

Opinion No. 57-172

July 17, 1957

BY: OPINION OF FRED M. STANDLEY, Attorney General Howard M. Rosenthal,
Assistant Attorney General

TO: Mr. Robert R. Salazar, Commissioner, Motor Vehicle Department, Bureau of
Revenue, State of New Mexico, Santa Fe, New Mexico

QUESTIONS

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1. Is a service man who owns a vehicle registered in his own name in the state of his residence, a noncommunity property state, purchased during coverture, required to register his motor vehicle in New Mexico under the provisions of § 64-6-1, N.M.S.A., 1953 Comp., as amended, if his wife is gainfully employed within the State but is not using the vehicle in her work?

2. Is a service man who owns a vehicle registered in his own name in the state of his residence, a community property state, purchased during coverture, required to register his motor vehicle in New Mexico under the provisions of § 64-6-1, N.M.S.A., 1953 Comp., as amended, if his wife is gainfully employed within the state but is not using the vehicle in her work?

CONCLUSIONS

1. No.

2. No.

OPINION

ANALYSIS

Please note the change in both questions, pursuant to our telephone conversation of July 5, 1957.

State v. Pate, 47 N.M. 182, is the only case on point. A pertinent holding of this case reads:

"Do we not have here a general class, viz., non-resident owners or operators of motor vehicles? And, is not this general class arbitrarily divided within itself, by the act of the legislature, when it seeks to impose a license fee on those within the class who are

gainfully employed and exempting those within the same class who are not? Such differentiation is discrimination and not classification."

Attorney General Opinion No. 57-79, issued April 23, 1957, on a similar question, holds:

". . . we find little difference between the 1941 provision and that presently controlling, supra. Under the existing statute, nonresident owners are no longer limited by the ninety day provision, but acceptance of any employment still activates the immediate requirement to register a foreign vehicle and accordingly establishes a differentiation within a class which has been held to be discriminatory.

"In view of the holding in the Pate case, supra, it is our opinion that the requirements of § 46-6-1 (d) are unconstitutional. . . ."

Hence, it is our opinion that both questions must be answered in the negative.

However, in passing, we may state that legislation applying to all of a class would appear to be held constitutional - and that if our registration statutes were to be revised by the Legislature with such end in view, a contrary result might be reached.