

Opinion No. 39-3240

August 14, 1939

BY: FILO M. SEDILLO, Attorney General

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

{*93} As requested by you over the telephone today, I have looked into the question of whether persons who pay no tax are entitled to vote at the bond election in Bernalillo County tomorrow by reason of their having purchased an automobile license plate.

I find that on August 2, 1935, Opinion No. 1122, Mr. Quincy D. Adams, Assistant Attorney General, held that the payment of automobile license tax does not entitle a voter to vote at such an election, saying "such registration fee may be in lieu of a property tax," but in my opinion it is not a property tax.

Since that time opinions have been written by former Attorney General Frank Patton and by several of his assistants, up to July 27, 1938, Opinion No. 2013, and so held.

In the case of Oden Buick, Inc., vs. Roehl, 36 N.M. 293, it is pointed out that counsel in that case argued the license tax to be a property tax because of the apportionment of auto registration fees in Section 11-331. That distribution is to the road fund, insofar as the county is concerned, and does not go to the payment of county bonded indebtedness or for any other purpose to which property taxes are dedicated. The question was not squarely before the court in that case, and there is a doubt whether the Supreme Court would hold that such is a property tax in view of the constitutional provision requiring property taxes to be uniformly assessed and based upon value.

Automobile registration tax is based upon weight and age of the car, and not upon value. I, therefore, concur in the opinions above referred to. The fact that the county gets a portion of those taxes for its road fund does not make it a property tax.

By: ANTONIO M. FERNANDEZ,

Asst. Atty. Gen.