

Opinion No. 59-197

December 11, 1959

BY: OPINION of HILTON A. DICKSON, JR., Attorney General

TO: Mr. Abner Schreiber Assistant District Attorney P. O. Box 800 Los Alamos, New Mexico

QUESTION

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1. Is Sec. 64-6-1, N.M.S.A., 1953 Comp., (P.S.) which is the section relating to the registration of automobiles by non-residents within the State of New Mexico applicable to such non-residents who temporarily accept employment for periods in excess of 30 days?
2. Inasmuch as the above statute permits a 30-day period during which, under certain conditions, non - resident owners may operate their motor vehicles within the State without registering such vehicle, is the running of the 30-day period tolled when such non-resident interrupts the consecutive 30-day period by a visit for pleasure or business to another State but with the intent to return to New Mexico?
3. Does the above-mentioned section eliminate the constitutional questions for which a preceding similar section was held to be unconstitutional by the Supreme Court of New Mexico?

CONCLUSIONS

1. Yes.
2. No.
3. Yes.

OPINION

{*306} ANALYSIS

In order to answer the questions raised by you, it is believed helpful, if not necessary, to set forth Sec. 64-6-1, supra, in toto. It reads as follows:

"A. A nonresident owner owning any foreign vehicle of a type otherwise subject to registration hereunder may use or operate or permit the use or operation of such vehicle within this state for a period of thirty [30] days without registering such vehicle in, or

paying any fees to this state, subject to the condition that such vehicle at all times during this thirty [30] day period, 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. The commissioner of motor vehicles shall promulgate and publish as required by law, rules and regulations necessary to implement this section.

B. A nonresident owner of a foreign vehicle operated within this state for the transportation of persons or property for compensation or for the transportation of merchandise, either regularly according to a schedule, or for a consecutive period exceeding thirty [30] days, shall register such vehicle and pay the same fees therefor as is required with reference to like vehicles owned by residents of this state. This paragraph shall not be construed as limiting the effect of validly entered reciprocal agreements between the state of New Mexico and other states or of proportional registration provided for in Section 64-3-3, New Mexico Statutes Annotated, 1953 Compilation.

C. Every nonresident, including any foreign corporation, carrying on business within this state and owning and regularly operating in such business any motor vehicle, trailer, semitrailer, house trailer, or pole trailer within the state, shall be required to register each such vehicle and pay the same fees therefore as is required with reference to like vehicles owned by residents of this state."

It becomes obvious that the legislature in adopting the above statute has eliminated any qualification of residency insofar as it relates to the necessity for licensing or registering motor vehicles traveling on the highways of this State. You will note that the only qualification is that a motor vehicle owner is permitted a period of 30 days during which he may operate his vehicle within the State without registering it in accordance with the laws applicable to resident owners so long as the same is duly registered and displays valid registration plates from the place of residence of the owner. Subsections B and C of the above statute further qualify this exemption. Therefore, in answer to your first above question, we are of the opinion that the statute applies equally to those who only temporarily accept employment within the State so long as that person remains within the State for a period in excess of 30 days. However, your attention is further directed to Subsection C of the above quoted section wherein it is provided that if that person regularly operates his vehicle in the course of such business then it appears that each such {30} vehicle shall be registered without the privilege of exercising the 30-day exemption provided for in the first two subsections of the quoted statute.

Your second question is closely related to one considered by this office earlier this year. See Opinion No. 59-71, dated July 10, 1959. In that opinion, we had occasion to quote with approval the following language from the case of **Marshall v. State**, 171 S.W. 2d 269, 271, wherein the Supreme Court of the State of Tennessee construed a statute having similar language in the following fashion:

"Considering the entire Act and scheme of legislation, it is our opinion that it was not the intention of the legislature to permit a non-resident to operate a business or practice his

profession in the state of Tennessee for a period of 29 days and be out of the state for one day, thus avoiding the 30-consecutive-day period, and avoid the registration of his automobile."

We also quoted with approval from the case of **Dudley v. Northampton Str. Ry.**, 69 N.E. 25 (Mass.) as follows:

". . . the running of his 15 days was not interrupted by his temporary calls into the other states." *Supra*, page 26.

While we recognized that the above statutes were not precisely in the same language as that adopted by the New Mexico legislature in its 1959 session, we were of the opinion that they were sufficiently similar in content as to make the court's interpretation as expressed therein precedent for us. Therefore, we concluded in that opinion that the purpose of the statute could not be circumvented by a nonresident motorist who, with the intent to return to New Mexico, leaves the State for only a day or two in an effort to toll the running of the period.

We are constrained to hold similarly in response to the question raised by you. We do not feel that a person who is gainfully employed in this State may circumvent the 30-day limitation by a short visit to another state when it is his intention to return within a day or two to New Mexico.

In answer to your third question, this office is of the opinion that the provisions of similar legislation held unconstitutional in **State v. Pate**, 47 N.M. 182, have been eliminated by the legislation adopted by the 1959 legislature. This office so held in an earlier opinion this year. See 59-53, dated June 2, 1959, wherein the author of the opinion stated as follows:

"The amendment [to 64-6-1, *supra*] also removed certain exceptions from this section of law which had been adjudicated as making part of this section of doubtful validity."

State v. Pate, 47 N.M. 182, you will recall held that it was an effort on the part of the legislature to create a class within a class of nonresidents. It is our view that no such distinction exists within the statute in question and that the classification meets the test of reasonableness. It is our view that these tests have been met and that the constitutional doubts have been eliminated. Therefore, our conclusion is as above-mentioned to your third question.

By: Thomas O. Olson

Assistant Attorney General