

Opinion No. 63-137

October 11, 1963

BY: OPINION of EARL E. HARTLEY, Attorney General

TO: K. K. Miller, Chief New Mexico State Police P. O. Box 919 Santa Fe, New Mexico

QUESTION

STATEMENT OF FACTS

A motor vehicle rental agency, with a branch office in New Mexico, does business in several states. The agency properly registers its vehicles in other states. The vehicles are rented in other states and eventually are left with the branch office in New Mexico to be rented again.

QUESTIONS

1. If a vehicle, as described in the Statement of Facts, is subsequently rented by the New Mexico branch and permanently removed from the state within thirty (30) days of the date it entered the state, must the owner register the vehicle pursuant to § 64-6-1, N.M.S.A., (Replacement v. 9, 1960)?
2. Is such a vehicle subject to registration if it is rented by the New Mexico branch office to be used within New Mexico for a period of less than thirty (30) days and then returned either to the branch office within New Mexico or to a branch office in another state?
3. Define a vehicle being "regularly operated" in the course of the rental car business as that expression is used in § 64-6-1, N.M.S.A., (Replacement v. 9, 1960)?
4. Do U-Haul and other rental trailers come under the registration provisions of § 64-6-1, N.M.S.A., (Replacement v. 9, 1960)?

CONCLUSIONS

1. No.
2. See Analysis.
3. See Analysis.
4. Yes.

OPINION

{*304} ANALYSIS

According to the Department of Motor Vehicles, there are no existing reciprocal agreements with other states regarding the registration of rental trailers and driverless rental cars. Should such agreement be made in the future, however, it would control the answers to your questions. See §§ 64-3-3 (2), 64-6-1B, 62-12-2, N.M.S.A., (Replacement v. 9, 1960).

Three paragraphs constitute § 64-6-1, N.M.S.A., (Replacement v. 9, 1960). Paragraph A refers to all nonresident owners of foreign vehicles of a type which are subject to registration in New Mexico. Paragraph B refers to nonresident owners of foreign vehicles operated in New Mexico for the transportation of persons or property for compensation. Paragraph C refers to nonresidents carrying on business with the State and regularly operating a vehicle in such business.

Paragraph C by itself seems to include all nonresidents owning vehicles operated for the transportation of persons for compensation, but paragraph B specifically refers to this category of nonresidents. Paragraph B, therefore, should apply to nonresident owners of vehicles for the transportation of persons for compensation if that category of nonresidents otherwise falls within all other requisites of this paragraph.

Paragraph B of § 64-6-1, N.M.S.A., (Replacement v. 9, 1960), as pertinent to this inquiry reads as follows:

"B. A nonresident owner of a foreign vehicle operated within this state for the transportation of merchandise, either regularly according to a schedule, or for a consecutive period exceeding thirty (30) days, shall register such vehicle and pay the same fees therefor as is required with reference to like vehicles owned by residents of this state. . . ."

It seems settled from the facts in your questions that we are here concerned with a vehicle registered in another state and later brought into this state. We refer to the definition of "foreign vehicle" in order to determine whether the vehicles you describe fall within the meaning of "foreign vehicle" as that expression is used in § 64-6-1.

"Foreign vehicle. -- Every vehicle of a type required to be registered hereunder brought into this state from another state, territory or country. § 64-1-10, N.M.S.A., (Replacement v. 9, 1960)."

Since § 64-3-2, N.M.S.A., (Replacement {*305} v. 9, 1960), says that every motor vehicle driven on the highways is subject to registration, we conclude that the vehicles you refer to in your questions are "foreign vehicles" of a "type required to be registered."

We are also of the opinion that the vehicles you describe are "operated within this state for the transportation of persons or property for compensation." The definition of a driverless car supports our conclusion. That definition is:

" "Driverless Car" means a motor vehicle for the transportation of persons for hire, for the operation of which no driver is furnished the lessee." § 64-1-6 G, N.M.S.A., 1953 Comp., (P.S.).

Attorney General's Opinion No. 5929, 1953-54, also supports the conclusion that the vehicles you describe are operated for the transportation of persons for compensation.

The only remaining question is whether or not a foreign corporation with a branch office in New Mexico comes within the meaning of the term "nonresident." A nonresident is defined by § 64-1-16, N.M.S.A., (Replacement v. 9, 1960) as "every person who is not a resident of this state." Therefore, if a corporation can be included within the meaning of the word "person" for the purpose of § 64-6-1, its vehicles are subject to registration in New Mexico. A business entity such as a proprietorship or partnership is not distinguishable from the proprietor or partners and they clearly come within the meaning of the word "person." Therefore, vehicles owned by a proprietorship or partnership are subject to registration.

If a foreign corporation could not come within the meaning of the word "person" then it would not be subject to the motor vehicle registration laws of this state. This interpretation would result in an unworkable, absurd result which obviously was not the intent of the legislature. Such an interpretation is disfavored and should not be adopted.

Hahn v. Sorgen, 50 N.M. 83, 171 P. 2d 308 (1946). Accordingly, it was said in **Department of Highways v. Lykes Bros. S.S. Co.**, 209 La. 381, 24 So. 2d 623, 625, 626 (1945), that the word "person" includes corporation if corporations fall within the reason and purpose of the statutory definitions. See also **Ginther v. Southwest Workover Co.**, 286 S.W. 2d 291, 295 (Tex. Civ. App. 1955).

Since the rental vehicles which you described come within all the provisions of paragraph B of § 64-6-1 their registration is accordingly governed by the requirements of that paragraph. The thirty day limitation period therefore applies, and the answer to your first question is "no."

Your second question is closely related to two questions considered by this office in 1959. In Attorney General's Opinion No. 59-71 this office was of the opinion that a nonresident motorist could not take his vehicle out of state for short periods of time merely to disrupt the running of a consecutive thirty day period. And in Attorney General's Opinion No. 59-197 it was said that a person who is gainfully employed in this state may not circumvent the thirty day limitation by a short visit to another state when it is his intention to return to New Mexico in a day or two.

Each of these opinions quoted with approval the following language from **Marshall v. State**, 180 Tenn. 9, 171 S.W. 2d 269, 271 (1943):

"Considering the entire Act and scheme of legislation, it {*306} is our opinion that it was not the intention of the legislature to permit a non-resident to operate a business or practice his profession in the state of Tennessee for a period of 29 days and be out of

the state for one day, thus avoiding the 30-consecutive-day period, and avoid the registration of his automobile."

Although the cited case is not precisely in point, we feel that the quoted language is applicable to the situation you suggest in your letter. Thus, if a vehicle is operated in New Mexico for a period of thirty days without leaving the state, it is subject to registration regardless of how many times it has been returned to the rental agency in New Mexico and rerented. Further, it is our opinion that a short trip to another state will not serve to circumvent the thirty day limitation when it is the driver's intention to return to New Mexico.

In answer to your third question, the clause, "vehicle regularly operated in the course of such business," suggests that the principal use of the vehicle is in connection with the earning of one's livelihood as opposed to a casual use in that connection. See **Farm Bureau Mutual Auto Insurance Co. v. Marr**, 128 F. Supp. 67, 69 (D.C.N.J. 1955); **Palmer v. Glenn Falls Insurance Co.**, 58 Wash. 2d 88, 360 P. 2d 88, 360 P. 2d 742, 743 (1961).

Turning to your last question we refer to the statutory definition of "vehicle."

"A. "Vehicle" means every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, excepting devices moved by human power or used exclusively upon stationary rails or tracks; . . ." § 64-1-6A, N.M.S.A., 1953 Comp. (P.S.).

"Trailer" is also defined by the statute in terms of the word "vehicle." We quote the applicable language:

"TRAILERS. -- (a) Trailer. 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. . . ." § 64-1-8 (a), N.M.S.A., 1953 Comp. (Replacement v. 9, 1960).

§ 64-3-2, N.M.S.A., 1953 Comp., (Replacement v. 9, 1960), requires that "every motor vehicle, trailer, semitrailer, and pole trailer when driven or moved upon a highway shall be subject to registration." Therefore, rental trailers fall within the provisions of § 64-6-1, N.M.S.A., Comp., (Replacement v. 9, 1960). Paragraph A of this section refers to "any foreign vehicle." Considering all the applicable statutory definitions it is evident that a rental trailer comes within the definition of "vehicle" just as much as rental motor vehicles come within it. The same is true for paragraph B which also refers to "vehicle." Paragraph C specifically mentions trailers and subjects them to registration. Thus it is clear that rental motor vehicles and rental trailers come within the provisions of § 64-6-1.

By: Wayne C. Wolf

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