Opinion No. 53-5877

December 18, 1953

BY: RICHARD H. ROBINSON, Attorney General

TO: Mr. Horace Moses Director Motor Transportation Division Bureau of Revenue Santa Fe, New Mexico

*{*306}* This is in answer to your request for an opinion upon the question of whether motor vehicles for hire should pay mileage tax for the use of the highways in the State of New Mexico when being test driven following a substantial overhaul or when the equipment is carrying a mechanic to the scene of a road failure, either *{*307}* to make repair upon the broken down equipment on the road or tow the disabled vehicle to a repair shop.

There are two mileage tax statutes in this State under which motor vehicles for hire operate. Section 68-1513 N.M.S.A., 1941 Comp., as amended, levies and assesses a stated mileage tax upon motor vehicles entering the State and is levied only upon carriers not registered or licensed in this State. The other mileage tax applicable to commercial motor vehicles is levied and assessed under Section 68-1346 N.M.S.A., 1941 Comp., as amended, which the writer feels is the tax herein involved. That tax is assessed upon common and contract carriers certified by the State Corporation Commission for the hauling for hire of passengers or freight for every mile traveled over the highways of this State. It is clear from a reading of the statute that the tax is assessed for the use of the highways of New Mexico for hire.

It is therefore the opinion of this office that a common or contract motor carrier who is test driving his equipment subsequent to a substantial overhauling in a repair shop or who is operating a piece of equipment for the main and principal purpose of carrying a mechanic to a broken down piece of equipment or is returning a piece of broken down equipment to a shop if not liable for mileage tax under Section 68-1346 N.M.S.A., 1941 Comp., as amended.

We trust this is of some assistance to you.

By: William J. Torrington

Assist. Attorney General