

Opinion No. 74-25

July 23, 1974

BY: OPINION OF DAVID L. NORVELL, Attorney General

TO: Honorable Joseph E. Gant, Jr. State Senator 602 Riverside Drive Carlsbad, New Mexico 88220

QUESTIONS

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Does Article 37 of the New Mexico Motor Vehicle Act (Sections 64-37-1 to 64-37-16, NMSA, 1953 Comp. (1973 P.S.)) apply to manufacturers, representatives, distributors, and dealers of self-propelled agricultural machines and equipment which may travel upon the public highways of New Mexico?

CONCLUSION

Yes, but see analysis.

OPINION

{*49} ANALYSIS

Section 64-37-2, *supra*, provides in part:

Application of act. -- The provisions of this act [64-37-1 to 64-37-16] shall apply to all **persons, manufacturers, representatives, distributors and dealers.** . . (Emphasis added)

Section 64-37-3 contains definitions:

"As used in this act . . ."

A. **'motor vehicle'** means every self-propelled vehicle by which a person or property may be transported on a public highway and having four or more wheels ;

B. **'motor vehicle dealer'** or 'dealer' means any person who sells or solicits or advertises the sale of new or used **motor vehicles.** Motor vehicle dealer or dealer shall not include:

(1) receivers, trustees, administrators, executors, guardians or other persons appointed by or acting under judgment; decree or order of any court;

(2) public officers while performing their duties as such officers;

(3) persons making casual sales of their own vehicles duly registered and licensed to them by the state of New Mexico; and

(4) finance companies, banks and other lending institutions covering sales of repossessed vehicles.

C. ' **person** ' means every natural person, partnership, corporation, association, trust, estate or any other legal entity;

D. ' **manufacturer** ' means any person who manufactures or assembles {*50} new **motor vehicles** either within or without this state;

E. '**distributor**,' means any person who distributes or sells new or used **motor vehicles** to dealers and who is not a manufacturer;

F. '**representative**' means any person who is or acts as an agent, employee or representative of a manufacturer or distributor who performs any duties in this state relating to promoting the distribution or sale of new or used **motor vehicles** or contact dealers in this state on behalf of a manufacturer or distributor; . . ." (Emphasis added)

Since the act applies to manufacturers, representatives, distributors, and dealers, and since those terms are in turn defined according to their relation to motor vehicles, the key definition is "motor vehicle" and what constitutes a motor vehicle within the meaning of this act.

Although there is some authority to the contrary, the greater weight of authority and reason holds that farm tractors are motor vehicles, at least for certain statutory purposes. The Supreme Court of Wisconsin has held that a farm tractor being operated on a public highway is a motor vehicle for purposes of the direct action statutes. **Hakes v. Paul**, 34 Wis.2d 209, 148 N.W.2d 699 (1967). See also **Snorek v. Boyle**, 18 Wis.2d 202, 118 N.W.2d 132 (1962). A farm tractor, used as a "loading device" but capable of traveling on the highway was held to be a motor vehicle for purposes of New Hampshire's financial responsibility act. **American Mut. Liability Inc. Co. v. Chaput**, 95 N.H. 200, 60 A.2d 118 (1948). The Supreme Court of Nebraska has held a farm tractor to be a motor vehicle within the meaning of statutes regulating the use of motor vehicles on public highways. **Keller v. Wellensiek**, 186 Neb. 201, 181 N.W.2d 854 (1970). Similarly, a farm tractor has been held to be a motor vehicle within the meaning of an automobile guest statute. **Hessler v. Ford**, 225 Iowa 1055, 125 N.W.2d 132, 98 A.L.R.2d 539 (Iowa, 1963).

In another well-reasoned case, the Missouri Supreme Court held, in a criminal prosecution for driving while intoxicated, that the defendant was operating a "motor vehicle" while drunk, even though he was driving a farm tractor. **State v. Powell**, 306

S.W.2d 531, 66 A.L.R.2d 1141 (Missouri, 1957). The reasoning of the Missouri Court is applicable to New Mexico's statutory scheme relating to motor vehicles.

Based on the definitions contained in the act, and on cases referred to herein, our opinion is that Article 37 of the Motor Vehicle Act does apply generally to dealers, distributors, manufacturers, representatives, etc., of agricultural machines and equipment which are self-propelled and which may travel upon the public highways of this state, and which have four or more wheels. There may be exceptions to this rule but they will have to be evaluated on a case by case basis.

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