

**Opinion No. 54-6037**

November 8, 1954

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

**TO:** Mr. Jack L. Love Assistant District Attorney Fifth Judicial District Roswell, New Mexico

{\*506} We have received your letter of October 22, 1954, in which you request an interpretation by this office of Section 68-2036, N.M.S.A., 1941, as amended by the 1953 Legislature.

The pertinent provisions of that statute are:

"(a) A nonresident owner, except as otherwise provided in this section, owning any foreign vehicle of a type otherwise subject to registration hereunder, may operate or permit the operation of such vehicle within this state without registering such vehicle in, or paying any fees to, this state, subject to the condition that such vehicle at all times when operated in this state is duly registered in, and displays upon it, valid registration plate or plates issued for such vehicle in the place of residence of such owner.

"(d) Every nonresident owner of a foreign vehicle operated within this state or owner of a house trailer within this state, who or which accepts any employment or engages in any trade, profession or occupation in this state shall register such vehicle and pay the same fees therefor as is required with reference to like vehicles owned by residents of this state."

As we read the statute, the test for the determination of whether or not a nonresident vehicle, which is not used for the transportation of persons or property for compensation, and which is not owned by a person or corporation carrying on business within this state, is subject to registration under our Motor Vehicles Registration and Licensing Act, is whether or not the nonresident owner of that vehicle is engaged in any employment, trade, profession or occupation in this state. If such an owner is not so engaged, then, under the provisions of subsection (a) of the statute, his vehicle would not be subject to registration; but if such owner were so engaged, the vehicle would be subject to registration in this state regardless of whether it was operated by the nonresident owner or by a resident borrower.

We call your attention to Section 68-2038, N.M.S.A., 1941, which provides:

"Officers and enlisted personnel of the United States Army, Navy, Marine Corps, Coast Guard and Air Force may operate their personal passenger vehicles in this state subject to the provisions of Section 74 (§ 68-2036)."

It is our opinion that the Legislature intended that nonresident service personnel should be permitted to operate their vehicles in this state pursuant to the provisions of subsection (a) of Section 68-2036, N.M.S.A., 1941, and that they should not, under the rule stated in subsection (d) applying to other persons engaged in any employment trade, profession or occupation in this state.

Trusting that the foregoing will answer your question satisfactorily, I am,

By: Henry A. Kiker, Jr.

Assist. Attorney General