

Opinion No. 65-107

June 23, 1965

BY: OPINION OF BOSTON E. WITT, Attorney General George Richard Schmitt,
Assistant Attorney General

TO: Mr. Delmar M. Kolb, Director, Museum of New Mexico, P.O. Box 2087, Santa Fe,
New Mexico

QUESTION

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1. Can a state vehicle or other equipment be rented to either private institutions and governmental agencies either in state or out of state when the Museum has no involvement in the project? In this instance the Museum would only benefit from the rental fee.
2. Can a state vehicle or other equipment be rented to either private institutions and governmental agencies either in state or out of state when the Museum is committed as a co-operating agency and will receive scientific data, research materials, and other benefits? In this instance the state will benefit, not only from the rental fee but in the receipt of significant information that will be of value to Museum collections and research resources.

CONCLUSION

1. No.
2. See analysis.

OPINION

{*179} ANALYSIS

The answers to your questions are determinable under Sections 64-25-6 and 64-25-7, N.M.S.A., 1953 {*180} Compilation set forth as follows:

"Regulations for use of state vehicles -- Private or pleasure use prohibited. -- The state highway engineer shall prescribe and enforce rules and regulations for the use of any and all motor vehicles belonging to the state, and to be used by any officer, agent, employee or department thereof; **Provided, however, that no such motor vehicles shall, at any time, be taken or used for the pleasure or private use of any such state officer, agent, employee or department of the state or any other person and, that all such motor vehicles shall be taken and used only on the exclusive**

business of the state and its agencies, and only upon requisition and order, and under further rules and regulations as shall be prescribed by the state highway engineer." (Emphasis supplied).

"64-25-7. Use of state vehicles for pleasure or private use -- Penalty -- Any person who shall use any motor vehicle which is the property of the state or designated for the use of the state or any department or agency thereof for private use or purposes of pleasure shall be deemed guilty of a misdemeanor and for such offense shall be punished by a time of not less than \$ 50.00 (Fifty dollars), or by imprisonment in the county jail for not more than three months or by both such fine and imprisonment."

A reading of the above clearly discloses that state vehicles can not be used for pleasure or private use under penalty of law and that use of the vehicles is confined to "the exclusive business of the state and its agencies." The use of the Museum vehicles is controlled by the statutory provisions cited above and they are afforded no exemption such as the vehicles used by the Cattle Sanitary Board, Section 47-2-20, 47-2-21, N.M.S.A., 1953 Compilation.

We believe the law clearly precludes the Museum from renting their vehicles or equipment when the only resultant benefit to the Museum is the rental fee paid for the use of the vehicles. The reason for this conclusion, we believe is fairly obvious. It can hardly be said that automobile renting is the business of the Museum, much less "exclusive business."

The answer to your second question, however, is not that clear. We can not be quite sure that the statutory phrase "exclusive business" absolutely prohibits the Museum from entering into a joint project which will result in the receipt of significant information to the Museum that will be of value to the Museum in its work. In such an instance the rental of Museum vehicles to the other party involved in the project might very well be valid under Section 64-25-6, supra, so long as the use thereof was confined to the business of the Museum. In any event if such a situation does arise we believe that you must refer the matter to the State Highway engineer before proceeding therewith. As you have undoubtedly already observed the State Highway Engineer has the authority under Section 64-25-6, supra, to prescribe and enforce rules and regulations for the use of all state vehicles. We believe a problem such as you have posed in your second question is one which may be validly decided by the State Highway Engineer in his discretionary authority as provided by the law and according to the guidelines set forth in this opinion.