (R77-144)

Dear Mr. Thorneycroft:

By memorandum dated April 8, 1977, you requested our opinion concerning whether the State Department of Transportation may refuse to issue an operator's or chauffeur's license to a person not legally admitted to the United States or legally admitted for a period of no more than six months. Based upon our interpretation of the applicable Arizona statutes, it is our opinion that you may not refuse to license such a person.

A.R.S. § 28-411.A prohibits a person, unless exempted, from driving a motor vehicle upon this State's highways unless<sup>1</sup> that person has a valid license as an operator or chauffeur. The persons exempted<sup>2</sup> from the license requirement are described in A.R.S. § 28-412. The exemption categories, whether individ-

1. A.R.S. § 28-411.A states that:

No person, except those expressly exempted in this chapter, shall drive any motor vehicle upon a highway in this state unless the person has a valid license as an operator or chauffeur under the provisions of this chapter. No person shall drive a motor vehicle as a chauffeur unless he holds a valid chauffeur's license.

2. A.R.S. § 28-412 provides as follows:

The following persons are exempt from license under this chapter:

1. Any person while operating a motor vehicle in the service of the armed forces of the United States.

2. Any person while driving or operating any road machine, farm tractor or implement of husbandry  
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ually or together, do not cover all of the persons falling within the classes of persons with respect to which your question pertains.<sup>3</sup> As a consequence, at least some of those persons must obtain licenses before operating vehicles in this state.

Arizona statutes do not specify who may be licensed. Rather, the pertinent statute, A.R.S. § 28-413, specifies the persons who may be licensed. Subsection A of that provision states:

The department shall not issue a license:

1. To a person, as an operator, who is under the age of sixteen years, except that the department may issue a restricted license as provided by this chapter to a person who is at least fifteen years of age.
2. To a person, as a chauffeur, who is under the age of eighteen years.

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2. (cont.)

temporarily operated or moved on a highway.

3. A nonresident who is at least sixteen years of age and who has in his immediate possession a valid operator's license issued to him in his home state or country may operate a motor vehicle in this state only as an operator.

4. A nonresident who is at least eighteen years of age and who has in his immediate possession a valid chauffeur's license issued to him in his home state or country may operate a motor vehicle in this state either as an operator or chauffeur subject to age limits applicable to chauffeurs in this state except that the person must be licensed as a chauffeur under this chapter before accepting employment as a chauffeur from a resident of this state.

5. A nonresident who is at least eighteen years of age, whose home, state or country does not require the licensing of operators, may operate a motor vehicle as an operator only, for a period of not more than ninety days in any calendar year, if the motor vehicle so operated is duly registered in the home state or country of the nonresident.

3. Obviously, it is quite possible for some members of those classes of persons to fit within the exempt categories. But this will certainly not be true with respect to all members of those classes.

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3. To a person, as an operator or chauffeur, whose license has been suspended, during such suspension, nor to a person whose license has been revoked, except as provided in § 28-448.

4. To a person, as an operator or chauffeur, who is an habitual drunkard, or is addicted to the use of narcotic drugs.

5. To a person, as an operator or chauffeur, who has previously been adjudged to be afflicted with or suffering from a mental disability or disease and who has not at the time of application been restored to competency by the methods provided by law.

6. To a person, as an operator or chauffeur, who is required by the provisions of this chapter to take an examination, unless the person has successfully passed the examination.

7. To a person who is required under the provisions of the motor vehicle financial responsibility laws of this state to deposit proof of financial responsibility and who has not deposited such proof.

8. To a person when the department has good cause to believe that the operation of a motor vehicle on the highways by the person would be inimical to public safety or welfare.

As may be seen from a review of this provision, it does not prohibit the issuance of licenses to the classes of persons with respect to which your question relates. By listing the persons who may not be licensed, and by not including within that list the classes of persons to whom your question pertains, we think it reasonable to conclude that the Legislature did not intend to prohibit the issuance of licenses to those classes of persons.<sup>4</sup>

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4. The prohibition against licensing contained in A.R.S. § 28-413 appears to be generally concerned with highway safety. It is entirely consistent with this purpose to require the Department to review for licensing as many persons as possible of those who may drive on the State's highways, since those persons, in order to be licensed, will have to meet the minimal qualifications pertaining to physical ability and knowledge of highway safety rules.

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Phoenix Title and Trust Co. v. Burns, 96 Ariz. 332, 335, 395 P.2d 532 (1964). Moreover, we think it clear from the statutory scheme, which requires a license to drive unless an exemption exists, that the Department must license all otherwise qualified persons which A.R.S. § 28-413 does not preclude from being licensed. This would include the persons to whom your question pertains, assuming they are otherwise qualified.<sup>5</sup>

Of course, no person, including the persons in the classes to which your questions pertains, may be licensed unless that person meets and complies with the various other statutes pertaining to licensing, such as A.R.S. § 24-422.C, which requires satisfactory proof of birth date for persons between the ages of 16 and 23, and A.R.S. § 28-416.C, which describes the personal information which must be included on the license application. But these and the other licensing provisions should be applied in an equal manner to the classes of persons to which your question pertains.

Sincerely,



BRUCE E. BABBITT  
Attorney General

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5. It would include persons who are exempt from the licensing requirement under A.R.S. § 28-412, if they apply for licenses.