

## Opinion No. 59-36

April 21, 1959

**BY:** FRANK B. ZINN, Attorney General

**TO:** Mr. Emilio Naranjo Administrator Driver Services Department Motor Vehicle Division Bureau of Revenue Santa Fe, New Mexico

The operator of a 3 horse-power, electrically driven vehicle suitable for transportation of persons upon the highways of the State must obtain a motor vehicle operator's license.

### OPINION

{\*55} This is in answer to your recent opinion request in which you ask whether an operator of a 3 horse-power, electrically driven vehicle must obtain an operator's license before driving the vehicle upon the highways of the State of New Mexico. The information supplied by you indicates that these vehicles attain a top speed of approximately 15 miles per hour, will carry two {\*56} passengers and will travel approximately 30 to 35 miles a day. The vehicle has two rear wheels and one in front which comes in contact with the ground. This vehicle is described by the manufacturer as "a completely new deluxe car".

In my opinion, the operators of such vehicles must have a valid motor vehicle operator's license if they wish to drive such vehicles upon the highways of the State of New Mexico.

Section 64-13-38, N.M.S.A., 1953 Comp. (1957 P.S.) provides in part that no motor vehicle operator except those expressly exempt shall drive any motor vehicle upon a highway in the State unless such person has a valid license as an operator or chauffeur under the provisions of the Motor Vehicle Operators' Licenses Act (64-13-31 to 64-13-78). Section 64-13-39 lists the pertinent types of vehicles which can be operated without an operator's license. They include the operation of farm tractors or implements of husbandry, temporarily drawn, moved or propelled on the highway but in no instance is a vehicle such as you describe specifically exempt.

I further direct your attention to Section 64-13-32, N.M.S.A., 1953 Comp. (1957 P.S.) wherein the term "vehicle" is defined. A "vehicle" is defined as every device in, upon or by which any person or property is or may be transported or drawn upon a public highway except devices moved by human power or used exclusively upon stationary rails or track. This section further describes a motor vehicle as being "Every vehicle which is self-propelled and every vehicle which is propelled by electric power obtained from overhead trolley wires, but not operated upon rails."

Inasmuch as the vehicle which is the subject of this opinion is self-propelled and can convey a person or persons upon the highway, I believe that every such operator must

be licensed. Vehicles of this particular type are not specifically enumerated under the Motor Vehicle Act so the question arises as to who may acquire a license permit to operate this type of vehicle. Although the specifications in fact resemble a "motor driven cycle" defined under Section 64-14-4, N.M.S.A., 1953 Comp. (1957 P.S.), examination of this section indicates that a motor driven cycle to be limited to every motorcycle including motor scooter with a motor which produces not to exceed 5 horsepower and every bicycle with motor attached. Since this vehicle is not a motorcycle, motor scooter or motor bike and the manufacturer has advertised it as an electrically driven car, operators should be licensed as if they were operating an automobile in accordance with the provisions of Section 63-13-40, N.M.S.A., 1953 Comp. (1957 P.S.) which relates to persons who may or may not be licensed.

Fred M. Calkins, Jr.

Assistant Attorney General