

Opinion No. 55-6313

November 4, 1955

BY: RICHARD R. ROBINSON, Attorney General

TO: Mr. Patrick F. Hanagan, District Attorney, Fifth Judicial District, Roswell, New Mexico

You have presented for our opinion the question:

"Are drivers of Federal, State or County motor vehicles exempt from paying penalties for violation of traffic regulations passed by the cities?"

Chapter 139, Laws of 1953, as amended in 1955, (§ 64-14-1, N.M.S.A., 1953, et seq.) is the act regulating traffic upon New Mexico highways.

You mention that under § 64-15-4, N.M.S.A., 1953, which is § 25 of the above act, that it would seem that public officials or employees of the State, Federal, County, or otherwise, are subject to local traffic regulations the same as any other person. This section extends the application of the act to public officers and employees. However, it should be noticed that § 28 of the act (§ 64-15-8) provides that "local authorities with respect to streets and highways under the jurisdiction and within the reasonable exercise of the police power . . ." may pass regulations regarding specified activities and subjects. It appears to us that regulations enacted by local authorities are not provisions of the act but are rather regulations passed under authority contained in what may be termed an exception to the act. For this reason, obedience to local traffic regulations may not be called for by § 25 of the act (§ 64-15-4).

However, even without express direction from the Legislature that local traffic regulations should extend to drivers of Federal, State or other vehicles, it seems to us that such drivers are amenable to them.

Concerning carriers of the U.S. mails, it has been held that absent contrary regulations promulgated by or under the authority of Congress, local traffic regulations extend to them. *Massachusetts v. Closson*, 229 Mass. 329, 118 NE 653, LRA 1918-C 939; c.f. *Ex Parte Willman*, 277 F. 819.

The mail carrier cases illustrate that drivers of Federal vehicles must obey local traffic regulations. These cases, of course, concern permissible regulation of the activities of one government by another, i.e., the Federal by the State or Municipal.

In extending municipal traffic regulations to drivers of state vehicles, the situation is a little different.

The municipality functions only by virtue of the power delegated to it by the State. It is a subdivision of the State. Thus, if municipal traffic regulations apply to drivers of State cars, the substantial effect had is that the State is regulating itself.

The inquiry then is whether or not the power to regulate traffic given to the local authorities under the above statutes is limited to the extent that regulations passed by these authorities do not reach drivers of State owned vehicles. On this question we have been unable to discover authorities which cover the question.

However, it seems to us that the only reasonable view is that such traffic regulations do extend to drivers of State cars. As indicated above, the State by express declaration, has made traffic regulations on State highways applicable to drivers of State owned cars. If it thus has expressly regulated drivers of its vehicles upon the State highways it would seem that upon streets and highways within the jurisdiction of municipalities the State, in granting power to regulate same, impliedly submitted its drivers to regulations which thereafter might be passed under this grant of authority. To view the matter otherwise would result in the most intolerable of situations.

For example, under Section 64-15-8 (2), the local authorities may regulate traffic by "means of police officers or traffic control signals." Under Section 64-15-8 (4), they may designate streets upon which traffic may move in one direction only. Under Section 64-18-8 (10) they may alter the **prima facie** speed limits specified elsewhere in the act. If it were held that regulations enacted by local authorities did not apply to drivers of State cars, then such a driver could with impunity, disregard a stop light, travel on a designed one-way street in the direction that pleased him, or disregard the speed limits designated by the local authorities.

It is necessary only to reflect upon the above example and the conclusion is inescapable that drivers of State vehicles are not immune from obedience to local traffic regulations or that they do not possess greater privileges than any other class of drivers. And it seems to us that the same reasoning applies to drivers of county owned vehicles.

Your question, therefore, is answered in the negative.

You state that a department of the State has maintained that they do not have to pay into the parking meters for the privilege and use of parking space, contending that they are exempt from "paying such revenue."

It should be noted that the passage of parking meter ordinances has been sustained by our Supreme Court as an exercise of the police power and has been held to be not a revenue raising measure. *City of Roswell v. Mitchell*, 56 N.M. 201.

We trust the above helps answer your inquiry.

By Santiago E. Campos

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