

Opinion No. 38-1949

May 11, 1938

BY: FRANK H. PATTON, Attorney General,

TO: Mr. Owen B. Marron District Attorney Albuquerque, New Mexico

{*233} This will acknowledge receipt of your letter dated May 10 wherein you state that your local State Police have requested an opinion as to the construction of Chapter 198, New Mexico Session Laws of 1937, relating to the regulation, testing, adjusting and inspection of lights, brakes and steering equipment on motor vehicles.

You make three inquiries. We shall answer them in the same order in which they appear in your letter. Your first inquiry is as follows:

"Does that act or any statute in force make it a misdemeanor for the driver of a motor vehicle to operate his vehicle without the certificate of inspection having been issued to him as required by the act?"

Chapter 198 of the Session Laws of 1937 is amendatory to Section 54 of Chapter 75 of the Session Laws of 1929. Said Chapter 75 also appears in the 1929 Code as Sections 11-801, et seq. We have searched in vain but are unable to find any statute in force making it a misdemeanor for the driver of a motor vehicle to operate his vehicle without the certificate of inspection having been issued to him as required by said Chapter 198. Clearly, Chapter 198 does not make it a misdemeanor. True, Section 59 of Chapter 75 of the Session Laws of 1929 provides penalties for the violation of any provision of such act but nowhere in said act or amendments thereto are we able to find any provision making it unlawful for the driver of a motor vehicle to operate his vehicle without the certificate of inspection having been issued him.

Chapter 75, Laws of 1929, is designated as the Uniform Motor Vehicle Act Regulating the Operation of Vehicles (See Section 67 of the Act), and was adopted from the original Uniform Act approved in 1926 by the National Conference of Commissioners on Uniform Legislation. In this connection it is interesting to note that this Uniform Act was revised in 1930 by the Conference and is now known as the Uniform Act Regulating Traffic on Highways (See Uniform Laws Annotated, Vol. {*234} 11, Motor Vehicles), and Section 2 of the Uniform Act as revised now provides as follows:

"Obedience to Traffic Regulations. -- (a) It shall be unlawful and unless otherwise declared herein with respect to particular offenses it shall constitute a misdemeanor for any person to fail or neglect to comply with any rule or regulation declared in this act.

(b) Offenses by Owners. -- It shall be unlawful for the owner, lessor, or lessee of a motor vehicle or for any person employing or otherwise directing the driver of a motor vehicle to require the operation of a motor vehicle upon a public highway when such

vehicle is equipped otherwise than is required or permitted by law or is in excess of a weight permitted by law, or the operation of any vehicle in any manner contrary to law."

No doubt our act should be amended so as to include the foregoing section of the revised Uniform Act because as our enactment now stands it provides in many details what should be done pertaining to motor vehicles but only in a few instances does the act make it unlawful for the owner or operator of a motor vehicle to fail or neglect to comply with any rule or regulation declared in the act. In view of this we shall forward a copy of this opinion to Mr. Tom W. Neal, Director of the Legislative Reference Bureau, in order that he might make necessary recommendations to the Legislature.

You state your second inquiry as follows:

"The question has also arisen as to whether or not a person charged with having defective lighting or braking equipment, or charged with having no lights or brakes, may be prosecuted if prior to the return date of the citation he obtains a certificate from an official adjusting station, as required by Chapter 198 of the 1937 Sessions laws, within forty-eight (48) hours after his arrest?"

Subsection (b) of Section 1 of Chapter 198, Laws of 1937, plainly states that the driver of any motor vehicle who is arrested upon a charge that the lamps, brakes or steering equipment of such vehicle are improperly adjusted, or are unsafe, or fail to comply with the requirements of the act, shall be allowed forty-eight hours within which to bring such equipment into conformity with the requirements of this act. Said section also provides that it shall be a defense to any such charge if the person arrested produces in court, or submits to the prosecuting attorney, a certificate from an official adjusting station showing that within forty-eight hours after such arrest such equipment was made to conform to the provisions of the act.

It is therefore our opinion that a person charged with having defective lighting or braking equipment, or charged with having no lights or brakes, may not be prosecuted if prior to the return date of the citation he obtains a certificate from an official station showing that within forty-eight hours after his arrest his lighting or braking equipment was made to conform to the provisions of the act.

Your third inquiry is as follows:

"Is there any provision of the law penalizing the failure of the operator of a motor vehicle to display an inspection certificate on the windshield of his motor vehicle?"

For the same reasons advanced in our answer to your first inquiry, supra, we are constrained to hold that we find no provision of law penalizing the failure of the operator of a motor vehicle to display an inspection {235} certificate on the windshield of his motor vehicle.

Trusting the foregoing is responsive to your inquiries, I am,

By: FRED J. FEDERICI,

Asst. Atty. Gen.