

Opinion No. 58-205

October 10, 1958

BY: OPINION OF FRED M. STANDLEY, Attorney General By. Joel B. Burr, Jr.,
Assistant Attorney General

TO: The Honorable Edwin L. Mechem, Governor of New Mexico, Santa Fe, New
Mexico

QUESTION

QUESTIONS

Pursuant to resolution of the New Mexico Reciprocity Commission, dated November 21, 1955, Governor John F. Simms and James F. Lamb were authorized and appointed to sign agreements and to cancel old agreements in behalf of the Commission. According to the factual situation presented in your request, so far as the minutes of the Commission reflect, no more specific grant was given and no specific ratification was made for any of the acts of Governor Simms or James F. Lamb, so that no quorum appears to have approved these agreements. Assuming the above facts to be correct:

1. "Can the Commission authorize less than a quorum to conduct all of the business of the Commission and exercise all of its statutory powers without ratification or approval, where such powers are discretionary and not defined?"
2. "If you answer the above question in the negative, can the Commission now ratify the acts of the two members, Governor Simms and James F. Lamb, so as to legalize what has transpired?"
3. Can proportional registration to nonresident operators be extended to residents of a state which has no reciprocity agreement with the State of New Mexico?

CONCLUSIONS

1. No, but ratification appears to have taken place.
2. Yes.
3. Yes, unless the Commission determines that such proportional registration privileges evade fair and just tax liabilities. See Opinion.

OPINION

ANALYSIS

The statutory provisions pertinent to questions 1 and 2 are as follows:

Section 64-12-1, N.M.S.A., 1953 Compilation, 1957 Pocket Supplement, creates the New Mexico Reciprocity Commission and provides for its membership.

Section 64-12-2, N.M.S.A., 1953 Compilation, 1957 Pocket Supplement, sets out the policy of the Legislature in providing for reciprocal agreements and proportional registration privileges. It provides as follows:

"The state of New Mexico hereby declares it to be its policy to grant to nonresidents of the state, whose motor vehicles, trailers or semitrailers are properly registered or licensed in a state or territory of the United States or the District of Columbia, while engaged in interstate commerce in the state of New Mexico, exemption from the payment of all or part of license fees, registration fees, permit or other motor vehicle fees or taxes or compensation for the unusual use of the highways or the display of registration numbers, compensation permits or other numbers or permits on motor vehicles, trailers, semitrailers, provided that the owners of vehicles registered in the state of New Mexico while engaged in interstate commerce, are granted like privileges or exemptions from the payment of license, registration, permit or other motor vehicle fees or taxes or compensation for the use of the highways or display of registration numbers, compensation permits or other numbers or permits on motor vehicles, trailers or semitrailers by any state or territory of the United States or the District of Columbia in which the motor vehicle of such nonresident is registered or licensed."

And lastly, Section 64-12-3, N.M.S.A., 1953 Compilation, 1957 Pocket Supplement, provides for proportional registration privileges and authorizes the Commission to negotiate reciprocal agreements with other states. This section provides, in part, as follows:

"The commission set forth under section 1 (64-12-1) of this bill shall enter into such reciprocal agreements with the responsible authorities of the other states and territories of the United States and the District of Columbia as may be necessary to carry out the policy declared in the preceding section, notwithstanding the statutes of this state providing for the collection of license fees, registration fees, permit fees, or motor vehicle fees or taxes or compensation for the unusual use of the highways, or for the display of registration numbers, compensation permits or other numbers or permits on motor vehicles, trailers or semitrailers, or the use or operation thereof, and the said commission shall do all things necessary or required to negotiate and perfect such reciprocal agreements, granting the exemptions set forth in section 2 (64-12-2) hereof, for the purpose of securing exemptions and privileges for citizens of this state operating motor vehicles in other states and territories of the United States and District of Columbia."

The resolution in question is reproduced in part below:

"WHEREAS it is deemed more feasible and convenient to designate someone within the commission to sign or cancel on behalf of the whole Commission rather than each member of the Commission affixing his signature to such agreements or cancellations, THEREFORE BE IT RESOLVED BY THE New Mexico Reciprocity Commission that the Honorable John F. Simms, as Governor and as Chairman of the New Mexico Reciprocity Commission, be authorized and appointed to sign agreements and to cancel old agreements in behalf of the New Mexico Reciprocity Commission, and the Honorable James F. Lamb to attest such agreements and correspondence as Corporation Commissioner and Secretary of the New Mexico Reciprocity Commission,

AND BE IT FURTHER RESOLVED by the New Mexico reciprocity Commission that the approval of the Commission shall be had prior to the execution of any agreements, modifications or amendments, thereto, or the cancellation of old agreements." (Emphasis Ours).

In answer to your first question, it is the opinion of this office that only the Commission is authorized under the provisions of Section 64-12-3, supra, to enter into reciprocal agreements with other states. The duties and power of the Commission, in this regard, are wholly discretionary and as such may not be delegated without express statutory authority, *Payton v. McQuown*, 97 Ky. 757, 31 S. W. 874; *State Tax Commission v. Katsis*, 90 Utah 406, 62 P. 2d 120.

However, we feel it only fair to point out that the Commission did not by virtue of its resolution of November 21, 1955, delegate its powers to enter into reciprocal agreements with other states to Governor Simms and James F. Lamb. It expressly reserved the right to approve or disapprove any and all agreements prior to their execution, modification, or amendment (See underlined language in the resolution quoted above), which gives rise to a presumption that the Commission acted pursuant to its resolution. The only duties delegated to Governor Simms and James F. Lamb were the purely ministerial duties of preliminary negotiations, and the actual signing of the agreements. A delegation of duties of this type is proper. See 42 Am. Jur., Public Administrative Law, § 73, wherein is cited numerous authorities to this effect.

If, however, Governor Simms and James F. Lamb executed reciprocal agreements with other states without first submitting the same to the Commission for its approval, and if such agreements were not subsequently ratified then, in our opinion, the same may be voided by the present Commission if it so desires. On the other hand, the agreements, if made without authority, may be ratified by the Commission if such is its desire. The Reciprocity Commission being an administrative body, the following statements in regard to the law of ratification is deemed appropriate:

"Acts of administrative authorities unauthorized at the time may become valid and binding by ratification, unless the attempted ratification is made at a time when the ratifying authority could not lawfully do the act, or there are substantial intervening rights." 42 Am. Jur., Public Administrative Law, § 27, Ratification and Validation.

See also *Brooks v. Dewar*, 313 U.S. 354; *Hodges v. Snyder*, 261 U.S. 600. *State v. Heinezen*, 206 U.S. 370. The two exceptions found in the above statement of the law are not present in this case. We feel it proper to state at this point that the agreements signed by Governor Simms and Mr. Lamb have been honored by the Commission since their execution many months ago. It might very well be although we express no opinion inasmuch as this question is not before us, that the Commission by its failure to revoke these agreements, has in effect ratified them. Certainly, there would be a presumption to this effect.

In answer to your final question, your attention is directed to Section 64-3-3 (2) (c) and the second paragraph of Section 64-12-3, N.M.S.A., 1953 Compilation, 1957 Pocket Supplement. The former is an amendment to the Motor Vehicle Registration Act passed in 1955. It provides in part, as follows:

"(1) Any owner engaged in operating fleets of two (2) or more vehicles in this state in interstate commerce may, in lieu of registration of such vehicles under the general provisions of this act, register and license such fleet for operating in this state by filing a sworn application with the division declaring the total mileage operated by such vehicles in all states and in this state during the preceding calendar year and describing and identifying each such vehicle to be operated in this state during the ensuing license year. Such statement shall also designate a sufficient number of certain vehicles to be registered and licensed under this section to produce total fee payments not less than an amount obtained by applying the proportion of instate fleet miles to total fleet miles, as reported in said statement, to the fees which would otherwise be required for total fleet registration in this state. The division shall upon payment of proper fees, and after approval of the Reciprocity Commission as provided in Section 64-12-5, New Mexico Statutes Annotated, 1953 Compilation, issue the licenses, and shall upon payment of an additional fee of one dollar (\$ 1.00) for each other vehicle of the said fleet, issue a distinctive sticker for each other vehicle named in said statement in identifying it as an interstate fleet which shall be exempt from all further license fee requirements of this state, provided, that each of such vehicles is properly and duly licensed and registered in some other state, district, possession or territory of the United States or some foreign province, state or country. The proportional registration and licensing provisions of this section shall apply to vehicles added to said fleet and operated in this state during the license year. The right of out-of-state operators to proportional registration hereunder shall be subject to the terms and conditions of any reciprocity agreement or declaration made under the provisions of section 3, chapter 56, Laws 1947 (64-12-3)."

The second paragraph of Section 64-12-3, *supra*, was passed as an amendment to the Reciprocity Act in 1955. The language contained therein is as follows:

"The commission may extend to nonresident operators of 2 or more commercial motor vehicles engaged in interstate commerce in the state of New Mexico the privilege of procuring proportional registration of that portion of their fleet operated in New Mexico in proportion to the total operations of that fleet both within and outside of the state of New Mexico. In determining which fleets or operators shall be entitled to this privilege, the

commission shall consider the effect such proportional registration shall have upon the revenues from taxes for unusual use of the highways of the state of New Mexico, and where it is apparent that such proportional registration privilege evades fair and just tax liabilities, the commission shall not extend any such benefit under this act. For the purposes of administration of this act, the division of motor vehicles shall certify the name of every owner or operator making application to the division for the privilege of proportional registration to the commission and the commission shall within thirty (30) days of the date of receiving such certificate inform the division of motor vehicles of its approval or disapproval of the applicant's request. Any such approval or disapproval granted or denied shall be final and no appeal shall lie from the decision of the commission."

It seems apparent that the 1955 Legislature intended to extend the privilege of proportional registration to non-residents by the unilateral act of New Mexico alone. Otherwise, there would have been no necessity for the language found in the amendment to the reciprocity act quoted above. We are further prompted to this conclusion by virtue of a similar amendment made to the Motor Vehicle Registration Act providing for proportional registration, during the same legislature. It should be noted that the Legislature dealt with the entire subject in 1955. The legislation it adopted contemplated a dual approach to the subject, namely, negotiations with other states, and the extension of proportional registration privileges to non-residents under certain conditions by the unilateral act of New Mexico alone.

The 1955 amendment to Section 64-12-3, supra, directs that the Commission in determining which fleets or operators shall be entitled to the privilege, take into consideration the effect such proportional registration shall have upon the revenues from taxes for the unusual use of the highways of the state. In the event the effect of such privilege is to evade fair and just tax liabilities, the benefit is not to be extended. The benefit, being a privilege, may of course be revoked at any time by the Commission if in its opinion the result of extending such benefits is adversely affecting tax revenue for the unusual use of state highways.