

## Opinion No. 69-18

March 11, 1969

**BY:** OPINION OF JAMES A. MALONEY, Attorney General Robert J Laughlin, Assistant Attorney General

**TO:** Mr. Johnny A. Taylor, Commissioner, Motor Transportation Department, P.O. Box 1028, Santa Fe, N.M. 87501

### QUESTIONS

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May the Motor Transportation Department, pursuant to its authority under Section 64-23-22, N.M.S.A., 1953 Compilation, legally issue permits to allow combinations of five vehicles to be operated by the City of Albuquerque for the purpose of collecting refuse, in light of the restriction on such combinations of vehicles contained in Section 64-23-15, N.M.S.A., 1953 Compilation.

#### CONCLUSION

Yes.

### OPINION

#### {\*25} ANALYSIS

Section 64-23-15, N.M.S.A., 1953 Compilation, provides in part as follows:

"(c) No combination of vehicles coupled together shall {\*26} consist of more than two [2] units, except that a truck tractor and semitrailer will be permitted to pull one [1] trailer and excepted further that a double saddle mount of vehicles in transit by driveway-towaway methods will be permitted. \* \* \*

The question is whether the Motor Transportation Department may issue a special permit for the operation of combinations of vehicles which exceed the limits set out in the above quoted statute, pursuant to its authority under Section 64-23-22, N.M.S.A., 1953 Compilation. Subsection A and C of Section 64-23-22, supra, read in part as follows:

"A. The motor transportation department and local highway authorities may, in their discretion, upon application in writing and good cause being shown, issue a special permit in writing authorizing the applicant to operate or move a vehicle or load of a size or weight exceeding the maximum specified in this act [64-23-12 to 64-23-24] on any highway under the jurisdiction of the state highway commission or local authorities. A

permit may be granted, in cases of emergency, for the transportation of loads on a certain unit or combination of equipment for a specified period of time not to exceed one [1] year, \* \* \*."

"C. Special permits may be issued for a single vehicle or combination of vehicles by the department for a period not to exceed one year for a fee of ten dollars (\$ 10.00). The permits may allow excessive height, length and width for a vehicle or combination of vehicles or load thereon, and may include a provision for excessive weight if such operation is to be within the vicinity of a municipality. The excessive weight provision, however, shall be limited to an area not to exceed ten [10] miles beyond any municipality limits."

It is obvious that the above quoted statute purports to give the Motor Transportation Department discretionary power to issue permits allowing the operation of vehicles which are not in compliance with the weight and size limitation contained in Sections 64-23-12 through 64-23-25, supra. It thus appears clear that the Motor Transportation Department pursuant to this authority may issue permits to allow combinations of vehicles which exceed those standards set out in Section 64-23-15, supra, if in its discretion it deems this action to be reasonably necessary.

It is clear that the legislature may prescribe general regulations governing motor vehicles, and delegate to an executive agency the power to make rules and regulations as to administrative matters. **Johnson v. Sanchez**, 67 N.M. 41, 351 P.2d 449. The legislature in enacting Sections 64-23-12 through 64-23-25, supra, has prescribed general regulations controlling the weight and size of vehicles to be operated on the highways of the State of New Mexico. It is our view that the power to administer these rules and to grant exceptions to them, when necessary, has been properly delegated to the Motor Transportation Department. **Sofoico v. Heffernan**, 41 N.M. 219, 67 P.2 240, the New Mexico Supreme Court stated:

"It is well settled that it is not always necessary that the statutes and ordinances prescribe a specific rule of action, but on the other hand, some situations require the vesting of some discretion in public officials as for instance, where it is difficult or impractical to lay down a definite, comprehensive rule, or the discretion relates to the administration of police regulation and is necessary to protect the public morals, health, safety and general welfare."

{\*27} It appears that the area of regulation under consideration is one where it would be difficult for the legislature to lay down definite rules. It also appears that the statutes governing weight and size limitations is one dealing with the public safety and welfare. Therefore, based on the above authorities and reasoning expressed therein, we conclude that the Motor Transportation Department has broad discretion in the granting or denying of permits provided for under Section 64-23-22, supra.