

Opinion No. 68-27

February 26, 1968

BY: OPINION OF BOSTON E. WITT, Attorney General

TO: Mr. Edmundo G. Martinez Vehicle Services Division Department of Motor Vehicles
State Capitol Building Santa Fe, New Mexico

QUESTIONS

FACTS

An owner of a 1963 Chevrolet truck permanently attached a well servicing unit to the chassis of the truck. The well servicing unit is large; it is made up of an engine to drive the unit and extendable metal arms used to drill into the well hole. Very little room exists on the truck bed for other items which could be hauled. The cab of the truck is large enough to carry three to four people and it is large enough to haul items of property when only one person is in it. No impediments exist which would restrain the truck's use on the public highways.

1. Does the vehicle described above qualify as a special mobile equipment vehicle under the exemption to vehicle registration in Section 64-3-2, N.M.S.A., 1953 Compilation?

CONCLUSION

1. No.

OPINION

{*50} ANALYSIS

Section 64-3-2, supra, states in pertinent part:

"Vehicles subject to registration -- Exemptions. -- 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".

Section 64-1-12, N.M.S.A., 1953 Compilation states:

"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, ditch-digging 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."

This question was considered previously by this office, Opinion of the Attorney General No. 58-115, dated June 3, 1958; Opinion of the Attorney General No. 67-148, dated December 26, 1967. On the basis of Section 64-1-12, supra, and the above opinions, the following {51} questions must be answered in order to answer your question:

1. Is the vehicle designed or used primarily for the transportation of persons or property?
2. Is the vehicle incidentally moved or operated over the public highways?
3. May the unit which is allegedly the special mobile equipment vehicle be disengaged from the vehicle which does the hauling or pulling?

The well servicing unit and the truck are permanently joined. They must for the purposes of this opinion, be considered as one unit.

The truck was obviously designed primarily for the transportation of people. As mentioned above, the cab could probably hold three or four people. Further, under the facts furnished to this office we cannot say the unit is not used primarily to transport people. The truck was also designed primarily to transport property. It is constructed with a large bed behind the cab. It suffices to state that the bed was obviously designed to be used to haul some type of property. Due to the permanent joinder of the well servicing unit, it hauls only the unit.

The facts presented to this office fail to substantiate a claim that the vehicle is only incidentally operated over the public highways. The truck appears capable of traveling long distances on the public highways. It also appears capable of traveling at high speeds.

Finally, the well serving unit may not be disengaged from the truck. This element is significant. If this unit was hauled, trailer like from job to job, then a better argument could be made for the exemption. If the well servicing unit could be disengaged, then facts could possibly be available to show the unit itself is used primarily for well serving and is operated only incidentally over the public highways This was generally the fact situation in Opinion of the Attorney General No. 67-148, supra. But here the exempting of the well servicing unit necessarily means the exemption of the truck. Based upon the above conclusions as to primary design and use, such an exemption may not be allowed.

By: Donald W. Miller

Assistant Attorney General