

## Opinion No. 59-38

April 21, 1959

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

**TO:** State Highway Commission State Highway Department 1120 Cerrillos Road Santa Fe, New Mexico. Attention: Mr. L. D. Wilson Chief Highway Engineer

State Highway Commission cannot legally issue permits for the movement of trucks in driveaway-towaway saddle mount combinations of more than one towed vehicle.

### OPINION

{\*58} This is in reply to your recent request for an opinion on the following question:

May the State Highway Commission legally issue permits for the movement of double saddle mount combinations?

It is the opinion of this office that the State Highway Commission cannot legally issue permits for the movement of double saddle mount combinations.

In order to answer this question fully and correctly, it is necessary {\*59} to know the statutory definition of the following: truck, trailer, semitrailer and truck-tractor.

A truck is defined in Sections 64-14-6 (a) and 64-1-7 (d), N.M.S.A., 1953 Compilation, as follows:

"Every motor vehicle designed, used, or maintained primarily for the transportation of property."

A truck tractor is defined in both sections 64-1-7 (a) and 64-14-5 (a), N.M.S.A., 1953 Compilation, and in both instances reads as follows:

"Every motor vehicle designed and used primarily for drawing other vehicles and not so constructed as to carry a load other than a part of the weight of the vehicle and load so drawn."

A comparison and study of the above definitions makes it obvious that the unit furnishing the motive power in a piggyback combination, except under extraordinary circumstances, must be either a truck or a truck tractor.

Now do the two vehicles being piggybacked come within the definition of either a trailer or semitrailer?

A trailer is defined in Sections 64-1-8 (a) and 64-14-7 (a), N.M.S.A., 1953 Compilation, the same in both sections and reads as follows:

"Every vehicle with or without motive power, designed for carrying persons or property and for being drawn by a motor vehicle and so constructed that no part of its weight rests upon the towing vehicle."

A semitrailer is defined in both Sections 64-1-8 (b) and 64-14-7 (b), N.M.S.A., 1953 Compilation, the same and reads as follows:

"Every vehicle with or without motive power, other than a pole trailer, designed for carrying persons or property and for being drawn by a motor vehicle and so constructed that some part of its weight and that of its load rests upon or is carried by another vehicle."

As neither of the two piggybacked trucks were "designed for being drawn by a motor vehicle", the units cannot under the circumstances be considered to be either a trailer or semitrailer. Therefore, the piggyback combination does not come within the terms of Section 64-23-15 (c), N.M.S.A., 1953 Compilation (P.S.), which reads as follows:

"No combination of vehicles coupled together shall consist of more than two (2) units, except that a truck tractor and semi-trailer will be permitted to pull one (1) trailer. No combination of vehicles including any load thereon shall exceed an over-all length of 65 feet inclusive of the front and rear bumpers."

Since the piggyback combination violates the prohibition against combinations consisting of more than two vehicles and does not come within the exception, this combination is clearly illegal.

The piggyback combination also undoubtedly comes under the definition of "driveaway-towaway operation", which is found in Section 64-14-7 (e), N.M.S.A., 1953 Compilation, which reads as follows:

"Driveaway-towaway operation. The term 'driveaway-towaway operation' means any operation in which any motor vehicle or motor vehicles, new or used, constitute the commodity being transported, when one (1) set or more of wheels of any such motor vehicle or motor vehicles are on the roadway during the course of transportation, whether or not any such motor vehicle furnishes the motive power."

{\*60} It should be noted that in the above quotation there is some indication that "driveaway-towaway operations" were not to be limited to a towing and a single towed unit as it states "when one (1) set or more of wheels of any such motor vehicle or motor vehicles are on the roadway during the course of transportation." Since Section 64-14-7, N.M.S.A., 1953 Compilation (P.S.), was passed in 1955, we feel that the latter statute being the last expression of the legislature is controlling. The driveaway-towaway statute is ambiguous.

Since the piggyback combination comes under Section 64-14-7 (e), N.M.S.A., 1953 Compilation, it follows that it comes under Section 64-20-41, subsection 3, N.M.S.A., 1953 Compilation, and the exception found in subparagraph (b) of subsection 3 and which reads as follows:

"3. From and after the effective date of this act every bus, truck, truck-tractor, road-tractor, trailer, semitrailer, and pole trailer shall be equipped with brakes on all wheels in contact with road surfaces, except:

. . .

(b) Any vehicle being towed in a driveaway-towaway operation, provided the combination of vehicles is capable of complying with the performance requirements of section 150 (b) [this section]; . . ."

Section 150 (b) is subsection 7 (b) of Section 64-20-41, N.M.S.A., 1953 Compilation, quoted above, and has to do with brakes and brake performance.

The piggyback combinations also come under the requirements of Section 64-20-15, N.M.S.A., 1953 Compilation, which outlines the lighting for driveaway-towaway operations.

By way of conclusion, it is my belief from the wording of the above quoted statutes that the State Highway Commission cannot legally issue permits for the movement of double saddle mount combinations.

Hilario Rubio