

Opinion No. 78-17

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OPINION OF: Toney Anaya, Attorney General

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TO: Peter J. Valencia, Jr., Director, Motor Transportation Division, Department of Transportation, P.O. Box 1028 Santa Fe, New Mexico 87503

CATEGORIZATION OF NONCOMMERCIAL VEHICLES

Pursuant to Section 64-26-71.1, N.M.S.A. 1953 Comp., the Motor Transportation Division has the authority to categorize special fuel powered noncommercial vehicles as passenger vehicles if the vehicle: 1) is used solely for transportation of persons; 2) is not operated for compensation; and 3) has a supply tank which does not exceed an aggregate capacity of thirty (30) gallons.

QUESTIONS

Is the Motor Transportation Division authorized under Section 64-26-71.1, N.M.S.A. 1953 Comp., to categorize special fuel powered noncommercial pickup trucks, vans and other vehicles whose fuel supply tanks do not exceed an aggregate capacity of thirty (30) gallons as "passenger vehicles"?

CONCLUSIONS

Yes, provided that all requirements of Section 64-26-71.1, **supra**, are met.

ANALYSIS

Section 64-26-71.1, **supra**, creates an exemption to the provisions of the special fuel tax relating to licenses, permits, bonds and reports for "passenger vehicles." The term "passenger vehicle" is not specifically defined within the Special Fuel Act (Sections 64-26-66 to 64-26-89, N.M.S.A. 1953 Comp.).

OPINION

The status of various modes of transportation has been examined by courts throughout the country in order to determine whether the vehicles fit under rubrics which are the equivalent of the "passenger vehicle" designation in question. Although the courts have not been in total agreement as to the status of vehicles such as vans and pickup trucks, they have uniformly examined the functional use made of the vehicles rather than automatically eliminating them from the passenger vehicle class.

The United States Court of Claims, in a series of opinions, meticulously traced the design, development, and use of the army jeep in order to determine whether the jeeps were eligible for lower rail freight rates set for transporting passenger vehicles. While conceding that jeeps were often used for transporting weapons, medical supplies and other equipment, the court concluded that the predominant vehicle use was the transportation of personnel and therefore it should be considered a passenger vehicle. See **Union Pacific Railroad Co. v. United States**, 91 F. Supp. 762, 117 Ct. Cl. 534 (1950); **Atchison, Topeka and Santa Fe Railway Co. v. United States**, 101 F. Supp. 889, 121 Ct. Cl. 467 (1952).

The status of pickup trucks has been examined in determining whether passengers who were victims of accidents could collect benefits when insurance coverage was for persons being transported in "passenger motor-driven cars" or "private passenger automobile of the pleasure type." A converted run about equipped with a truck-like box for hauling tools and equipment was considered to be a passenger motor driven car because the principle use made of the vehicle was as a passenger vehicle. **Poncino v. Sierra Nevada Life and Casualty Co.**, 104 Cal. App. 671, 286 P. 729 (1930). The Supreme Court of Tennessee felt that the fact that pickup trucks were used as passenger vehicles for pleasure purposes was so generally known that they could take judicial note of that use in holding that a pickup is a "private passenger automobile of the pleasure car type." **Aetna Life Insurance Co. of Hartford Conn. v. Bedwell**, 192 Tenn. 627, 241 S.W.2d 595 (1951).

Ultimately, however, we must refer to the statute to resolve this question. Although the term "passenger vehicle" is not specifically defined, the qualifications for the exemption are clearly spelled out. The qualifications set forth closely parallel the functional tests which the courts have developed in deciding the status of these vehicles.

Section 64-26-71.1, **supra**, specifies that in order to qualify for the exemption, the vehicle must:

- "1. be used solely for the transportation of persons;
2. not be operated for compensation; and
3. have supply tanks which do not exceed an aggregate capacity of thirty (30) gallons."

If a vehicle, including a pickup or van, meets these qualifications, it must be presumed to be a passenger vehicle eligible for the exemption. The functional test set forth in the statute is the most prevalently applied by courts in deciding the nature of these vehicles and, because it is prescribed by the statute, we consider statutory qualifications as controlling.

ATTORNEY GENERAL

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