

Opinion No. 60-85

May 9, 1960

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

TO: Mr. Glenn B. Neumeyer Assistant District Attorney Third Judicial District Las Cruces, New Mexico

QUESTION

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Does Section 1, A, 5 at page 9 of the 1960 State Highway Commission Regulations Covering Operation of Oversize and Overweight Vehicles conflict with Section 64-23-12 (b), N.M.S.A., 1953 Comp. (P.S.)?

CONCLUSION

No.

OPINION

{*447} **ANALYSIS**

Section 64-23-12 (a), in effect, provides that the driving or moving of overweight or oversize vehicles on any state highway shall be a misdemeanor. Section 64-23-12 (b) is the exception clause and declares as follows:

"(b) The provisions of this article governing size, weight and load limits shall not apply to fire apparatus, road machinery engaged in highway construction or maintenance, or to implements of husbandry, including farm tractors, temporarily moved upon a highway or to a vehicle operated under the terms of a special permit issued as herein provided."

The Highway Commission Regulation to be construed is Section 1, A, 5 of the 1960 Regulations Covering Operation of Oversize and Overweight Vehicles which reads as follows:

"5. When farm vehicles or equipment oversize are carried or towed by another vehicle a permit is needed."

The question here posed is whether the statutory provision and the above regulation are in conflict. It is our opinion that they are not.

The present issue was substantially resolved by Attorney General Opinion No. 5570, dated July 28, 1952, construing § 68-602, N.M.S.A., 1941 Comp., which contained an

exception provision very similar to the one quoted above from § 64-23-12 (b), N.M.S.A., 1953 Comp. (P.S.). It was stated in the above-mentioned Attorney General Opinion that,

". . . the exemption given in this statute for instruments of husbandry applies only to such instruments themselves, which will be propelled or moved upon the highways, and not to the instrumentalities or vehicles which may be carrying such instruments of husbandry. It is quite evident that the exemption is not intended to apply to a trailer which may be transporting instruments of husbandry since the vehicle in question is a trailer and a trailer cannot be classified as such instrument."

It appears that in adopting the regulation now under consideration, the Highway Commission was merely expressing for the sake of clarity and public information what they could require even without the regulation. In other words, the vehicles and equipment described in said regulation cannot be brought within the exception provision of said § 64-23-12 (b) and, therefore, their presence upon the highways is lawful only when an authorizing permit has been issued. The types of permits which may be issued, the prerequisites to their issuance, and the amounts of the attendant fees are all provided by §§ 64-23-21.1 and 64-23-22, N.M.S.A., 1953 Comp., (P.S.).

{*448} It, therefore, is our conclusion that there is no conflict between the provisions here under consideration and that each case must be examined on its peculiar facts to determine which provision is applicable.

By: F. Harlan Flint

Assistant Attorney General