

Opinion No. 72-21

April 28, 1972

BY: OPINION OF DAVID L. NORVELL, Attorney General Frank N. Chavez, Assistant Attorney General

TO: Honorable Odis Echols, Jr., New Mexico State Senator, Suite 200 Studio City, Clovis, New Mexico 88101

QUESTIONS

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In reference to house moving, if a load is 20 feet wide or over, can it be optional to the house mover and/or the State Police for the carrier to furnish his own escort, such as that provided by a private business escort service?

CONCLUSION

It is optional; however, the option lies with the Motor Transportation Department.

OPINION

{*37} ANALYSIS

The relevant statutes are Sections 64-18-13.1 and 64-23-22, NMSA, 1953 Comp. Section 64-18-13.1 **supra**, is set out in full:

Movement of hazardous vehicle -- Escort to be furnished. -- A. When, in the judgment of the motor transportation department or local authorities, with respect to highways under their jurisdiction, the movement of any vehicle is deemed a hazard to traffic upon a highway over which the vehicle is to travel, the granting of permission for the movement thereof may be conditioned upon a special escort accompanying the hazardous vehicle.

B. The chief of the New Mexico state police, upon request from the proper authority, shall furnish a special police car escort to safeguard traffic during the movement of the hazardous vehicle. There shall be paid by the applicant, to move such vehicle, the sum of fifty dollars (\$ 50.00) for each police car for each day such police escort is required. All sums so paid are appropriated to the state police.

In analysis, Section 64-18-13.1 **supra** states:

1. Any vehicle which is deemed a hazard to traffic, in the judgment of the Motor Transportation Department must receive permission from the Department before it may be moved.

2. The permission for movement of the vehicle may be conditioned upon a special escort accompanying the vehicle.

Under the provisions of paragraph B of Section 64-18-13.1, **supra**, the special escort may be a state police car. Under the provisions of Section 64-23-22(C) **supra** -- the Motor Transportation Department is given authority to promulgate regulations controlling safety, insurance and equipment for personal escort vehicles and for escort vehicles provided by a private business in this state.

Furthermore, under the provisions of Section 64-23-22 (B) **supra**, a reference is made to local police escort.

Thus, based on collateral statutory {³⁸} information and in the absence of a direct expressed definition, we conclude that the legislature intended the definition of a "special escort" as either a state police car escort, a local police car escort, or a private escort service.

The other relevant provision, Section 64-23-22(B), **supra** is herein set out:

B. The department shall charge and collect, when the movement consists of houses and building of a width of twenty [20] feet or greater, for a distance of five [5] miles or more, the sum of fifty dollars (\$ 50.00) a day or fraction thereof, to defray the cost of state or local police escort. The permit issued and the fee charged shall be based upon the entire movement at one [1] time requiring police escort and not upon the number of vehicles involved.

It is noteworthy that both of the relevant statutes were passed in 1971 under Chapter 255, Sections 1 and 3 respectively.

We are mindful that Section 64-23-22 (B), **supra** appears to be a specific provision with respect to movement of vehicles as opposed to Section 64-18-13.1, **supra** which appears to be a general statute on the same. See **State v. Riley**, 82 N.M. 235, 478 P.2d 563 (1970); **State v. Blevins**, 40 N.M. 367, 60 P.2d 208 (1936).

However, it is our opinion that the specificity of Section 64-23-22(B) **supra** refers to the collection of fees, not to providing a state police escort. It is our opinion that **if** a state police escort is used, it is mandatory that the Department collect certain fees.

We have also considered Section 64-23-13, NMSA, 1953 Comp. and we conclude that this section is concerned with vehicle size and/or size of a load on the vehicle. Section 64-23-13, **supra** does not in our opinion relate to a towed load.

If a house is moved on the vehicle, Section 64-23-13, **supra** and Sections 64-23-16 and 64-23-14, NMSA, 1953 Comp. will control. And the width may not exceed eight [8] feet except as otherwise provided in that section.

However, for house moving where the load is not upon the vehicle proper we conclude that the Motor Transportation Department has the discretion to permit the movement of the hazardous vehicle in the first place. Secondly, the Motor Transportation Department may exercise its judgment as to whether an escort is necessary to accompany the hazardous vehicle. The escort at this point may be either a private escort service or it may be a police escort service. Thirdly, the Motor Transportation Department may request a special state police escort or local police escort for these services.

If the Motor Transportation Department concludes that a state or local police escort is necessary under the provisions of paragraph B of Section 64-23-22, **supra** the Department must collect the sum of \$ 50.00 a day, if the vehicle moves a house or building 20 feet wide or greater, a distance of five miles or more.

We finally conclude that there is an option available for the type of escort in movement of a load 20 feet or over, but that the option lies with the Motor Transportation Department and not the load mover.