

## Opinion No. 67-148

December 26, 1967

**BY:** OPINION OF BOSTON E. WITT, Attorney General

**TO:** Honorable George E. Fettinger State Representative P.O. Drawer M Alamogordo, New Mexico

### QUESTION

#### FACTS

The opinion involves a two wheeled piece of equipment. The piece of equipment is hitched to a pickup, which tows it. The piece of equipment has no floor. It is structured from pipe lengths and is about four feet in height. The only item carried on the piece of equipment is a spool of cable. The piece of equipment is never on a public highway except when it is moved from one job to another. The primary purpose of the piece of equipment is to provide a platform from which the cable is unrolled.

#### QUESTION

Does this piece of equipment qualify as a "special mobile equipment" vehicle under Section 64-1-12, N.M.S.A., 1953 Compilation?

#### CONCLUSION

Yes.

### OPINION

#### {\*238} ANALYSIS

Section 64-1-12, supra states:

Special mobile equipment. -- Every vehicle not designed or used **primarily** for the transportation of persons or property and incidentally operated or moved over the highways, including farm tractors, road construction or maintenance machinery, ditchdigging apparatus, well-boring apparatus, and concrete mixers. The foregoing enumeration shall be deemed partial and shall not operate to exclude other such vehicles which are within the general terms of this section. (Emphasis added)

The other pertinent Section here is Section 64-3-2, N.M.S.A., 1953 Compilation. It states, in pertinent part:

Vehicles subject to registration -- Exceptions. -- Every motor vehicle, trailer semitrailer and pole trailer when driven or moved upon a highway shall be subject to the registration and certificate of title provisions of this act except:

\* \* \*

(d) Any special mobile equipment as herein defined;

This office inspected a picture of the piece of equipment involved. It is the opinion of this office that the piece of equipment was not designed primarily for the transportation of persons. Arguably, cable might qualify as property. But we believe the piece of equipment's function is analogous to the function of maintenance machinery or well-boring apparatus. Accordingly, the piece of equipment qualifies as a special mobile equipment vehicle.

This opinion reflects generally the reasoning used in Opinion of the Attorney General No. 58-115, issued June 3, 1958.

By: Donald W. Miller

Assistant Attorney General