

## Opinion No. 43-4420

December 6, 1943

**BY:** EDWARD P. CHASE, Attorney General

**TO:** Mr. Charles E. Bassett, Director, Gasoline Tax Division, Bureau of Revenue, Santa Fe, New Mexico

We are in receipt of your letter of December 2, 1943, and the enclosed letter from Charles Shepard. In your letter you ask our opinion as to whether or not a person operating a motor vehicle off the highways of the State of New Mexico must have such motor vehicle registered and licensed, and further, whether he must obtain a brake and light sticker for such vehicle.

Your attention is directed to Section 68-202 of the N.M. 1941 Compilation, which provides in part as follows:

"Every owner of a motor vehicle, trailer, or semi-trailer, **intended to be operated upon any highway** in this state shall, before the same is operated, apply to the department for and obtain the registration thereof."

Section 68-201 (r) of the N.M. 1941 Compilation defines highways as follows:

"Every way or place of whatever nature open to the use of the public as a matter of right for purposes of vehicular travel; the term 'highway' shall not be deemed to include a roadway or driveway upon grounds owned by private persons."

It is primarily a question of fact as to whether the logging roads used by Mr. Shepard are open to the public as a matter of right, but it would appear, from what is said in his letter, that they are not. If they are not, then, under the above quoted provision, Mr. Shepard would not have to register his trucks unless he at some time caused them to be operated on a highway.

Your attention is also directed to Section 68-225 of the N.M. 1941 Compilation providing penalties for operating a motor vehicle that is not registered or licensed, which section is made to apply only to vehicles operated on highways; and Section 68-214 of the N.M. 1941 Compilation providing for renewal, where again the test is made whether the vehicle is operated upon the highway.

The question of whether or not a person operating a motor vehicle off the highways of New Mexico must obtain an inspection certificate is governed by Section 68-616, which provides in part as follows:

" **Every motor vehicle** in this state shall be tested as to lights, brakes and steering equipment at least three times a year, such test or inspection to be made at least once every four months."

However, no penalty is provided anywhere in our statute for operating a motor vehicle without an inspection certificate.

Enclosed please find copy of Opinion No. 1949, dated May 11, 1938, dealing with this question.

Section 68-612, providing for proper brakes, relates only to vehicles operated on highways.

Section 68-701 to Section 68-729, relating to lights, apply only to vehicles operated upon highways.

There is no separate provision relating to the steering equipment of a motor vehicle.

In view of the foregoing, it is my opinion that a motor vehicle operated off the highways of the State of New Mexico, as defined above, need not be registered or licensed, and further, that while Section 68-616 requires that every motor vehicle be inspected and a certificate placed upon it, yet there can be no penalty for the failure to obtain such certificate when the vehicle is not operated upon the highway.

You will find enclosed a copy of this opinion for your convenience.

By ROBERT W. WARD,

Assistant Attorney General