

Opinion No. 16-1836

June 23, 1916

BY: FRANK W. CLANCY, Attorney General

TO: Mr. W. W. McClellan, Police Judge and Justice of the Peace, Albuquerque, New Mexico.

Interpretation of automobile law.

OPINION

{*399} I have received your letter of yesterday in which you ask five questions regarding the automobile law, which I will answer in the same order that they are asked, without here repeating the questions.

1. As to the disposition of a fine collected in your court, while there is no distinct statutory provision on the subject, it would be better for you to pay it to the county treasurer, taking his receipt therefor, and it will then be the duty of that officer to remit it to the state treasurer. I find that I recommended this course in a letter addressed to the State Treasurer on February 20, 1913, and it is probable that the practice has become general.

2. I am of opinion that dealers' licenses do not expire on the 31st of December, as do the ordinary licenses provided for by Section 382 of the Codification. The dealer's license is provided for in Section 384, and declares that it shall be \$ 12.00 per annum, and I believe that means for the period of one year from the issuance of the license. I find, upon inquiry at the office of the Secretary, that the practice of that office has been in accordance with this idea. Section {*400} 382, which speaks of the license expiring at the end of each year, appears to be limited to those licenses provided for in that section.

3. Dealers are not allowed, by law, to purchase, trade in, or take a car for sale on commission, and affix a dealer's license and then use it for pleasure riding or profit. He ought, when buying an old car, to have the license transferred to him, as provided in Section 387.

4. The affixing to a car of a sign "License applied for," does not, under the statute, give the owner any more right to run the car than he would have without any such sign. Section 391 clearly provides that any person who shall operate a motor vehicle without a number or license shall be punished by fine or imprisonment, or both. The law means what it says.

5. Under the law I do not think that a dealer is limited as to the number of cars which he may exhibit for purpose of sale, but he has no right to use the cars for any other purpose. It is quite plain that the legislature intended to favor the business of

manufacture or sale of motor vehicles by allowing the manufacturer or dealer to have one license, for which he pays only \$ 12.00 per annum, under which he can, in the prosecution of his business, operate and exhibit any number of motor vehicles, but he must not operate any such vehicle for his own private use or for hire. The moment that he does this he would be liable for the payment of the ordinary full license for each vehicle so used or hired. In other words, his stock in trade of vehicles for sale must not be used in any way except to promote the sale thereof, and any other use which gives him any personal benefit would be a violation of the act.