Opinion No. 54-5929

March 26, 1954

BY: RICHARD H. ROBINSON, Attorney General

TO: Mr. Chester Hunker Legal Division - Bureau of Revenue State Capitol Building Santa Fe, New Mexico

*{*375}* Your department and several other departments have requested the opinion of this office upon the question of whether "U-Drive It" vehicles or fleet vehicles rented to private individuals or companies under lease *{*376}* or other similar agreement are "driverless cars" within the meaning of Section 68-1802 (g), N.M.S.A., 1941 Comp., as amended, (Laws 1953, Ch. 138, Sec. 2), and are therefore subject to registration fees set out in Section 68-2062 (f), N.M.S.A., 1941 Comp., as amended, (Laws 1953, Ch. 138, Sec. 100), if owned by a resident and operated within this State, or if owned by a nonresident of this State and operated within this State subject to the provisions of Section 68-2036, N.M.S.A., 1941 Comp., as amended, (Laws 1953, Ch. 138, Sec. 74).

The basic question to be decided is the interpretation of the following section:

"68-1802 (g). Driverless cars. Motor Vehicles for the transportation of persons for hire, for the operation of which no driver is furnished the lessee thereof. (Laws 1953, Ch. 138, Sec. 2)"

The above section is a re-enactment of Section 68-201, N.M.S.A., 1941 Comp., as amended, (Laws 1929, Ch. 110, Sec. 1) with the exception of the correction of a minor error changing the word "lesser" to "lessee". It appears that although the bulk of the 1929 enactment was taken from the "Uniform Motor Vehicle Registration Act", this particular section did not so originate, and a review of other states allegedly having comparable motor vehicle laws does not reveal a use by them of any similar section such as that which is quoted above.

Therefore in determining the meaning of the above stated section, and what vehicles the Legislature intended to include therein, requires some clarification of the definition of "driverless cars" as it appears therein. In Colorado, under a taxing statute not involving registration, but upon a sales and service tax upon the automobile rental service business, such was declared to apply to the "driverless car" business and to be synonymous with the term "automobile rental service". **Herbertson vs. Cruce,** 115 Colo., 274, 170 P. 2d 531, **172 ALR 1312.** That Court cited **Driverless Car Company vs. Glessner-Thornberry Car Company,** 83 Colo., 262, 264 P. 653, and **Driverless Car Company vs. Armstrong,** 91 Colo., 334, 14 P. 2d 1098, which are useful in showing that the term "driverless car" has been generally applied to "U-Drive-It Autos".

The above section does not impose the increased license fee merely upon vehicles used for the "transportation or delivery of persons for hire" such as was the case in

Argansas, Colorado and New Jersey where such additional fees were found not to apply to "U-Drive-It" operations or similar operations. **State vs. Dabney** (1928) 176 Ark. 1071, 5 S.W. 2d 304; **Armstrong vs. Denver Saunders System Co.,** (1928) 84 Colo., 138, 268 P. 976; **Camden vs. Smalley** (1924) 2 N.J. Misc., R. 1056, 126 A. 465. The statutes involved in those cases are not in point to the section herein under consideration inasmuch as the section under consideration applies to mere licensing of all vehicles, and is not restricted to common or contract carriers transporting passengers or property for hire. See 7 ALR 2d 456, § 1 and § 3.

In accordance with the above cited cases and following the general rules of statutory construction, it is evident that Section 68-1802 (g), N.M.S.A., 1941 Comp., as amended, (Laws 1953, Ch. 138, Sec. 2), includes motor vehicles hired or rented by one person to another with a view to the transportation of persons therein, and as a part of such transaction no driver is furnished to the person *{*377}* so hiring or renting such motor vehicle. Any interpretation other than this of the above section, viewing the section with other definition of terms therein would be to find that this section has no meaning whatsoever. It therefore follows that driverless cars as defined above are required to pay the registration fee set out in Section 68-2062 (f), N.M.S.A., 1941 Comp., as amended (Laws 1953, Ch. 138, Section 100).

The only remaining question involves the differing fact patterns that exist upon which the above basic rules should be applied. If the question involves a leasing arrangement rather than a "U-Drive-It" operation, whereby the owner or trustee as title holder leases a vehicle or fleet of vehicles upon a long term arrangement regardless of whether such operation results in a net profit to the title holder or the manner of billing for the leasing, it is clear that the nature of the transaction is the same as a "U-Drive-It" operation. **Kilgore vs. Motor Leasing Corporation of Florida** (1949) Florida Reporter, 39 So. 2d 69.

In a like manner where the rental company or title holder is a nonresident of this State, but such vehicles are being used within this State, such autos would be subject in the same manner as other nonresidents using the highways of this State under the provisions of Section 68-2036, N.M.S.A., 1941 Comp., as amended (Laws 1953, Ch. 138, Sec. 74).

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

By: William J. Torrington

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