

Opinion No. 57-79

April 23, 1957

BY: OPINION OF FRED M. STANDLEY, Attorney General Hilton A. Dickson, Jr.,
Assistant Attorney General

TO: Mr. Robert Salazar, Motor Vehicle Commissioner, Bureau of Revenue, Santa Fe,
New Mexico

QUESTIONS

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Are U.S. Government civilian employees temporarily assigned to military installations within the state required to register their motor vehicles in New Mexico under the provisions of § 64-6-1, N.M.S.A. 1953 Compilation, as amended?

CONCLUSION

No.

OPINION

ANALYSIS

The statute, above cited, provides in part as follows:

"a. **A nonresident owner**, except as otherwise provided in this section, owning any **foreign vehicle** or a type otherwise subject to registration hereunder, may operate or permit the operation of such vehicle within this state without registering such vehicle in, or paying any fees to, this state, subject to the condition that such vehicle at all times when operated in this state is duly registered in, and displays upon it, valid registration plate or plates issued for such vehicle in the place of residence of such owner.

....

d. Every nonresident owner of a foreign vehicle operated within this state or owner of a house trailer within this state, who or which accepts any employment or engages in any trade, profession or occupation in this state shall register such vehicle and pay the same fees therefor as is required with reference to like vehicles owned by residents of this state." (Emphasis Supplied).

As used in the Motor Vehicle Code, a "nonresident" is defined as "Every person who is not a resident of this state." § 64-1-16. A "foreign vehicle" is defined by § 64-1-10 as

"Every vehicle of a type required to be registered hereunder brought into this state from another state, territory or country."

The aforesaid sections may be briefly restated as providing that residents of states (or countries), other than New Mexico, may use their vehicles in this state subject to appropriate registration in the state of legal residency, and further until such time as the owner of such vehicle accepts employment in this state. A specific exception to the registration requirement is found in § 64-6-3, whereby military personnel on active duty in New Mexico are permitted to operate their personal vehicles in compliance with § 64-6-1 (a), supra. See also Attorney General's Opinion No. 6037. No other exceptions are found pertinent to personal vehicles. Thus, the requirements for registering personal vehicles are patent from the language considered and only constitutional reservations and safeguards remain to be considered.

In *State v. Pate*, 47 N.M. 182, 138 P. 2d 1006, the New Mexico Supreme Court was confronted with a question very similar to that instantly being considered. In that case, an itinerant agricultural worker questioned the legislative classification of non-residents required to register personal vehicles. The Court was called upon to consider the constitutionality of Chapter 165, § 1 (a), Laws 1941, amendment which provided:

"A nonresident owner, except as otherwise provided in this section, owning any foreign vehicle which has been duly registered for the current calendar year in the state, county or other place of which the owner is a resident and which at all times when operated in this state has displayed upon it the number plate or plates issued for such vehicle in the place of residence of such owner, may operate or permit the operation of such vehicle within this state without registering such vehicle or paying any fees to this state, **during a period of three months from the time such vehicle is first brought into the state. Provided, however, a non-resident owner of a vehicle of a type subject to registration in this state, who, while residing in this State, accepts gainful employment within this State shall for the purpose of, and subject to the provisions of this code, be considered a resident of this State.**"

(Emphasis Supplied).

The Court, in holding the 1941 provision unconstitutional, expressed itself as follows:

"As will be seen from the language of this section of the act the unemployed nonresident owning an automobile duly registered for the current year in another state enjoys immunity for three months from registering the same in New Mexico. Whereas, another member of the same general group automatically becomes subject to the requirement of registration upon accepting gainful employment. Conceivably and under the strict letter of the act this could be true of employment for so short a period as a week, or even a single day, occurring at the beginning of a nonresident's three month's sojourn in the state.

....

Aside from the fact that hardship to the gainfully employed nonresidents and the resident farmers might result from the application of the act, it would seem from an examination of the act that we have in the instant case an attempt by the legislature to create a class within a class of nonresidents.

'While classification is proper, there must always be uniformity within the class. If persons under the same circumstances and conditions are treated differently, there is discrimination and not classification.' See 6 R.C.L. § 370.

Do we not have here a general class, viz. nonresident owners or operators of motor vehicles? And is not this general class arbitrarily divided within itself, by the act of the legislature, when it seeks to impose a license fee on those within the class who are gainfully employed and exempting those within the same class who are not? Such differentiation is discrimination and not classification."

Returning to the instant case, we find little difference between the 1941 provision and that presently controlling, *supra*. Under the existing statute, nonresident owners are no longer limited by the ninety day provision, but acceptance **of any employment** still activates the immediate requirement to register a foreign vehicle and accordingly establishes a differentiation within a class which has been held to be discriminatory.

In view of the holding in the Pate case, *supra*, it is our opinion that the requirements of § 46-6-1 (d) are unconstitutional. No consideration is given, in this opinion, to your suggestions of "voluntary" acceptance of employment or indirect imposition of a "burden" on the Federal Government.

It is hoped that this opinion sufficiently answers your query.