

Opinion No. 59-71

July 10, 1959

BY: Hilton A. Dickson, Jr., Attorney General

TO: Honorable Dan Sosa, Jr. District Attorney Third Judicial District Las Cruces, New Mexico

{*113} This opinion is in response to your recent letter in which you requested our views on the following question:

"May non-resident truckers employed by a contractor on a state job for more than thirty (30) days avoid the registration of their trucks by removing the trucks from the state over the week-ends or holidays?"

It is my opinion that a non-resident trucker may not relieve himself of the requirement of registration of his truck imposed by § 64-6-1, N.M.S.A., 1953 Compilation, as amended, by removing his truck from the state for short intervals.

Your inquiry is precipitated by the position adopted by certain non-resident truckers employed by a contractor in doing construction work within the state. You state that these truckers, while employed during the work-week in the state, drive their trucks to Texas over the week-end, and thus contend they do not fall within the requirement for purchasing licenses imposed by Subsection B of Section 64-6-1 of the New Mexico Statutes Annotated, 1953 Compilation, as amended by House Bill No. 282, approved March 31, 1959, and codified as Chapter 156, p. 406 of the Laws of New Mexico, 1959. This section reads as follows:

"B. A nonresident owner of a foreign vehicle operated 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 {*114} period exceeding thirty days, shall register such vehicle and pay the same fees therefor as is required with reference to like vehicles owned by residents of this state. This paragraph shall not be construed as limiting the effect of validly entered reciprocal agreements between the State of New Mexico and other states or of proportional registration provided for in Section 64-3-3 New Mexico Statutes Annotated, 1953 Compilation."

The pertinent language of said section causing difficulty in the enforcement problem you have raised is "either regularly according to a schedule, or for a consecutive period exceeding thirty days." There appears to be no question that the truckers you describe otherwise fall within the requirements of said section B.

It appears unlikely that the truckers would fall within the category "either regularly according to a schedule." It is my opinion that the said clause refers only to those who

"regularly" transport persons or property or merchandise on a prescribed schedule such as bus lines, dray lines, or the like.

However, it is my view that the truckers you described would fall within the second category, that is those transporting "for a consecutive period exceeding thirty days." The word "consecutive" is troublesome in that its normal usage would infer a requirement that the particular vehicle would have to be within the state for thirty successive days. However, in analyzing the legislation and the intent expressed thereby, it appears that certain language employed by the Supreme Court of the State of Tennessee in considering a similar problem is pertinent. This language is as follows:

"Considering the entire Act and scheme of legislation, it is our opinion that it was not the intention of the legislature to permit a non-resident to operate a business or practice his profession in the State of Tennessee for a period of, say twenty-nine days and be out of the State for one day, thus avoiding the thirty-consecutive-day period, and avoid the registration of his automobile. *Marshall v. State*, 171 S.W. 2d 269.271".

Also the language of the Massachusetts Court in **Dudley vs. Northampton St. Ry.** 89 N.E. 25, is pertinent wherein it is stated:

". . . the running of his fifteen days was not interrupted by his temporary calls into the other states." *Supra*. 26.

While the language of the statutes involved in the above cases was not exactly the same as the statute here in question, the Court's interpretation of the statutes is sufficiently similar as to make the statements equally applicable to our statute.

In conclusion it is my opinion that the purpose of the statute may not be circumvented by a non-resident motorist who, using his motor vehicle in the course of his business in this state for a period in excess of thirty (30) consecutive days, leaves the state for short periods of time during such period merely to disrupt the consecutive period of his employment within the State.

In furnishing you with this opinion we have not considered the possibility of reciprocal agreements or proportional legislation as described in your last sentence in subparagraph B of § 64-6-1, as amended.

Thomas O. Olson

Assistant Attorney General