

## Opinion No. 54-5940

April 8, 1954

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

**TO:** Honorable Jason W. Kellahin Chief Counsel, Bureau of Revenue Santa Fe, New Mexico

{\*389} You have requested the opinion of this office upon the question of whether § 68-1531, N.M.S.A., 1941 Comp., as amended, (Ch. 125, Sec. 13, Laws of 1943), assesses mileage tax upon public and private carriers whose vehicles enter this State with New Mexico license tags or a license {\*390} tag of a State having a valid reciprocal agreement with this State upon licensing.

As you state, this office, in Opinion No. 4321, Opinions of Attorney General, 1943-44, has ruled that no mileage tax may be collected by the Bureau of Courtesy and Information under § 68-1531, from commercial motor vehicles which are registered and licensed in New Mexico. We feel this opinion is clear and unambiguous, but present information indicates that the stated opinion is not being followed. The purpose of this opinion, therefore, will be to reiterate that which was stated in Opinion No. 4321, and to clarify certain incidents of that holding.

The next to the last paragraph of the Opinion reads as follows:

"In view of the foregoing, it is my opinion that no mileage tax may be legally collected on a commercial motor vehicle, which is registered and licensed in New Mexico, by any State agency, under Sec. 12, Ch. 125 of the Laws of 1943."

This might give rise to the assumption that the State Corporation Commission, a State agency, was contemplated as a registering or licensing body and failure to attain such registration or license from such agency would make the carrier subject to the tax. It further appears that this wording is followed by the citation to Laws of 1943. Neither Sec. 12 nor Sec. 10 of Ch. 125, Laws of 1943, (§ 68-1531), establish the legal necessity for license or registration in this State. The licensing and registration requirements in this State are set out in §§ 68-2062, 68-1801 -- 68-1823, 68-1901 -- 68-1916, 68-2001 -- 68-2012, and 68-2014 -- 68-2081, N.M.S.A., 1941 Comp., as amended, (L. 1953, Ch. 138, Sec. 100), which repealed § 68-226, N.M.S.A., 1941 Comp., as amended, (L. 1951, Ch. 42, Sec. 1). The above cited sections of the Motor Vehicle Code, with the applicability and exemptions stated therein, are the sections of our law which require registration and licensing and no place therein is the State Corporation Commission given any duty or responsibility for the issuance of such registration or licensing. The confusion may have arisen by reason of the provisions of § 68-1309, N.M.S.A., 1941 Comp., as amended, which require interstate motor carriers, using the highways of the State of New Mexico for hire, to obtain a certificate of registration from the Corporation Commission before operating in this State. Such a certificate of registration is not a

registration of a motor vehicle or the licensing of a motor vehicle in this State as specified in §§ 68-1531 and 68-1529, N.M.S.A., 1941 Comp., as amended.

Therefore, clarifying the stated paragraph above in Opinion No. 4321, which, incidentally, is clarified in that Opinion itself in the paragraph preceding that which is quoted, the Bureau of Courtesy and Information, charged with the collection of mileage taxes assessed under § 68-1531, may not collect such tax upon any commercial motor vehicle which has a New Mexico license plate properly upon the vehicle or the license plate of any other state having a valid licensing reciprocal agreement with this State.

Referring further to your request for an opinion, you state:

"If paragraph (c) has reference to license tag fees, the entire section would seem to indicate that the mileage tax would be collected and license tags be sold to a carrier falling within that classification on his first trip, {391} since the next time he appeared at a New Mexico Port of Entry he would be licensed in this State, and under such an interpretation would pay no mileage tax."

The assumption that a commercial motor vehicle, who purchases license plates at the Ports of Entry, is a non-registered or non-licensed vehicle and is required to pay the stated mileage tax, is to torture the reading of that statute. Section 68-1531 assesses a stated tax against the commercial motor vehicles described in § 68-1529 (c) and (d). Section 68-1529 is a general directive provision as to issuance of clearance certificates or stickers after the carrier has stopped at the registration station as required by § 68-1527. Neither § 68-1527, § 68-1528, nor § 68-1529, N.M.S.A., 1941 Comp., as amended (or any subsections thereunder), set up the legal requirements for obtaining license plates. As has been stated above, the law setting out the legal requirements to obtain New Mexico plates is clearly set out elsewhere in the Motor Vehicle Code. The reference to "registration" in § 68-1528 means that if such carrier is required under **Licensing Statutes** to obtain a license tag, such inspection station shall require a purchase of such license tag.

Therefore, any commercial motor vehicle appearing at the Ports of Entry as a non-licensed vehicle and who promptly and immediately purchases license tags in this State is no longer a vehicle "not registered or licensed in this State" and it seems apparent that such vehicle is no longer subject to the tax assessed under § 68-1531 in that the vehicle is no longer within the class described in § 68-1529 (c) or (d). To say otherwise, would be to permit the conclusion that a commercial motor vehicle not registered or licensed, coming to the Port of Entry, could arrive at the Port, purchase license plates, turn around and then immediately return to the Port of Entry and be exempt from the tax.

You further state that the terminology appearing in § 68-1520 (c) "registered or licensed" would seem to mean something more than license tags inasmuch as § 68-1529 (c) (1) refers to "all taxes and license tag fees" and the variance in terminology between these two paragraphs would infer that the Legislature intended, in § 68-1529

(c), to mean something more than license plates and that the word "registration" would, therefore, mean a certificate of convenience and necessity or a certificate of registration from the Corporation Commission of the State of New Mexico. Such an assumption is without foundation as pointed out in Opinion No. 4321. Going further to the ascertainment of the meaning of these terms, the motor vehicle law of the State of New Mexico which requires license plates is denominated "Registering and Licensing Law." Our law upon registration and licensing is taken from the Uniform Motor Vehicle Registration Act, the title of the original act and subsequent amendments makes it clear that the term "registration and licensing" has to do only with the licensing and not with the certification or registration required in the Motor Carriers Act, L. 1933, Ch. 154, as amended.

It is therefore the opinion of this office that Opinion No. 4321 clearly states the law and that the Bureau of Courtesy and Information is not permitted to assess or collect mileage tax on commercial motor vehicles, whether they be public or private carriers, which have a proper license plate of this State or of any other state having a valid reciprocal agreement on licensing, and further, § 68-1529 {392} (c) (1) does not authorize the Bureau of Courtesy and Information to sell license tags to commercial motor vehicles and at the same time require them to pay mileage tax under § 68-1531.

We trust this is of some assistance to you on this matter.

By: William J. Torrington

Assist Attorney General