

## **Opinion No. 68-47**

May 7, 1968

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

**TO:** Honorable Richard B. Edwards New Mexico State Representative 1408 Valle Alto,  
NW Albuquerque, New Mexico Mr. Johnny A. Taylor Commissioner Motor  
Transportation Department P. O. Box 1028 Santa Fe, New Mexico

### **QUESTIONS**

1. Does Section 64-3-3(G), N.M.S.A., 1953 Compilation (P.S.), give a carrier the option to choose between making his records available in the Santa Fe office which has jurisdiction over proportional registration audits or having the audit performed in the carrier's own office?
2. If the answer to the previous question is "yes", must the state agency with jurisdiction over proportional registration audits notify the carriers of the possible options prior to authorization of an audit by the agency or its appointed representative?
3. Who pays for the audit if the carrier records are made available in the Santa Fe office of the agency having jurisdiction over carrier audits?
4. Who pays the cost of auditing if a carrier makes its records available in its own office?
5. If an appointed representative performs an audit in the carrier's office, does the appointed state agency have any responsibility regarding the determination of audit charges to be paid by the carrier to the appointed representative?
6. Does the appointing state agency have any authority or responsibility regarding the collection of audit charges billed by the appointed representative?

### **CONCLUSIONS**

1. Yes
2. Yes.
3. See analysis.
4. See Analysis.
5. See analysis.
6. See Analysis.

## OPINION

### {\*80} ANALYSIS

The New Mexico State Department of Motor Vehicles has the duty to register and license motor vehicles operating within the State of New Mexico. The Motor Transportation Department has the authority to act as agent for the Department of Motor Vehicles in respect to registering and licensing commercial fleet carriers. Section 64-34-24, N.M.S.A., 1953 Comp. (P.S.). Section 64-3-3, N.M.S.A., 1953 Comp. (P.S.) (last amended by Laws 1965, Chapter 72, Section 1) establishes the procedures to be followed for this purpose. Section D thereof allows owners operating fleets of two or more vehicles in New Mexico in interstate {\*81} commerce to register and license the vehicles on a proportional basis of the total in-state fleet miles driven to the total fleet miles driven throughout all of the states. Subsection G further provides for a method of auditing the records of the owners of fleets applying for proportional registration. In pertinent part it provides as follows:

"G. Any owner complying with and being granted proportional registration shall preserve the records on which the application is made for a period of four [4] full years following the year upon which said application is based. Upon request of the division the owner agrees to make such records available **at his office** for audit as to accuracy of computation and payments, or to pay the costs of an audit by the division or its duly appointed representative at the home office of the owner . . . ." (Emphasis added)

The two disjunctive portions of the second sentence of the above quoted section are plainly conflicting. It provides that when the division desires an audit of an owner's records the owner shall make them available at his office or the owner may make them available at

his home office, in which case he will be required to pay the cost of the audit. Your questions concern interpretation of this sentence.

The statute as enacted is obviously unclear as to what procedures the legislature intended to be followed by the division in performing the audits of fleet owners' records. A general rule of statutory construction is that statutes should be construed in the most beneficial way to which their language is susceptible to prevent absurdity, hardships or injustice, and although imperfect in form, they should be sustained if they can be construed to give them sensible effect. **Cox v. City of Albuquerque**, 53 N.M. 334, 207 P.2d 1017 (1949). To give subsection G, supra, the effect intended, we are of the opinion that the second sentence of the section should read as if "at his office" were meant to be "at its office. Applying this construction, the statute provides that the owner may make his records available at the office of the department in Santa Fe or at the owner's home office in which latter case he would be obligated to pay the costs of the audit.

In answer to your first question, we conclude that the legislature intended to allow the fleet owner the option of furnishing the records to the department in Santa Fe, or paying the cost of an audit of the records at his home office. Such an interpretation is only reasonable in view of the fact that in many instances it may be quite impractical for a fleet owner to transport to Santa Fe records of his nationwide fleet operations. In such a situation then, the fleet owner would undoubtedly choose to have the audit performed at his home office and pay the costs therefor.

At the time that the department requests an audit, it seems only reasonable that the fleet owner be notified that he may transport his records to the department's office in Santa Fe or bear the costs of an audit at his home office. Therefore in answer to your second question, we conclude that the department should notify the owner of his options in this regard. Should the owner decide to send his records to Santa Fe for auditing, the cost of the audit would be borne by the department. There is no provision for payment of the costs by the fleet owner under those circumstances.

If the audit is conducted at the carrier's office, as stated in your fifth question, and the audit is conducted by an independent auditor at the direction of the department, then we believe the department {82} has the responsibility of collecting the costs of that audit from the carrier. Subsection G, supra, places the responsibility of conducting an audit upon the department and how it chooses to conduct this audit is within the department's sole determination. The appointed independent auditor shall bill the department directly for his services with an itemized account of the services rendered. In this manner the department can proceed to bill the carrier for the costs of the audit.

By: David R. Sierra

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