

Opinion No. 56-6387

February 10, 1956

BY: RICHARD H. ROBINSON, Attorney General

TO: Mr. Louis C. Lujan, Attorney for the Bureau of Revenue, Legal Division, Santa Fe, New Mexico

You have stated a conflict exists on the question of whether Chapter 19 or Chapter 276 of the Laws of 1955 prevails as to registration rates to be paid by each truck-tractor--road-tractor and truck weighing for registration purposes in excess of 2400 lbs.

You request our opinion as to which law prevails for trucks falling within the over 2400 lb. category, especially when the truck has been registered during the last three or more years.

It is to be noted at the outset that Chapter 276 was the last expression of the Legislature on the subject since Chapter 19 was approved February 18, 1955, while Chapter 276 was approved March 30, 1955.

The old law on the subject, Section 64-11-1, N.M.S.A., 1953 Compilation, (Chapter 138, Laws of 1953) provided in section (e) that trucks not registered in the State during the last two years prior to the year for which same is being registered, that such registration fee should be a certain amount depending upon the weights thereof. It followed with a second category for trucks registered in the State during the last two years prior to the year for which the same was being registered with the subparagraphs thereof describing the amount to be paid depending on the weight of the truck. This law went no further, therefore, all trucks paid the same amount depending on the weight of same after the third year of registration. There was no lowering of the rate when the age of the truck increased beyond the third year.

Chapter 19 of the Laws of 1955, was then enacted into law and is an almost exact duplication of the old above cited statute with two exceptions.

The first is that in Section (e) there was added two categories, to-wit: For trucks registered in any State during the last three years prior to the year for which same is being registered, and those registered during the last four years prior to the year for which the same is being registered. Here it is interesting to note that there is a reduction of registration fees for trucks under 1600 lbs. 3(a) and 4 (a) and trucks weighing 1600 to 2400 lbs., 3(b) and 4(b) in each of these years; however, the fee for trucks weighing over 2400 lbs. remains consistent with the other two categories. In other words this change in the law amounted to no reduction in registration fees to trucks weighing over 2400 lbs. from the previous law.

The second change of the law was in section (d) of the Act respecting additional benefits to farmers and ranchers on trailer registration fees, and it is suspected that this was the main purpose of the passage of this Act.

Chapter 276 was subsequently passed during the same session of the Legislature. With respect to Section 64-11-1, supra, the same was amended to embrace all that was contained in Chapter 19, except that new weight and fee schedules were established.

A schedule was created for trucks weighing more than 2400 lbs. and not more than 4400 lbs., this being designated as (c). It also contained a further schedule covering vehicles weighing more than 4400 lbs. This is designated (d). These schedules are listed under Category 1 which is for trucks not registered during the last two years prior to the year for which same is being registered, and Category 2 for trucks which have been registered during the last two years for which same is being registered. For trucks which have been registered during the last three years, (Category 3) Schedules C and D are not included. The same is true for trucks which have been registered during the last four years (Category 4).

The basic question then is whether Chapter 276 is to be followed in determining license fees for trucks in Categories C and D when the truck is over three years old or should you go back to Chapter 19 which contains a schedule which is different than C and D for the third and fourth categories.

It is our opinion that Chapter 276 should be followed, and that Chapter 19 was repealed by implication.

The main purpose of Chapter 276 was to eliminate mileage taxes and increase registration fees to make up for this loss in revenue. In addition, the Reciprocity Commission was given the power to provide for proportional registration of motor carrier fleets engaged in inter-state commerce. This was also to bring about increased revenue and provide a more uniform and workable method of pro-rating registration fees with other States. Therein lies the reason for the increase in registration fees for trucks of over 2400 lbs.

In this case, we then have a repeal of Chapter 19, by Chapter 276. Generally, repeals of statutes by implication, are not favored, unless necessary to give legislative intent to the latter Act. See *Stokes vs. New Mexico State Board of Education*, 55 N.M. 213. Here it seems clear that Chapter 276 clearly expresses the legislative intent and should be followed by the Bureau of Revenue, especially when it is noted that two new fee schedules were added to provide for the additional revenue.

Also see *State vs. Monteil*, 56 N.M. 181, and *State vs. Valdez*, 59 N.M. 112, where the familiar rule is expressed that where two inconsistent, irreconcilable or repugnant statutes, relating to the same subject matter are enacted by the Legislature at the same session, that statute which is last in place or position, as determined by sequence is presumed to be last in time and prevails over that which is first.

It might be added that there would have been very little point in the Legislature passing Chapter 276 unless the increased fees could be collected.

With kind personal regards, we remain

By: Jack A. Smith

Assistant Attorney General