

Opinion No. 59-215

December 30, 1959

BY: OPINION of HILTON A. DICKSON, JR., Attorney General

TO: Mr. Benny E. Sanchez Commissioner of Motor Vehicles Bureau of Revenue Santa Fe, New Mexico

QUESTION

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Can the Motor Vehicle Department require non-resident workers who commute back and forth into New Mexico to work daily to register their cars in New Mexico and pay the excise taxes?

CONCLUSION

See Opinion.

OPINION

{*330} ANALYSIS

The statutory provision pertinent to this opinion is codified as Section 64-6-1, N.M.S.A., 1953 Comp., (P.S.). This section is divided into three subparts with three different situations discussed.

The first of these, which is the usual situation, covers the nonresident owner who is operating a vehicle on the highways of this State but which vehicle is not regularly operated in the business of the owner. Such a person has the privilege of operating his vehicle within the State for a period of 30 days without registering such vehicle or paying any fees to the State so long as it is duly registered in and displays valid registration plates for such vehicle from the place of residence of the owner. It would appear that the person you have described in the above question, that is, one who merely uses his vehicle as a means of conveyance to and from work in New Mexico from his home outside the State of New Mexico would fall within this category. Likewise, he does not operate his vehicle in the State for a period of 30 days -- and we may assume that this means consecutive days -- and thus would not fall within the category of persons who must register their vehicles and pay the excise taxes thereon as provided for under the laws of this State.

Subsections (b) and (c) of the above-mentioned section of our Code make exceptions to this qualification. Subsection (b) provides that those nonresident owners operating vehicles within this State for the transportation of persons or property for compensation

or for the transportation of merchandise either regularly according to a schedule or for a consecutive period exceeding 30 days must register those vehicles and pay the fees therefor as is required for resident vehicles within the State. Subsection (c) requires each nonresident, including any foreign corporation, carrying on business within this State and **owning and regularly operating in such business {331} any motor vehicle**, trailer, semi-trailer, house trailer or pole trailer within the State, to register each such vehicle and pay the usual fees thereon.

Our conclusion is that those nonresident persons employed within the State and who merely use their vehicle as a means of conveyance to and from such employment, but who do not regularly operate such vehicle in the course of their business, fall within the first subsection and are exempt from the purchase of New Mexico registration plates and the payment of the usual fees in connection therewith so long as they display registration plates on the vehicle from the state of residence.

By: Thomas O. Olson

First Assistant Attorney General