

Opinion No. 19-2193

February 11, 1919

BY: HARRY S. BOWMAN, Assistant Attorney General

TO: Hon. Manuel Martinez, Secretary of State, Santa Fe, New Mexico.

Automobiles Owned by State Not Exempt from License Tax.

OPINION

In reply to your letter of the 8th instant, asking for an opinion as to what institutions and persons are entitled under our law to "gratis Automobile Licenses," wish to advise that there is nothing in our statutes which requires the furnishing by your office of free automobile licenses to any persons or institutions whatsoever.

While our constitution provides that state property is not to be taxed, still, that does not imply that automobile licenses shall be furnished to cars that are owned by the state without fees.

I am of the opinion that your office is not compelled to furnish free automobile licenses to any person or institutions.

If the licensing of an automobile is taxation within the strict meaning of the word, then it would be unnecessary to register each state motor vehicle and secure a number plate for each car, but authorities on this subject make a distinction between taxation and a license tax or a license. They define a tax as a burden imposed by the legislative power upon persons or property to raise money for public purposes or to defray expenses of administering the government. A license is merely the permission or authority to do some act and a license fee is a sum of money charged to defray the expenses of issuing license certificate and of regulating the business, vehicle, or occupation so licensed. The authorities further hold that even if revenue is raised through the licensing of an act, that still it is not a tax.

In view of this distinction between a tax and a license it seems to us that motor vehicles operated by the **state** would not be exempt under the provisions of Section 3, Article VIII of the State Constitution.

It will be observed that Section 3 of Article VIII of the Constitution exempts the **property** owned by the State from taxation. The license fee exacted for the privilege of operating a motor vehicle is not a tax on the property but a license to operate said vehicle upon the highways. If it were a tax in the strict sense of the word, then we would be confronted with the proposition of double taxation and also that the tax is not uniform upon subjects of taxation of the same class. Under the law, unless an automobile is operated upon the highways a license is not required.