

## Opinion No. 52-5554

June 25, 1952

**BY:** JOE L. MARTINEZ, Attorney General

**TO:** Mr. C. W. Burrell Labor Commissioner Santa Fe, New Mexico

{\*266} Recently you requested from this office an interpretation of that portion of Section 68-1376 NMSA which reads as follows:

"It shall be unlawful for any motor carrier to require or permit any driver or chauffeur operating a motor vehicle for hire upon the public highways of the State of New Mexico to be or remain continuously on duty for a longer period than ten hours."

You ask whether the foregoing provision is applicable to taxicab drivers who are on duty, subject to call, for a period of twelve hours, but who are not driving their vehicles continuously during such period.

It is my opinion that the prohibition of Sec. 68-1376 does not apply to the above-mentioned taxicab drivers, and that an "on call" period of twelve hours is permissible. It is obvious, I believe, that what the Legislature had in mind in the enactment of the foregoing section was a provision which would have a two-fold function:

1. A measure which would protect the health of the driver in limiting periods of tiring work.
2. A safety measure which would reduce accidents on the highways resulting from driver fatigue.

For these very reasons, it is my opinion that the provision in question cannot apply to taxicab drivers. This office takes notice of the fact that whereas a truck driver traveling from Las Vegas to Silver City would be hard at work for a period of perhaps ten hours, a taxicab driver on duty for twelve hours during that same day would spend a large portion of such time parked at a taxi stand, parked on the street, or awaiting passengers. It is my opinion that a taxicab driver is not, therefore, "continuously on duty" in the sense those words are used in Sec. 68-1376, but is instead "continuously on call" during his daily period of employment.

It is likewise apparent, in my opinion, that further limiting the period of a taxi driver's daily employment, while realizing that his "productive time" at present is substantially less than twelve hours, would work a real economic hardship on such driver. When a statute is fairly susceptible of two constructions, the hardship which will follow one or the other construction may properly be considered. **50 Am. Jur. 383**. The hardship which would result in rendering 68-1376 applicable to taxi drivers has therefore also been considered in the writing of this opinion.

For all of the foregoing reasons, it is my opinion that taxicab drivers may remain on duty for a period of twelve hours without thereby violating the provisions of Sec. 68-1376.

I trust that this opinion answers fully your questions on this subject.