

Opinion No. 65-203

October 15, 1965

BY: OPINION OF BOSTON E. WITT, Attorney General

TO: Senator Jose Ortiz y Pino III, Galisteo, New Mexico

QUESTION

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May state-owned motor vehicles be used without the identifying marks on the side and with coverup plates rather than official license plates?

CONCLUSION

Yes, but see Analysis.

OPINION

{*331} ANALYSIS

We have taken the liberty of rewording your question for the sake of clarity.

As a general proposition, all state-owned motor vehicles must be conspicuously marked as such. See Section 64-25-3, N.M.S.A., 1953 Compilation. The reason for such a requirement is obvious. It, in large measure, prevents these motor vehicles from being used for private or unauthorized purposes by public officials and employees. On the other hand, unmarked state-owned motor vehicles by their nature tend to be an invitation for unauthorized use. However, certain exceptions must be made in the interest of law enforcement. It is obvious to this office that the use of unmarked, unidentifiable state-owned motor vehicles by law enforcement officials is required for the law enforcement establishment of this state to correctly and efficiently carry out its function. It can hardly be argued with any merit that an undercover narcotics agent for the State Police or any other law enforcement agency should be required to perform his work in a motor vehicle conspicuously identified {*332} as state owned.

We think that there is authority in the statutes for this exception. Section 64-25-5, N.M.S.A., 1953 Compilation vests in the State Highway Engineer.

"care, control, supervision and custody of all motor vehicles which are the property of the state."

Section 64-25-6, N.M.S.A., 1953 Compilation empowers the State Highway Engineer to prescribe and enforce rules and regulations for the use of any and all motor vehicles belonging to the state.

It is our opinion that the State Highway Engineer can, under his rule-making power, allow unmarked state-owned motor vehicles. We would point out again, however, that the use of unmarked state-owned motor vehicles opens the door to abuse of the use of these vehicles and we would, therefore, suggest a rule restricting the use of these motor vehicles to purposes which are wholly and solely law enforcement by nature. Any other purposes can hardly be justified on any reasonable basis. Such a rule should also make the department head of the department using such motor vehicles directly responsible to see that the rule is not abused in any respect.

We would point out in passing that the issuance of cover-up plates for Federal law enforcement agencies, such as the Federal Bureau of Investigation, the Central Intelligence Agency, Bureau of Narcotics and the like, has been the practice since the existence of motor vehicle license plates and such a practice serves a definite law enforcement function as does the use of cover-up plates used by state law enforcement agencies.