

Opinion No. 61-76

August 22, 1961

BY: OPINION OF EARL E. HARTLEY, Attorney General Norman S. Thayer, Assistant Attorney General

TO: Mr. Donald T. Law, Member, New Mexico Reciprocity Commission, P.O. Box 1381, Las Cruces, New Mexico

QUESTION

QUESTIONS

Factual situations underlying these questions are given in the body of the opinion.

1. Is this bookkeeping system, allowing credit for deletions, lawful, considering our vehicle licensing statutes existing in the State?
2. Does the practice of giving operators a credit on additions to their fleet when they have overpaid on their original or supplementary applications violate the statutes of the State of New Mexico, and I make specific reference to Section 64-3-3 (2) (c) (1), N.M.S.A., 1953 Compilation?
3. Would the Reciprocity Commission violate the foregoing section of the statutes by only considering fleet miles operated in Compact states?
4. Is the practice of granting proportional registration to applicants domiciled in other than Compact states lawful, considering the language used in our motor vehicle code?
5. Does this practice of refunding monies under the above circumstances violate the licensing provisions of our statutes?

CONCLUSIONS

1. The practice of giving credits for deletions is lawful but not mandatory.
2. The practice of giving credits for overpayment on initial or supplementary additions to fleets is lawful but not mandatory.
3. It would be a violation of the Motor Vehicle Code for the Reciprocity Commission to consider fleet miles operated in only Compact states.
4. The question of domicile or residence of the owner is not involved in either the Compact nor the Motor Vehicle Code; therefore, the granting of proportional registration must be based upon a consideration of where the fleet is most frequently dispatched,

garaged, serviced, maintained, operated, or otherwise controlled. Therefore, the residence or domicile of the owner is not the controlling factor, but granting to the owner proportional registration is perfectly lawful, irrespective of his domicile.

5. Without a specific refund statute, it is not proper for the Motor Vehicle Department to grant refunds except in certain isolated cases not involved in your question.

OPINION

ANALYSIS

You have submitted a multi-question purpose request for an opinion from this office on matters concerning the administration of the reciprocity and prorationing provisions of the New Mexico Motor Vehicle Act, specifically referring to the licensing provisions of the Act as it applies to interstate vehicle fleet operators. The statute in question was enacted by the 1955 Legislature and is annotated at Sec. 64-12-1 et seq., N.M.S.A., 1953 Compilation. The pertinent provisions of that statute are Sections 64-12-2 and 64-12-3.

The statutes referred to above, constituted a re-enactment and extension of the previous reciprocity policy of the State of New Mexico. Previous to the 1955 Legislature, the reciprocity provisions were fundamentally "mirror-type" reciprocity--that is that the declared policy of New Mexico at that time was to treat the registration of out-of-state vehicles in the same manner as vehicles domiciled in New Mexico were treated in the second state. This led to much confusion as the policies of the various states varied considerably insofar as commercial type vehicles were concerned. It has worked satisfactorily for automobiles and for non-commercial type vehicles, but when the state approached the question of payment for use of the highways by commercial vehicles which through their commerce and the use of the highways were obtaining a profit, the various states in the United States refused to grant full reciprocity. As a result of this confusion there was proposed and enacted in New Mexico and in several other states, principally in the Western part of the United States, a Compact permitting proportional registration of two or more vehicles of a commercial type.

It can be easily seen from reading Section 64-12-1 et seq., that both the reciprocity theory and the proportional registration theory were embodied in our 1955 statute. It is absolutely necessary to maintain the distinction between mirror-type reciprocity and the theory of proportional registration despite the fact that they were combined in the same statutory enactments. To emphasize this, we particularly cite the last paragraph in Section 64-12-3, which reads as follows:

"Reciprocity shall not exist for fleets of two or more vehicles between this State and any other state which has adopted proration registration as to vehicles subject to this act."

Thus, it can be seen that reciprocity has not been prohibited but, to the contrary, the previous portions of the enactment indicate that it is to be encouraged. A state may

continue to enter into full reciprocity agreements with the State of New Mexico, and if that is the choice of the two states, then it is an effectual agreement. Prorational registration, on the other hand, is afforded on a unilateral basis in Section 64-12-3, and this problem was discussed at great length and very ably in Attorney General's Opinion No. 58-205, dated October 10, 1958.

To direct our attention to the specific questions and the analysis for them, in answer to your question No. 1, it is necessary to read the series of statutes passed in 1955 and discussed above with the registration statutes, and specifically Section 64-3-3 (2). Under the registration laws, New Mexico required registration by model, year and chassis weight (See Section 64-11-1.3 N.M.S.A., 1953 Comp.). Additionally, New Mexico requires that the license remain with the vehicle for the duration of the registration year (See Section 64-4-1, N.M.S.A., 1953 Compilation). Under this procedure, and coupled with the proportional registration statutes discussed above, it has been the practice of this state to license vehicles on a proportional basis and to permit deletions at the expiration of each quarter for vehicles no longer in the proportionally registered fleet, but to credit for the remaining quarter of the year the unexpired portion of that license. This system is permissible and the past use of this system by the Motor Vehicle Division is not prohibited by the statutes, but it is not mandatory and particularly in view of the second paragraph of Section 64-12-3, the Reciprocity Commission and the Motor Vehicle Division may cease to permit the credits for deletions if it chooses to do so.

In answer to your question No. 2, the practice of the Motor Vehicle Division and the Reciprocity Commission has been to require payment for registration of vehicles based on the mathematical formula of:

$$\text{In-State Miles/Total Miles} \times \text{total fleet fees}$$

In applying the above formula, it can be seen that the proration department upon arriving at a given number of dollars that each fleet operator must pay, has to license a sufficient number of vehicles to at least equal said sum before issuing the plates to the fleet operator. This practice frequently and almost invariably results on one vehicle having a registration fee assessed against it in excess of the prorated dollar. In the past, the proration department has given credit to a fleet operator if he subsequently has to make additions to his fleet. Through this system the State of New Mexico is receiving the full prorated amount of its license fees and in the event there is no addition during the licensing year to a prorated fleet, the state is receiving in excess of the prorated fee. The question, however, then becomes whether or not the state must, and by law is required to give credits for additions under these circumstances. It is with reluctance that this office concludes that despite the obvious inequity to the small fleet operator of this practice, that the Motor Vehicle Division and the Reciprocity Commission may refuse to grant these credits for additions. The practice heretofore is a lawful practice and obviously more equitable.

In analyzing and answering the third question submitted by you to this office, it is only necessary to cite the plain wording of the statute. You have asked if the Reciprocity Commission can only consider mileage traveled by vehicle operators in Compact States in determining the proration dollars to be received by the State of New Mexico.

Section 64-12-3, N.M.S.A., 1953 Compilation provides in part as follows:

"The commission may extend to nonresident operators of two (2) or more commercial motor vehicles engaged in interstate commerce in the state of New Mexico the privilege of procuring proportional registration of that proportion to the total operations of that fleet both within and **outside of** the State of New Mexico . . ."

In addition thereto Section 64-3-3- (2) (c) (1) provides as follows:

". . . Any owner engaged in operating fleets of two (2) or more vehicles in this state in interstate commerce may, in lieu of registration of such vehicles under the general provisions of this act, register and license such fleet for operating in this state by filing a sworn application with the division declaring the total mileage operated by such vehicles in **all** states and in this state during the preceding calendar year and describing and identifying each such vehicle to be operated in this state during the ensuing license year. . . ."

It can be seen from a reading of the emphasized provisions of the foregoing sections of the statutes that the Legislature intended that mileage traveled in all states should be considered. In addition thereto, the first above cited section of our statute also sets forth the mathematical formula to be followed by the Motor Vehicle Division in determining the prorate dollar to be paid to this state, said formula being worded as follows:

"Such statement shall also designate a sufficient number of certain vehicles to be registered and licensed under this section to produce total fee payments not less than an amount obtained by applying the proportion of in-state fleet miles to **total fleet miles**, as reported in said statement, to the fees which would otherwise be required for total fleet registration in this state"

The Legislature at no point made any reference to only mileage traveled in Compact states but, on the contrary, in each of the above cited sections of the statute used the clear language that total miles operated in all states is to be used by the Proration Department in arriving at the pro rata share that New Mexico should receive in licensing an interstate fleet.

It is, therefore, perfectly clear that the Legislature intended that the Reciprocity Commission, in granting proration to interstate fleet operators, consider the proportion of New Mexico miles to the total miles operated by said fleet owner in all states, and it would be a violation of the foregoing sections of the statutes of this state for the Reciprocity Commission to only consider fleet miles operated in Compact states.

Your fourth question is directed to the proposition proposed by the Director of Prorating and adopted by the Reciprocity Commission concerning the method of granting of proportional registration to fleet operators and restricting that proportional registration to only those domiciled in Compact states.

This office considered this problem in its Opinion No. 58-205, dated October 10, 1958, and held in that opinion that New Mexico granted reciprocal privileges for motor vehicle registration for two or more commercial-type vehicles in interstate commerce on a unilateral basis, and declared that this was the policy of the Legislature of the State of New Mexico. We approve that opinion in toto and reaffirm the principles stated therein.

It is clear from a reading of both the reciprocity statute above cited and the Compact itself that the question of domicile is not involved in the least in either of those. The Compact, it must be remembered, becomes the law of the state when it is legally entered into and remains the law of this state until the persons responsible for withdrawing the state from that Compact have done so legally.

The Compact entered into by the State of New Mexico with certain other states provides in Article 4, Section 50, in part, as follows:

"Applicability. Any owner of a fleet may register the vehicles of said fleet in any contracting state by paying to said state total registration fees in an amount equal to that obtained by applying the proportion of in-state fleet miles divided by the total fleet miles, to the fees which would otherwise be required for regular registration of each and all of such vehicles in such contracting state."

"All fleet pro-rata registration fees shall be based upon the mileage proportions of the fleet during the period of twelve months ending on August 31 next preceding the commencement of the registration year for which registration is sought; except, that mileage proportions for a fleet not operated during such period in the state where application for registration is made will be determined by the administrator upon the sworn application of the applicant showing the operations during such period in other states and the estimated operators during the registration year for which registration is sought, in the state in which application is being made; or if no operations were conducted during such period, a full statement of the proposed method of operation."

The only reference that the Compact contains to any item which even approaches the theory of "domicile" is contained in Section 14 of Article 2 of the Compact wherein "base state" is defined as that state from or in which the vehicle is most frequently dispatched, garaged, serviced, maintained, operated, or otherwise controlled. This provision, together with the above quoted provision of the Compact, and the above quoted provision of the Reciprocity Statute, would clearly indicate that the consideration is not one of domicile, but one of control, operation and housing of the individual fleet of vehicles subject to prorating.

Keeping in mind what has been said in the forepart of this opinion, and particularly the distinction between reciprocity and prorationing, it seems quite clear that the question of domicile cannot legally be a consideration in the determination of what fleets should be prorated and what fleets should not be prorated. Further, Section 64-12-3 provides the precise method for the determination of eligibility for prorationing and states therein that:

"In determining which fleets or operators shall be entitled to this privilege, **the Commission** shall consider the effects such proportional registration shall have upon the revenues from taxes for unusual use of the highways in the state of New Mexico, and where it is apparent that such proportional registration evades fair and just tax liabilities, the Commission shall not extend any such benefit under this act."

This would apparently give adequate protection to the State of New Mexico as it quite clearly permits the consideration of each application by the Commission. This is further borne out by the next sentence which reads as follows:

"For the purpose of administration of this act the division of motor vehicles shall certify the name of every owner or operator making application to the division for the privilege of proportional registration to the Commission, and the Commission shall within thirty days of receiving such certificate inform the division of motor vehicles of its approval or disapproval of the applicant's request."

This clearly does not permit the appointment of an administrator to decide this matter, but it is a matter entirely for Commission action. In addition, the language above quoted adequately demonstrates that the consideration is to be based upon the question of operation of the fleet of vehicles and not upon residence or domicile.

From a full reading of this opinion it can be seen that this office views the reciprocity and proportional registration statutes of this state to mean that (a) If full reciprocity is entered into with any other state, that we must give privileges for unusual use of the highways by commercial-type motor vehicles the same as though that vehicle were registered in New Mexico; (b) If a reciprocity agreement is entered into as has been accomplished in the Compact with the various other states, providing for proportional registration, then the Compact must be followed as long as New Mexico is a member of that Compact; and deviation from that Compact would be a violation of the Compact and would equally be a violation of the Laws of the State of New Mexico; (c) A person who does not base his fleet or any portion thereof in a Compact state, nor dispatch the fleet from a Compact state, nor garage his fleet in a compact state, **may** be given proportional registration under the statute as a unilateral act of the State of New Mexico in accordance with the opinion of this office No. 58-205.

That the reciprocity statute in force in the State of New Mexico is constitutional is answered by the following quotation from 11 Am. Jur., Section 220, page 931, which reads as follows:

". . . In most jurisdiction such retaliatory legislation has been sustained and held not to be an improper delegation of legislative authority. Similarly, no invalid delegation is involved in making an exemption on foreign motor vehicles, provided similar exemption is accorded to vehicles by the enacting state in which the foreign - owned vehicles are registered, such exemption to be contingent upon the making of an agreement for such reciprocal exemption between the local secretary of state and the proper officer of the other state. . . ."

A very extensive opinion on the subject of the constitutionality of statutes of this type can be found in **Bode vs. Barrett**, 106 N.E. 2d 521. In addition thereto, authority for the proposition that reciprocity agreements entered between states have the force of law and are to be given full effect, is found in **State vs. Brunow**, 320 E.W. 2d 80.

Your last question recites the practice of the proration department of the Motor Vehicle Division of refunding moneys under certain circumstances. The circumstance you cite refers to a situation where an intrastate operator purchases his licenses from the local license distributor in his locality and is seeking a refund if he subsequently becomes an interstate operator entitled to prorate the licenses of his fleet in the various states in which he operates. In the past, he has been able to obtain a refund from this state for any overpayment that he might have made on original registration as it applies to a subsequent proration program.

This office has many times held that refunds under specific statutory authority are permissible provided the moneys collected are placed in a suspense fund from which refunds can be made. There are, of course, refinements to this general statement, but as a general rule to follow, the above is followed by the various departments in this state during any given fiscal year. The problem arises with reference to your particular question in that the Legislature did not see fit to give the Motor Vehicle Division very broad powers with respect to refunds. Section 64-11-11, N.M.S.A., 1953 Compilation only provides two circumstances under which refunds can be made. They are as follows:

"(a) Whenever any application to the division is accompanied by any fee as required by law, and such application is refused or rejected, said fee shall be returned to said applicant. (b) Whenever the division through error collects any fee not required to be paid hereunder the same shall be refunded to the person paying the same."

It can be seen from the foregoing that it is not proper for the Division to refund moneys under the circumstances which you have recited to this office.