

Opinion No. 69-95

August 28, 1969

BY: OPINION OF JAMES A. MALONEY, Attorney General Mark B. Thompson, III,
Assistant Attorney General

TO: Mr. Johnny A. Taylor, Commissioner, Motor Transportation Department, P. O. Box
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QUESTIONS

FACTS

A special motor vehicle, used to haul exceptional loads, was leased by a New Mexico firm holding a certificate of convenience and necessity from an Arizona trucking firm and used to transfer a generator stator over State Road 56 from Thoreau, New Mexico to Crownpoint, New Mexico and beyond on State Road 371. An overweight and oversize permit was issued under Section 64-23-22, N.M.S.A., 1953 Comp. and the vehicle made the move and returned to Arizona within 8 days after entering the State of New Mexico. The vehicle was not normally used for transportation of property over the highways and was not registered in Arizona. The Arizona firm did not have its fleet of vehicles registered on a proration basis with New Mexico under Section 64-3-3, N.M.S.A., 1953 Comp. (Laws 1969, ch. 149).

QUESTIONS

Is the owner required to register this special vehicle in accordance with the New Mexico Motor Vehicle Code?

CONCLUSION

Yes.

OPINION

{*150} ANALYSIS

Section 64-6-1 A, N.M.S.A., 1953 Comp., Laws of 1969 ch. 70, Section 1 provides:

"A. Any nonresident owner of a vehicle of a type otherwise subject to registration may use or permit the use of such vehicle within this state for a period of ninety days without registering his vehicle, but any vehicle so used must display current registration plates issued for the vehicle in the state where the owner resides."

The Arizona trucking firm in this instance is the non-resident owner since it holds legal title to the vehicle and is not a resident {**151*} of the State of New Mexico. See Sections 64-1-15 & 16, N.M.S.A., 1953 Comp. If the vehicle is of a type otherwise subject to registration within the terms of Section 64-6-1 A, *supra*, then it is clear that the vehicle must be registered in the State of New Mexico even if it is only used on highways of New Mexico for one day, due to the fact that it was not registered in the State of Arizona and did not display current registration plates from that State.

Section 64-3-2, N.M.S.A., 1953 Comp. provides that:

"Every motor vehicle, trailer, semi-trailer 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. . . ."

Special mobile equipment is defined as a "vehicle not designed or used primarily for the transportation of persons or property. . . ." Section 64-1-12, N.M.S.A., 1953 Compilation. Because this vehicle was designed for the transportation of property it is otherwise subject to registration within the meaning of Section 64-6-1 A, *supra*, and would be registered if driven or moved upon a highway by a resident. See, Opinion of the Attorney General No. 60-178, dated September 29, 1960. We conclude, therefore, that the vehicle in question is subject to registration in New Mexico.

We should point out that the fact that the vehicle was not registered in the State of Arizona makes this an unusual case as normally vehicles used in the transportation of goods for hire would come within the provisions of Sections 64-6-1 D and E, N.M.S.A., 1953 Comp., Laws of 1969, ch. 70, Section 1. Section 64-6-1 D, would apply if the lessee uses a vehicle, registered in another state, for a period of 30 days or more. See Opinion of the Attorney General No. 59-71, dated July 10, 1959 and Opinion of the Attorney General No. 63-137, dated October 11, 1963. Section 64-6-1 E, would apply only if the Arizona owner was carrying on business within this state. Of course, in this instance, the Arizona trucking firm had no authority to haul goods for hire in New Mexico and the move was made under the control of lessee. See New Mexico State Corporation Commission Motor Carrier Rule No. 24 (1) (A) (f). Furthermore, this was an isolated leasing arrangement, and the Arizona firm was not in the business of leasing equipment in New Mexico. Compare, **Besser Co. v. Bureau of Revenue**, 74 N.M. 377, 394 P.2d 141 (1964); see also, Opinion of the Attorney General No. 63-137, dated October 11, 1963. See generally, Annot. 23 A.L.R. 3d 551, 561-71 (1969).

It appears clear that the New Mexico law contemplates that the owner, i.e., the holder of the legal title to the vehicle, is the party responsible for registration. Section 64-1-15, N.M.S.A., 1953 Comp. and Section 64-3-3 A, N.M.S.A., 1953 Compilation. Although the lessee is not responsible for the registration of the vehicle it would be unlawful for him to drive the vehicle on the New Mexico highways if it was not registered. See Sections 64-3-1 & 2, N.M.S.A., 1953 Compilation.