

Opinion No. 67-94

July 26, 1967

BY: OPINION OF BOSTON E. WITT, Attorney General

TO: Colonel Joseph A. Black Chief of Police New Mexico State Police Dept. P. O. Box 1626 Santa Fe, New Mexico

QUESTION

QUESTION

Is construction equipment which is being pulled over the highway required to be equipped with brakes pursuant to Section 64-20-41, N.M.S.A., 1953 Compilation?

CONCLUSION

See analysis.

OPINION

{*137} ANALYSIS

Section 64-20-41, N.M.S.A., 1953 Compilation sets forth the brake equipment required under the Motor Vehicle Code. Part (A) (3) requires brakes on all wheels that are in contact with road surfaces for "every bus, truck, truck-tractor, road-tractor, trailer, semitrailer, and pole trailer." Section 64-1-8, N.M.S.A., 1953 Compilation contains the definition of a trailer, semitrailer and pole trailer. We assume from your request that the construction equipment that is being pulled over the highway is permanently mounted on wheels and not being pulled upon any kind of trailer. This being the case, the requirements under Section 64-20-41(A)(3), supra are not applicable. However, construction equipment mounted on wheels would be considered a vehicle and therefore must comply with the general requirements contained in Sections 64-20-1(A), 64-20-41(5), and 64-20-41(7)(B), N.M.S.A., 1953 Compilation. Section 64-20-1(A), supra provides that:

Scope and effect of regulations. -- (a) It is a misdemeanor for any person **to drive or move or for the owner to cause or permit to be driven or moved on any highway any vehicle or combination of vehicles which is in such unsafe condition as to endanger any person**, or which does not contain those parts or is not at all times equipped with such lamps and other equipment in proper condition and adjustment as required in this article [64-20-1 to 64-20-61, 64-20-63 to 64-20-74], or which is equipped in any manner in violation of this article, or for any person to do any act forbidden or fail to perform any act required under this article. (Emphasis supplied)

Section 64-20-41(5), supra provides:

Parking Brakes. Every bus, truck, road tractor, or truck tractor shall be equipped **with parking brakes capable of locking the rear driving wheels and adequate under any condition of loading to hold, to the limit of traction of such braked wheels, such vehicle or combination of vehicles** to which such motor vehicle may be attached. The operating controls of such parking brakes shall be independent of the operating controls of the service brakes. (Emphasis supplied)

Section 64-20-41(7)(B), supra provides:

Performance Ability of Brakes. Every motor vehicle or combination of motor-drawn vehicles shall be capable, at all times and under all conditions of loading, of being stopped on a dry, smooth, level road, free from loose material, upon application of the service brake, within the distance specified below, or shall be capable of being decelerated at a sustained *{*138}* rate corresponding to these distances:

Vehicles or combinations of vehicles having brakes on all wheels (Feet to stop from 20 miles per hour -- 30) (Deceleration in feet per second -- 14).

Vehicles or combinations of vehicles not having brakes on all wheels (Feet to stop from 20 miles per hours -- 40) (Deceleration in feet per second -- 10.7).

(Emphasis supplied)

Therefore, it is our opinion that construction equipment which is permanently attached to wheels is not specifically required to have brakes on all wheels by Section 64-20-41, supra. However, the general requirements of safety and performance cited above do apply to such construction equipment being pulled over the highways.

By: Tom Overstreet

Assistant Attorney General