

Opinion No. 58-191

September 17, 1958

BY: OPINION OF FRED M. STANDLEY, Attorney General Hilton A. Dickson, Jr.,
Assistant Attorney General

TO: Mr. Robert R. Salazar, Commissioner, Division of Motor Vehicles, Bureau of
Revenue, Santa Fe, New Mexico

QUESTION

QUESTIONS

1. For what period of time may a motor vehicle be operated and used within the State of New Mexico under a foreign or non-resident license registration?
2. Under what circumstances are foreign or non-resident vehicles required to be re-registered in New Mexico?

CONCLUSIONS

1. Until the establishment of residency within New Mexico.
2. The manifestation of an intent to become a New Mexico resident.

OPINION

ANALYSIS

As pointed out in Attorney General's Opinion No. 57-79, dated April 23, 1957, the law applicable to automobile registration requirements for previously non-residents is found in Art. VI, Ch. 64, N.M.S.A., 1953 Comp., (P.S.), Specifically § 64-6-1 provides in part as follows:

"(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 pay 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.

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(d) Every nonresident owner of a foreign vehicle operating 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." (Emphasis added)

Considering initially the language of the last paragraph quoted and keeping in mind the aforesaid Attorney General's Opinion and **State v. Pate**,, 47 N.M. 182, 138 P. 2d 1006, the classifying language and provisions of said statute are in our opinion unconstitutional. As further suggested in Attorney General's Opn. 57-172, the apparent legislative purpose might well and effectively be carried out by simply eliminating the establishment of a classification of persons within a larger class, viz., employed individuals as compared with unemployed individuals; said persons in the first instance all being non-residents. Such clarification can of course, only be accomplished by the Legislature and accordingly leaves us in our present investigation to be guided by the remaining valid sections of the law aforestated.

The status of residency is such as has been long recognized in common law as being a simple matter of intent. It is the expression of one's intent or the manifestation thereof, as will evidence the same, which must be looked to in finally determining the intent involved. Admittedly, such determination, unless specifically declared by the individual concerned, becomes a difficult task where no definite guides or criteria are provided by law. In this state, residency for the accomplishment or the eligibility for acting within certain limitations of our laws have been made definite, such as is exemplified by the requirements for the right of franchise, use of our civil courts in domestic matters and the enjoyment of public employment. We find, however, no such specific guide relative to limited use of New Mexico highways by non-residents.

Accordingly, it must be concluded that under the existing valid legislative enactments that any non-resident or otherwise foreign vehicle may be operated in New Mexico for an indefinite period of time limited only by the period of valid registration as provided for in the state or country in which the concerned owner does as a matter of law reside and further in keeping herewith, it is our opinion that the circumstances as would establish or invoke a required registration in New Mexico can only be determined by a declaration of such by the newcomer or by a manifestation of an intention to become a resident in New Mexico as evidenced by employment of a permanent nature, voter registration or any other act lending support to a subjective determination of the intention to become a resident of this state.