

## Opinion No. 53-5815

September 14, 1953

**BY:** RICHARD H. ROBINSON, Attorney General

**TO:** Mr. Tony Mignardot Assistant Commissioner Motor Vehicle Department Santa Fe, New Mexico

{\*224} This office has been asked to clarify Opinion No. 5735 relative to the registration of a vehicle described as a trenching machine or a small shovel mounted upon a 6 x 6 truck chassis.

Opinion No. 5735, which held the described equipment as non-exempt for the reason that such equipment was not ipse facto road machinery, specifically interprets Section No. 68-203, N.M.S.A., 1941 Compilation, as amended, which states as follows:

"Tractors, road rollers, and road machinery; except trucks, trailers, and semi-trailers, and pleasure cars; temporarily operated or moved upon the highway, need not be registered under this act."

Opinion No. 4420. Opinions of the Attorney General 1943-44, in discussing licensing of trucks and other vehicles, clearly stated that motor vehicles not operated on the highways of the State of New Mexico need not be registered or licensed. Reading Section 68-203, N.M.S.A., with this opinion, which also states that it is largely a question of fact to be determined in each case whether a vehicle must be registered, it appears that the Legislature by the Laws of 1929, Chapter 119, Section 10, (§ 68-203 N.M.S.A.) intended to exempt road machinery temporarily operated or moved upon the highway.

It is therefore the opinion of this office that Opinion No. 5735 requiring a vehicle upon which is mounted a digger or shovel and which is clearly being used as road machinery need not be registered under the Motor Vehicle Registration and Licensing Act, if in fact the vehicle is only being used temporarily upon the highway. It is therefore a question of fact in each case, whether the vehicle is subject to the requirements for registration and licensing. If in fact, the stated piece of equipment is (1) used as road machinery full time and, (2) is only temporarily operated or moved upon the highway, then he would be allowed the exemption, but if he was using the equipment not as road machinery full time, and was operating upon the highways he would therefore be doing such operations at his peril if he failed to obtain a registration and license for the vehicle, regardless of the design of the vehicle.

We trust that this is of some assistance to you in this matter.

By: William J. Torrington

Assist. Attorney General