

## Opinion No. 71-87

July 19, 1971

**BY:** OPINION OF DAVID L. NORVELL, Attorney General

**TO:** Mr. William Henry Mee Attorney Examining & Licensing Study Committee New Mexico Legislative Council Service 334 State Capitol Santa Fe, New Mexico 87501

### QUESTIONS

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1. May the Department of Motor Vehicles define by regulation the term "mobile home" under Subsection (d) of Section 64-1-8, N.M.S.A., 1953 Comp., to exclude recreational vehicles which are not used as a "home" or a permanent place of abode?
2. If a recreational vehicle were excluded from the definition of "house trailer" would it fall within the definitions of "trailer" or "semitrailer" under Subsections (a) or (b) of Section 64-1-8, N.M.S.A., 1953 Comp. for registration purposes?
3. What is the definition of a "mobile home"?
4. May the Department of Motor Vehicles assess the one dollar per day late penalty against a recreational trailer retroactive to March 2, 1971, by an operation directive dated May 24, 1971, which countermanded a memorandum issued June 9, 1970, which exempted such vehicles from the application of Section 64-3-14(d), N.M.S.A., 1953 Comp.?

#### CONCLUSION

1. No.
2. Not applicable in view of Conclusion No. 1.
3. See analysis.
4. No.

### OPINION

#### {\*126} ANALYSIS

To facilitate an orderly answer to this question, it seems appropriate to first answer your Question No. 3. As you will note, the term "house trailer" is defined in both places it appears in the New Mexico Statutes as "Every vehicle without motive power **designed**

**for use** as a mobile home, office or shop." (Emphasis added.) See Sections 64-1-8(d) and 64-14-7 (d), N.M.S.A., 1953 Comp. But it will be further noted that the term "mobile home" has not been defined either by statute or by court decision in New Mexico. Consequently, as there is an absence of any clearly expressed legislative meaning, the term should be given its usual, ordinary meaning. See **Tafoya v. New Mexico State Police Board**, 81 N.M. 710, 472 P.2d 973 (1970). Neither Black's Law Dictionary nor Webster's Dictionary defines the term "mobile home". But other jurisdictions which have defined the term have spoken in terms of a "mobile home" as being nothing more or less than a house trailer, designed and built as a movable family dwelling. See **City of Rutland v. Keiffer**, 124 Vt. 357, 205 A.2d 400, and **Reetz v. Ellis**, 279 Ala. 453, 186 So.2d 915. Thus, it appears that the "designed for" language of Section 64-1-8(d), requires the adoption of a similar definition of a mobile home in New Mexico.

Accordingly, in determining the answer to your first question it appears that the legislature defined house trailer in terms of a mobile home. And, as has already been pointed out, the legislature defined it on the basis of its design rather than considering factors related to its use.

In light of the above it is the opinion of this office that unless the legislature sees fit to define "mobile home" to exclude recreational vehicles or defines house trailer in terms other than "designed for," the Commissioner of Motor Vehicle does not have the authority to exclude, by regulation, recreational vehicles which are not used as a home or as a permanent place of abode.

Neither a statute nor an administrative rule will be given retrospective operation unless such intention is clearly apparent. **State v. Padilla**, 78 N.M. 702, {127} 437 P.2d 163. And even if, as here, such intention is obvious, the general rule is that the statute or administrative rule will not impose liabilities not existing at the time of the enactment of the statute or administrative ruling. **Ford v. City of Caldwell**, Idaho, 321 P.2d 589; **Massa v. Mastri**, Conn., 3 A.2d 839; **Scamman v. Scamman**, Ohio, 90 N.E.2d 617; 73 C.J.S., **Public Administrative Bodies and Procedure**, § 109; see **Lesavoy Foundation v. C.I.R.**, 238 F.2d 589; **Cross v. Balkcom**, 115 S.E.2d 783. Here the May 24, 1971 directive seeks to impose a **penalty** on non-payment of a fee which was not paid because of an apparently erroneous directive issued June 9, 1970. The new directive is correct as to the applicability of the fee, but the **penalty** is not warranted and should not be assessed.