

Opinion No. 76-13

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BY: OPINION OF TONEY ANAYA, Attorney General Robert E Robles, Assistant Attorney General

TO: Mr. Jerry Manzagol, Commissioner, Department of Motor Vehicles, Manuel Lujan, Sr. Building, Santa Fe, New Mexico 87503

QUESTIONS

Facts

The Department of Motor Vehicles (DMV) is charged by the Motor Vehicle Code, Sections 64-1-1, et seq., NMSA, 1953 Comp., with the maintenance of certain information regarding motor vehicles registered by the Department. This information is stored by the Division of Automated Data Processing (DADP) pursuant to Section 4-25-7, NMSA, 1953 Comp. Law enforcement agencies, courts and correctional agencies of the state and its political and subdivisions require access to the information to carry out their functions with respect to criminal justice and highway safety. The Department of Motor Vehicles periodically requests DADP to effect changes to the stored data in order to introduce new data, comply with statutory changes and effect a more efficient operation. Each agency has its own access and response computer programs to obtain information stored by DADP. Consequently, when the Department of Motor Vehicles modifies its file, DADP must also change the programs of others who require access to the Department's information.

Question

Is either the Division of Automated Data Processing or the Department of Motor Vehicles obligated to provide free access to DMV files for those agencies requiring the use of the information stored by DADP.

Conclusion

No.

OPINION

{*71} Analysis

Section 64-3-19, NMSA, 1953 Comp. requires the Commissioner of the Department of Motor Vehicles to furnish a copy of a list of all registered vehicles without charge to any police department filing a request on or before January 15 of each year, and to furnish a

copy to any other person or agency filing a written request before January 15 upon payment of the cost.

Since the legislature has expressly provided for the one circumstance under which information is to be supplied at no cost, the only reasonable conclusion is that the legislature did not intend the DMV to bear the cost of supplying information under any other circumstances. See **American Auto. Ass'n, Inc. v. Bureau of Revenue**, 88 N.M. 148, 538 P. 2d 420 (1975); **State v. Prince**, 52 N.M. 15, 189 P.2d 993 (1948).

Section 4-25-8, NMSA, 1953 Comp. states, in part, as follows:

DADP shall . . . (1) be the exclusive agency responsible for the programming, operation and maintenance of any computer-based information system that is funded from any source whatsoever and that responds to the needs of law enforcement agencies, the courts and correction agencies of the state and its political subdivisions in the area of criminal justice and highway safety . . .

The foregoing section, however, must be read with Section 4-25-6, N.M.S.A., 1953 Comp., which reads, in part, as follows:

. . . The division shall be financed by legislative appropriation **and from charges to agencies** or the federal government **to which services are provided**. Charges for services shall be at cost including overhead . . . (Emphasis added.)

A reading of the above two sections as a whole compels the conclusion that although DADP is responsible for custody of the stored information, each agency is required to pay the cost of all services rendered by DADP. The term "agency" is defined in Section 4-25-2A., NMSA, 1953 Comp. as a ". . . department, board, bureau, commission or political subdivision of the state."

We conclude that the Department of Motor Vehicles must bear only the cost of producing lists supplied to a police department pursuant to Section 64-3-19, **supra**, and that each agency requiring access to the DMV's file stored by DADP must bear the cost of modifications to their respective programs if continued access is desired.