

Opinion No. 42-4165

October 9, 1942

BY: EDWARD P. CHASE, Attorney General

TO: Honorable John E. Miles Governor State of New Mexico Santa Fe, New Mexico

{*257} We have your request of September 23 for an opinion regarding the questions raised in the bulletin from the Office of Civilian Defense regarding Car-sharing -- Legal Consequences.

The above bulletin discusses the various questions concerning car-sharing from the view point of the general law, and as therein stated, reference must be had to the particular State law in order to determine the law of any one State. As illustrated by reading the various cases cited in the bulletin and as therein stated, the holdings of the various states differ widely in determining the various questions concerning liability of parties involved in similar instances. For this reason, reference to the general law to determine what the New Mexico law will probably be held to be is useless since it is impossible to anticipate which of the several lines of current authority in the country our Supreme Court would see fit to follow if an occasion should arise under a set of facts involving car-sharing. Chapter 15, Section 1 and 2 of the Laws of 1935, provides:

"No person transported by the owner or operator of a motor vehicle as his guest without payment for such transportation shall have a cause of action for damages against such owner or operator for injury, death or loss, in case of accident, unless such accident shall have been intentional on the part of said owner or operator or caused by his heedlessness or his reckless disregard of the rights of others.

"This act shall not relieve a public carrier or any owner or operator of a motor vehicle while the same is being demonstrated to a prospective purchaser of responsibility for any injuries sustained by a passenger being transported by such public carrier or such owner or operator."

This statute is, in effect, a "Guest Statute" as found in many states, as indicated by the bulletin. However, our Supreme Court has never been presented with a question concerning whether a person paying part of the expenses is a **guest** or not. In view of this fact all that can be said is that it is possible our Court might hold that even though a co-worker payed part of the expenses, he would be, nevertheless, a guest. Needless to say, the opposite result is also possible.

A fact situation involving co-workers sharing the expenses and a determination of possible rights and liabilities of the driver to the co-workers, as well as the possible other parties, and also possible liability of the co-workers to other parties, has never been presented {*258} to our Supreme Court, and it is, therefore, impossible for this office to anticipate what our Supreme Court might hold. It is further impossible for this

office to say whether a car-sharing arrangement would create a "host-guest relationship" or a "passenger for hire relationship" or a "joint adventure" situation.

Therefore, in view of the uncertainty concerning the status of our Tort law, and since it is necessary to determine the tort questions before anticipating insurance questions, it is also impossible to determine the exact status of insurance questions which may arise in connection with car-sharing in New Mexico.

It is the opinion of this office that the questions discussed may only be clarified by appropriate legislation. With this end in mind, this office, if requested, will prepare a bill to be submitted to the next Session of our Legislature.

By HARRY L. BIGBEE,

Asst. Atty. General