

Opinion No. 59-33

April 6, 1959

BY: FRANK B. ZINN, Attorney General

TO: Benny E. Sanchez, Commissioner Motor Vehicle Division Santa Fe, New Mexico

Agents may not be classified as employees of the Motor Vehicle Division for withholding taxes, Social Security and Retirement purposes.

Motor Vehicle Commissioner can, to the extent required by him, have access to all applications and other records pertaining to the Division while in possession of appointed agent.

Motor Vehicle Commissioner can replace any appointed agent for non-performance of service in accordance with departmental policies.

It is discretionary with the Motor Vehicle Commissioner whether appointed agents use division records while in agent's possession for furnishing data to others for additional fees, other than regular service fees as set by law.

OPINION

{*50} This is written in reply to your recent request for an opinion on the following questions concerning House Bill No. 80, as amended, which took effect as Chapter 6, Laws of 1959, on February 19, 1959.

Must the agents appointed by the commissioner authorized in House Bill No. 80 be classified as employees of the Motor Vehicle Division for withholding taxes, social security and retirement purposes?

To what extent does the Division of Motor Vehicles have access to applications and other records pertaining to the Division while in possession of the appointed agent?

May these appointed agents be replaced by the Commissioner for non-performance of service in accordance with departmental policies?

May these appointed agents use division records while in agent's possession for furnishing data to other for additional fees other than regular service fees as set by law?

It is my opinion in answer to your first question that these agents may not be classified as employees of the Motor Vehicle Division for withholding taxes, social security and retirement purposes.

It is my opinion in answer to your second question that Motor Vehicles Commissioner can, to the extent required by him, have access to all applications and other records pertaining to the Division while in possession of appointed agent.

It is my opinion in answer to your third question that Motor Vehicle Commissioner can replace any appointed agent for non-performance of service in accordance with departmental policies.

It is my opinion in answer to your fourth and last question that it is discretionary with the Motor Vehicle Commissioner whether appointed agents use division records while in agent's possession for furnishing data to others for additional fees, other than regular service fees as set by law.

Sections 2 and 3 of House Bill No. 80, as amended, provide that agents appointed by the motor vehicle commissioner receive no salary except administrative service fees. This fee is paid by the party obtaining a license plate or other service to the agent and retained by the agent. All other fees collected by the agent are to be remitted to the Commissioner. The Commissioner has no salary or money belonging to the agent from which to withhold any deductions for social security or {*51} retirement purposes.

In cases where the agent designated by the commissioner is also a paid official of any county or municipality the administrative service fee collected is to be paid to the general fund of the county or municipality and is not kept by the agent.

Concerning your second question there is no language in the act that restricts the commissioner's access to the applications and records on file in the possession of the agent. All records are the property of the Division of Motor Vehicles and the Commissioner can always have access to them as required by him while in the possession of the agent.

The Commissioner can dismiss an agent and reappoint another in his place. Under Section 1 of House Bill No. 80, as amended, he may appoint agents to act in his behalf. The power to appoint also implies authority to remove or replace.

The general authority of the Motor Vehicle Commissioner to appoint agents also carries with it implied authority to regulate the manner of their operation and conduct of the business they carry on. Should the Commissioner wish to limit use of the records of the department by the agents it is within his power to do so.

Hilario Rubio

Assistant Attorney General