

**Opinion No. 39-3197**

June 28, 1939

**BY:** FILO M. SEDILLO, Attorney General

**TO:** Mr. Earl Stull, Director, Division of Field Administration, New Mexico State Police, Santa Fe, New Mexico.

{\*74} This will acknowledge receipt of your letter dated June 24 requesting an opinion from this office with reference to the collection of mileage taxes in certain operations.

I understand your fact situations to be as follows:

"A has a place of business outside the State of New Mexico, say in Trinidad, Colorado. He does business in New Mexico. He obtains orders for his goods, say in Raton. He does not ship his goods by carrier to his customers but rather delivers the goods to Raton in his own truck, using his own driver, etc., and makes no charge for the transportation. His truck carries New Mexico license plates."

Your inquiry is:

"Should A, in addition to the fee charged for the New Mexico license plates, be required to pay the New Mexico mileage tax?"

Under the decision of Rountree vs. State Corporation Commission, 40 N.M. 152, 56 P. (2d) 1121. A would not be a "contract motor carrier" within the meaning of Chapter 154, Laws of 1933, as amended, and would not therefore be subject to the mileage tax payments required by said Motor Carriers Act.

A must, therefore, be governed by the provisions of Chapter 73, Laws of 1939, superseding our old Port of Entry law. This new law (Section 12 (c)) provides, as did the old law, that after registration and inspection, clearance certificates or special permits shall be issued for motor vehicles transporting property **not for hire** when such vehicle has been duly licensed and is displaying license tags as required by the laws of this state.

Since under the Rountree decision, supra, A would not be transporting for "hire," then under the law if he has paid for and displayed his New Mexico license tags, this is apparently all that is required of him under the express provision of the law.

The same would be true of a New Mexico merchant who delivers his own goods, not for hire, in his own truck, with his own driver, to his New Mexico customers. The law as written exacts no more from the out-of-state merchant than it does from the New Mexico merchant. In other words, the law as I see it contemplates that both be treated on the same basis under same fact situations.

This office has already ruled as I now rule in Opinion No. 1179 construing the old law which is identical with the new law in its wording in this respect, a copy of which former opinion will be found in your old Port of Entry files.

I return herewith the enclosures which accompanied your request and I trust that the foregoing will be of some information to you.

By: FRED J. FREDERICI,

Asst. Atty. Gen.