

Opinion No. 54-5906

February 19, 1954

BY: RICHARD H. ROBINSON, Attorney General

TO: Honorable Richard F. Rowley District Attorney Ninth Judicial District Clovis, New Mexico

{*346} This is in answer to your request for an opinion upon the question of {*347} whether certain specified motor vehicle equipment is required to be licensed under our 1953 Motor Vehicle Act.

You describe the specific equipment as follows: (1) A half-tract used as a prime mover for a well drilling rig, the rig being mounted on a semi-trailer; (2) A half-track truck used as a prime mover for a trailer which when loaded carries drill stems; and, (3) A half-track truck which is used as a prime mover for either a trailer or semi-trailer upon which is mounted a large tank to hold water.

Your question involves whether such vehicles specified above would be exempt from registration under Chapter 138, Section 41(d) Laws 1953 (§ 68-2002 (d) N.M.S.A., 1941 Comp., as amended) which reads as follows:

"Every motor vehicle, trailer, semitrailer and pole trailer when driven or moved upon a highway shall be subject to the registration and certificate of title provisions of this act. (§§ 68-1801 -- 68-1823, 68-1901, 68-916, 68-2001 -- 68-2012, 68-2014 -- 68-2081) except: . . .

(d) Any special mobile equipment as herein defined: . . .

Section 8 of Chapter 138, Laws of 1953, (§ 68-1808, 1941 Comp., as amended) defines special mobile equipment as follows:

"Every vehicle not designed or used primarily for the transportation of persons or property and incidentally operated or moved over the highways, including farm tractors, road construction or maintenance machinery, ditchdigging apparatus, well boring apparatus, and concrete mixers. The foregoing enumeration shall be deemed partial and shall not operate to exclude other such vehicles which are within the general terms of this section."

Whether the equipment comes within the above specification is clearly a question of fact to be determined by the law enforcement agency at the time they observe the use of the equipment. The determination of whether a specific motor vehicle is subject to registration and comes within the above definition of "special mobile equipment" being a question of fact for the law enforcement officer and the Court deciding such a question,

does not assist you in your request so with this condition attached we will make the following suggestions.

It appears apparent that each one of the vehicles you describe above is made up of a tractor and a semitrailer, and that upon a semi-trailer is mounted the well drilling rig or related apparatus, and is designed for the primary purpose of being used not for the transportation of persons or property upon the highways, but is only incidentally being operated upon the highway when being moved from site to site. It would appear equally apparent that the tractors used in pulling these trailers do not enjoy the primary design or use description applicable to the trailers, but are designed specifically for the transportation of property and when being operated upon the highway are being operated in accordance with their basic design and not merely incidental thereto.

Since the 1953 Motor Vehicle Code is a new enactment and does not stem from any single comparable piece of legislation of any other State, we have been unable to find any cases construing the above statute.

{*348} It is therefore the opinion of this office that, although any exemption under our 1953 Motor Vehicle Code can only be determined by a Court of competent jurisdiction upon a proper complaint of the law enforcement agency observing the use of the vehicle in question, motor vehicular equipment consisting of a tractor which hauls a trailer which is well drilling apparatus, the tractor equipment would not be considered exempt as well drilling apparatus, but the trailer equipment, if being used upon the highway only incidentally to the function of digging wells, would be exempt from registration.

We trust this is of some assistance to you.

By: William J. Torrington

Assist. Attorney General