

Opinion No. 55-6204

June 24, 1955

BY: RICHARD H. ROBINSON, Attorney General

TO: Mr. J. P. Roach, Chief, New Mexico State Police, P. O. Box 919, Santa Fe, New Mexico

On June 17, 1955 you addressed to this office for opinion thereon the following question:

Are the authorized Brake and Light Inspection Stations privileged to refuse issuance of Brake and Light Stickers to vehicles equipped with 'smitty' or 'Hollywood' mufflers?

Although I am not acquainted with the mechanical construction of "smitty" or "Hollywood" mufflers, I understand that they are employed to produce a loud rumbling roar. Different mufflers of this type vary, of course, in the amount, tone or pitch of noise produced. However, I think it generally conceded that their purpose is to create, by their distinctive and loud sound, the impression of tremendous power.

This opinion is based on the assumptions and understanding of the mufflers outlined above.

Section 64-21-6, N.M.S.A., 1953 provides, among other things:

"(b) The person operating an official inspection station shall issue a certificate of inspection and approval upon an official form to the owner of a vehicle upon inspecting such vehicle and determining that its equipment required **hereunder** is in good condition and proper adjustment, otherwise no certificate shall be issued. When required by the commissioner record and report shall be made of every inspection and every certificate so issued." (Emphasis supplied.)

"Hereunder" in the above statute refers to the sections of the Act regulating equipment on motor vehicles.

Section 64-20-44, N.M.S.A., 1953, a section of that Act, provides in part:

"(a) Every motor vehicle shall at all times be equipped with a muffler in good working order and in constant operation **to prevent excessive or unusual noise**, and no person shall use a muffler cutout, bypass, or similar device upon a motor vehicle on a highway." (Emphasis supplied.)

I believe it reasonable to conclude that the noise produced by a "smitty" or "Hollywood" muffler is such as could be classed as "excessive" or at least "unusual" within the meaning of the above section.

It is thus the opinion of this office that the answer to your question should be, and therefore is, in the affirmative.

I trust that this answers your inquiry satisfactorily.

By: Santiago E. Campos

Assistant Attorney General