

## Opinion No. 66-62

May 16, 1966

**BY:** OPINION OF BOSTON E. WITT, Attorney General Mr. Paul J. Lacy, Assistant Attorney General

**TO:** Mr. Louis R. Lopez, Justice of the Peace Division, Supreme Court Building, Santa Fe, New Mexico

### QUESTION

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May a non-resident operator of a motor vehicle be arrested and cited under Section 64-3-11, N.M.S.A., 1953 Compilation, as a misdemeanor for failure to exhibit on demand evidence of registration of the vehicle which he is driving?

#### CONCLUSION

No, but see analysis.

### OPINION

#### {\*76} ANALYSIS

In routine checks of vehicles on our highways it has been the practice in some parts of our state to arrest operators of vehicles under Section 64-3-11, supra for failure to exhibit on demand evidences of registration for the vehicle which is being operated. If the case appears to warrant such action, the operator of the vehicle is then sentenced to the county jail for a few days by a justice of the peace to enable the officers to discover whether the vehicle is stolen. This procedure has been quite effective in obtaining the recovery of stolen cars in New Mexico. However, some question has arisen as to whether a non-resident Motorist may be cited and imprisoned as a misdemeanor under Section 64-3-11, supra.

Section 64-3-11, supra, reads as follows:

"Evidences of registration to be signed and exhibited on demand. -- Every owner upon receipt of registration evidence shall write his signature thereon in a space provided. **Every such registration evidence or duplicates thereof certified by the division** shall be exhibited upon demand of any police officer." (Emphasis supplied.)

We are of the opinion that the words "Every such registration evidence or duplicates thereof certified by the division", operates to limit the application of this section to owners of motor vehicles which are required to be registered in New Mexico. Under

Section 64-6-1 (A), N.M.S.A., 1953 Compilation, "a non-resident owner owning any foreign vehicle of a type otherwise subject to registration hereunder may use or operate or permit the use or operation of such vehicle within this state for a period of thirty days without registering such vehicle in, or paying any fees to this state, subject to the condition that such vehicle at all times during this thirty day period, 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."

Therefore, when the non-resident owner has operated a motor vehicle in the State of New Mexico for a period of less than thirty days he may not be cited under Section 64-3-11, supra, for failure to exhibit on demand a receipt of registration of his motor vehicle under the motor vehicle laws of New Mexico.

However, this opinion should not be taken to mean that non-resident motorists in New Mexico are immune from reasonable regulation and investigation. Section 64-13-39, N.M.S.A., 1953 Compilation (P.S.), provides that a non-resident motorist must have a valid license from his state of residence "in his immediate possession" if he wants to operate a motor vehicle in New Mexico. New Mexico residents are also required to carry and show their driver's licenses, Section 64-13-49, N.M.S.A., 1953 Compilation. Recent cases have upheld the rights of the State to conduct {77} systematic checks of motorists to determine whether such laws are being complied with. *City of Miami v. Aronowitz*, (FLA) 114 S. 2d 784 (1960), noted in 6 *Wayne L. Rev.* 417, specifically upheld the practice of conducting roadblocks in order to enforce a statute identical to our Section 64-13-49, supra. Also, see *Commonwealth v. Mitchell*, (Ky.) 355 S.W. 2d 686 (1962), noted in 20 *Wash. and Lee L. Rev.* 386, 391.

We are of the opinion that from the cited cases it is only a short and permissible step to conduct a systematic check of the registration of all motor vehicles being operated on New Mexico roads. Under such a systematic procedure resident motorists can be required to show proof of registration under 64-3-11, supra, and a non-resident motorist can be required to show proof that his out-of-state vehicle is "duly registered in" some foreign state as is required under Section 64-6-1 (A), supra.

In conducting such checks of vehicle registration an officer can detain a non-resident motorist for a **brief time** on the road to determine whether his vehicle is "duly registered in" the foreign state. If the motorist cannot show proof of such foreign registration, and if it appears that the vehicle probably is not duly registered, then he may be cited as a misdemeanor under Section 64-6-1 (A), supra.

Finally, we stress that the systematic check of registration of motor vehicles may not be used merely as a pretext for searching vehicles, *Morgan v. Town of Heidleberg*, (Miss.) 150 S. 2d 512 (1963). The purpose of the check must be for a good faith examination of the driver's license or vehicle registration.