

Opinion No. 69-04

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BY: OPINION OF JAMES A. MALONEY, Attorney General David R. Sierra, Assistant Attorney General

TO: Johnny A. Taylor, Commissioner, Motor Transportation Department, P.O. Box 1028, Santa Fe, New Mexico 87501

QUESTIONS

FACTS

Visitors to and users of Elephant Butte Lake frequently drive their vehicles along the shores thereof for the purpose of transporting their boats, tents, campers, etc. to the lakeshore area. On occasion these vehicles become lodged in the sand or mud and require towing assistance in order to be dislodged.

QUESTIONS

Is the New Mexico Motor Carriers Act applicable to a person who provides a wrecker or towing service to the operators of the disabled vehicles described above?

CONCLUSION

No.

OPINION

{*7} ANALYSIS

The New Mexico Motor Carrier Act §§ 64-27-1, et seq., New Mexico Statutes Annotated, 1953 Compilation, as amended, provides for the regulation of commercial transportation services in the State. Regulated under the Act are common and contract motor carriers. For the purposes of this opinion, we will only concern ourselves with common motor carriers. This term is defined in § 64-27-2, supra, in pertinent part as follows:

{*8} The term 'common motor carrier,' when used in this act, shall mean any person who or which undertakes . . . to transport . . . property, or any class or classes of property for the general public, by motor vehicle for hire . . . over irregular routes under unscheduled service.

A "motor vehicle" as used in the above provisions is defined as any self-propelled or motor-driven vehicle "used upon any public highway of this state as herein defined." §

64-27-1(a)(1), supra. Thus, the question is whether the towing vehicle used in the above situation is to be considered as one using the public highways, thereby constituting a "motor vehicle" as defined.

The term "public highway" is defined in § 64-27-1(a)(2), supra, as

. . . every public street, alley, road, highway or thoroughfare of any kind used by the public.

One of the rules of statutory construction is that unless the contrary appears, statutory words are presumed to be used in their ordinary and usual sense and with the meaning commonly attributed to them. **Albuquerque Lumber Company v. Bureau of Revenue**, 42 N.M. 58, 75 P.2d 334 (1938); **State v. Martinez**, 48 N.M. 232, 149 P.2d 124 (1944). In applying the terms "street, alley, road, highway or thoroughfare" in their generally accepted and usual sense, we must conclude that lakeshores or beaches are not to be considered as public highways. Ordinarily, streets, alleys, thoroughfares, etc. are considered to be well defined ways or passages, open at both ends, for the use of motor vehicles. The sandy shores of a lake, however, are not well-defined ways or passages for use by motor vehicles but rather are primarily for the use of persons on foot such as bathers or fishermen.

It is our opinion, therefore, that since a lakeshore is not a "public highway" the provisions of the Motor Carrier Act, supra, are not applicable to one who occasionally assists motor vehicle operators in dislodging their vehicles from the sand in and around a lakeshore area. This opinion, however, is not intended to cover similar activities occurring on the roads and thoroughfares connecting a main highway with the lake area, because this opinion is limited strictly to activities occurring on the shores and beaches of the lake itself.