Opinion No. 53-5732

April 15, 1953

BY: RICHARD H. ROBINSON, Attorney General

TO: J. P. Roach, Chief New Mexico State Police Santa Fe, New Mexico

*{*127}* In your letter dated March 17, 1953 you enclose a number of statements from drivers of cars bearing a non-resident license being transported *{*128}* or driven through the State for various purposes and inquire for an interpretation of paragraph (e), Section 68-220, 1941 Comp., p.s., pertaining to motor caravan permits.

Section 68-220, paragraph (e) provides, in part, as follows:

"No person, dealer, agency, firm or corporation and no agent or representative of any person, dealer, agency, firm or corporation shall use the highways of the state of New Mexico for the transportation of any motor vehicle, truck, trailer, semi-trailer, tractor, or house-trailer, whether licensed in another state or not, either on its own wheels, or on another vehicle, (a) for compensation; or (b) for the purpose of delivery to any purchaser thereof on a sale or contract of sale previously made, whether the party transporting the same be acting for the seller or for the purchaser; or (c) for the purpose of selling or offering the same for sale to or by any person, dealer, agency, firm, corporation, purchaser or prospective purchaser, whether such person, dealer, agency, firm, corporation, purchaser or prospective purchaser be located within or without the state of New Mexico, unless such vehicle either:

1. Is licensed by the state of New Mexico, or

2. Is owned by an automobile dealer, duly licensed by the state of New Mexico and is operated under a dealer's license duly isssued to such dealer; or

3. A special permit for the use of the highways of this state for the transportation of such vehicle, in the manner in which the same is being transported, has first been obtained and the fee therefor has been paid as hereinafter specified."

There seems to be no question that the fee should be collected under sub-sections (b) and (c) in all instances where the vehicle is being transported for delivery to a purchaser on a sale or contract of sale previously made or where the vehicle is being transported for sale to or by a person, dealer, etc., for the purpose of sale. The provision relating to transportation over the highways of one or more vehicles for compensation is the provision which seems to concern you primarily.

It should be noted that as the law existed in 1939 and prior as shown by Ch. 117, Laws of 1939, the excise tax was imposed upon use of the highways for transportation of any motor vehicle on its own wheels for the purpose of sale or offering the same for sale by

any agent, dealer, purchaser or prospective purchaser. In the case entitled Lord v Gallegos, 46 N.M. 221, this provision was involved. The plaintiff in that case was engaged in the business of transporting and convoying automobiles singly and in tandem from the manufacturer to the owners, which owners had theretofore purchased and had paid license fees in the state where the automobiles were purchased. License plates from the foreign state were attached to each automobile. The Court held that the 1939 and prior law did not exact an excise tax upon firms engaged in the business of transporting such automobiles from the manufacturers to the owners who had previously purchased and obtained license for the same. As a result of the question involved in this decision, the 1941 Legislature amended Section 68-220, under Ch. 11, Laws of 1941, to read as the act presently reads and the sub-section reads as above quoted. It is apparent from the legislative history of the *{*129}* law and the fact that the amendment was made in connection with the question arising from the foregoing case, that the Legislature by the amendment and the use of the terms "person, dealer, agency, firm or corporation or agent or representative thereof" intended to cover persons, business enterprises or organizations engaged in the business of transporting motor vehicles and etc. upon the highways of this state for compensation. Such amendment, in our opinion, was not intended to cover instances of occasional or individual instances of cars being driven merely for reimbursement of expenses involved therein.

Also, in attempting to arrive at the legislative intent in such matters where the enactment contains a group of descriptive terms, such as appears in this section of the law, i.e., "person, dealer, agency, firm or corporation . . . shall use the highways for transportation of any motor vehicle, truck . . ." it is proper to consider all of these individual terms together to arrive at the real meaning of the enactment. This is known as the rule of "ejusdem generis" in statutory construction. This has arisen through the fact that often to withdraw a single word or a single descriptive term from a statute containing many such terms has the effect of placing a broader and often times an unwanted effect to the law. Sandack v. Tamme (C.C.A.N.M.), 182 F 2d 759; Grafe v. Delgado, 228 P. 601, 30 N.M. 150; Cain v. Bowlby (C.C.A.N.M., 1940), 114 F.2d 519. Therefore, applying this rule and the legislative history of this matter to the statute at hand, it is felt that the legislature meant to tax those persons as a class who use the highways of New Mexico for transportation of stated Motor Vehicles for compensation, and that narrowing this down, meant persons who regularly and as a part of their business and for a regular consideration or compensation, use the state highways.

The only other possible construction of this provision would require the payment of the fee by almost every person who receives compensation for driving vehicles not registered in New Mexico over our highways. A reading of the statute without consideration of legislative history lends itself to this interpretation. However, when the passage of the act is considered in light of the decision in Lord v. Gallegos, supra, and when consideration is also given to the fact that the Legislature has never appropriated sufficient moneys to your department or the Department of Courtesy and Information for the proper enforcement of the law under such an interpretation, we feel that such a

construction would not reflect the true intent of the legislature, and could not be enforced.

It is thus our conclusion in connection with this sub-section that where a motor vehicle singly or in tandem or by common carrier is being transported for the purposes of sale or delivery to a purchaser under sub-sections (b) and (c) of paragraph (e) of the section above mentioned, the caravan tax is applicable in all cases, however, where sale or contemplated sale is not involved and the vehicle is being transported for purposes other than that of sale or delivery to a purchaser then the tax would not be applicable unless the person or organization transporting the vehicle is engaged generally in the business of transporting the vehicles for compensation.

We have had, in addition, several inquiries concerning the handling of complaints against violators of this *{*130}* act and in order that the matter may be cleared up, we refer you to Section 38-205, 1941 Comp., relative to jurisdiction of justices of the peace in cases of misdemeanors. This section provides that the justices of the peace are given jurisdiction in all cases of misdemeanors where the punishment prescribed by law may be a fine of $ 100 or less, or imprisonment for 6 months or less, or may be both such fine and imprisonment.

Under Section 68-239, 1941 Comp. violations of the registration and licensing laws pertaining to motor vehicles, if not specifically declared to be a felony, are declared to be misdemeanors and the penalty therefor is a fine of not more than $ 500 or imprisonment for not more than 6 months, or both such fine and imprisonment. Since the maximum fine exceeds the jurisdiction of that authorized to be imposed by justices of the peace, they would have no jurisdiction to try and sentence a violator of this act. The violator should be brought before the District Judge to be arraigned there and no preliminary examination of a misdemeanor can be held under the law, Section 42-308, 1941 Comp.

Since all such cases are required to be tried in the District Court and the State must prove the guilt of the defendant beyond a reasonable doubt, it is suggested that the various district attorneys or their assistants in the counties where the alleged violations occur should be contacted in order to ascertain whether, in their opinion, under the facts in each case a complaint should be filed in the first instance, because, since the burden of proof is upon the State and each defendant is presumed to be innocent, the judgment of the district attorneys who have charge of the prosecution should govern in all instances in this connection.

We have also received a request for advice concerning the authority of arresting officers and prosecuting officials to impound the cars of persons charged with violation of the Registration and Licensing Act and of imposing a lien upon such cars in order to secure payment of any fine imposed. There is no authority whatever under the Registration and Licensing Act for detaining or impounding cars and the only authority for such procedure is contained in the provision relative to imposition of a mileage tax against motor carriers. In Section 68-1537, 1941 Comp., p.s., this language appears:

"Provided that for the purpose of enforcement of this act, the Department of Courtesy and Information, its officers and employees may detain any motor vehicle whose operator is found violating the provisions of any of the sections of this act."

We feel that this section applies only to violations of the Motor Carriers Act and that under the Registration and Licensing Act there is no authority to detain a motor vehicle nor to use the same as security for any fine imposed. In any event this provision merely authorizes detaining a vehicle and does not set up any procedure for the sale or application of the proceeds thereof to a fine that may be imposed.

Therefore, it is our opinion that a motor vehicle being driven by a person charged with violation of the Registration Act may not be impounded and held as security for the fine.

As a practical matter it, might be advisable for the Ports of Entry to place signs near the Port requiring vehicles being transported for sale or to a purchaser for compensation, as herein defined, to stop for inspection along with common *{*131}* carriers. Perhaps two or three questions directed to the driver of such vehicles would indicate whether or not the caravan tax should be collected. If no signs are used and persons pass the Ports of Entry, many of them may do so innocently and yet would be subject to fine as well as payment of the caravan tax.