

Opinion No. 92-02

March 11, 1992

OPINION OF: TOM UDALL, Attorney General

BY: Elizabeth A. Glenn Daniel Yohalem, Assistant Attorneys General

TO: Honorable Max Coll, State Representative, Rt. 9, Box 72-F, Santa Fe, New Mexico 87505. Dick Minzner, Secretary, Taxation & Revenue Department, P.O. Box 630, Santa Fe, New Mexico 87509-0630

QUESTIONS

1. May the Motor Vehicle Division of the Taxation and Revenue Department, by agreement, designate Motor Transportation Division inspectors to enforce provisions of the Motor Vehicle Code against noncommercial vehicles?
2. May Motor Transportation Division inspectors make arrests under provisions of the Criminal Code based on observations made or evidence seized in the course of their statutory duties inspecting or otherwise regulating and taxing commercial vehicles?

CONCLUSIONS

1. By agreement, the Motor Vehicle Division can designate Motor Transportation Division inspectors to enforce the Motor Vehicle Code against noncommercial vehicles.
2. Motor Transportation Division inspectors may not make arrests under and otherwise enforce the Criminal Code.

FACTS

The Motor Transportation Division ("MTD") is an arm of the State Taxation and Revenue Department. NMSA 1978, § 9-11-4 (Repl. Pamp. 1991). MTD's primary duty is to enforce the Motor Carrier Act, NMSA 1978, §§ 65-2-80 to -127 (Repl. Pamp. 1990) and other laws regulating commercial vehicles. NMSA 1978, § 65-1-6. MTD is authorized to enforce those laws by patrolling highways and establishing ports of entry and roadblocks. Id. §§ 65-1-2(l), 65-1-6(A), 65-1-11. MTD employs inspectors to carry out its enforcement duties. Id. § 65-1-6(B). MTD and the Motor Vehicle Division ("MVD"), its sister division in the Taxation and Revenue Department, entered into an agreement under which MVD granted MTD inspectors the authority to enforce the Motor Vehicle Code against private noncommercial vehicles. In addition, MTD inspectors periodically discover evidence of criminal activities in the course of fulfilling the statutory duties described above.

ANALYSIS

1. The agreement between the MVD and the MTD provides, in relevant part:

WHEREAS, the Motor Vehicle Division has the primary authority to enforce provisions of the Motor Vehicle Code, Chapter 66, Articles 1 through 8, NMSA 1978;

WHEREAS, the New Mexico Transportation Division desires to enforce those portions of Chapter 66, Articles One (1) through Eight (8) which deal with the operation of motor vehicles on the public roads;

NOW THEREFORE, the parties signatory hereto on behalf of their respective divisions do hereby agree to participate in a cooperative agreement to enforce Articles One (1) through Eight (8) of the motor vehicle laws of the State of New Mexico. The Director of the Motor Transportation Division shall designate inspectors who meet all law enforcement officer certification requirements to carry out said enforcement activities....

The agreement is in effect until revoked by one of the parties.

Although MTD inspectors are statutorily authorized to enforce the laws and regulations governing transportation for hire and commercial vehicles and, by agreement, to enforce excise taxes and other fees imposed by other state agencies, MTD statutes do not specifically grant them authority to enforce traffic laws against noncommercial drivers and vehicles. See NMSA 1978, § 65-1-9 (Repl. Pamp. 1990).¹ However, the Motor Vehicle Code, NMSA 1978, §§ 66-1-1 to 66-8-140, allows the director of the MVD to appoint other law enforcement officers to assist him in the enforcement of the Motor Vehicle Code.

Section 66-2-12 is entitled "Police authority of division." It sets forth the authority of the MVD to enforce the Motor Vehicle Code and further states in subsection (B):

The director may issue credentials to officers of state and local law enforcement agencies as evidence of the division's intent to fully implement the enforcement of the provisions of the Motor Vehicle Code.

Thus, as long as the MTD inspectors are officers of a law enforcement agency, the Director can, through Section 66-2-12, authorize them to enforce the Motor Vehicle Code.

The MTD is a state law enforcement agency: its inspectors have specific (but limited) investigation and enforcement authority, NMSA 1978, §§ 65-1-9 Repl. Pamp. 1990), they must attend the Law Enforcement Academy, NMSA 1978, § 65-1-6 (Repl. Pamp. 1981); § 29-7-8 (Repl. Pamp. 1984); AG Op. No. 87-25 (1987), and they have the powers of peace officers in carrying out their duties. NMSA 1978, § 65-1-7. Therefore, MVD may authorize MTD inspectors to enforce the Motor Vehicle Code against private noncommercial vehicles.

The question remains whether the agreement between MVD and MTD constitutes the issuance of credentials to the MTD inspectors sufficient to authorize them to enforce provisions of the Motor Vehicle Code. No particular form is required to establish credentials. The written agreement between the two divisions requires the director of the MTD to designate specific MTD inspectors to enforce the Motor Vehicle Code. Although the agreement does not explicitly require the issuance of MVD credentials to the MTD inspectors, the agreement was obviously intended by the parties to have the same effect as the required credentials. We believe the agreement sets forth the MTD inspectors' delegated authority with sufficient clarity to achieve the purpose. Nonetheless, in the future it would be preferable for MVD to issue authorizing credentials to the specific MTD inspectors who are cloaked with Motor Vehicle Code enforcement authority.

2. A close reading of the several statutes which govern MTD inspectors' arrest authority reveals that these inspectors have no statutory authority to make arrests for any offenses not specified in the Motor Carrier Act and other laws regulating commercial vehicles or enforcing state taxes or fees. Although the last sentence of Section 65-1-9 appears to confer some additional enforcement authority on MTD inspectors (see footnote 1, *supra*), when it is read in conjunction with the first two sentences, it is clear that this authority is limited only to the authority of those other agencies whose "primary" enforcement authority includes excise taxes, license fees and other charges, and the federal Motor Carrier Act.

Similarly, MTD's authority to stop commercial vehicles at ports of entry designated by MTD does not include general criminal arrest authority. NMSA 1978, § 65-5-1(C)-(F) (Repl. Pamp. 1990). If a MTD inspector encounters a violation of the Criminal Code or other law enforced by an agency other than MTD, the inspector must report the violation to the appropriate agency for enforcement. Cf. *United States v. Rivera-Rivas*, 380 F. Supp. 1007 (D.N.M. 1974) (evidence was admissible when it was obtained by a MTD official who opened the rear door of a truck stopped for weighing, found that the cargo consisted of people rather than furniture and called the border patrol).

Finally, NMSA 1978, § 29-1-1, which declares it "to be the duty of every...peace officer to investigate all violations of the criminal laws of the state which are called to the attention of any such officer or of which he is aware," confers Criminal Code investigative, but not arrest, authority on MTD inspectors. Moreover, the Criminal Code definition of "peace officer" recognizes that not all peace officers have general arrest authority: "any public official or public officer vested by law with a duty to maintain public order or to make arrests for crime, whether that duty extends to all crimes or is limited to specific crimes." NMSA 1978, § 30-1-12 (Repl. Pamp. 1984) (emphasis added).²

ATTORNEY GENERAL

TOM UDALL Attorney General

GENERAL FOOTNOTES

[n1](#) This section provides that MTD is empowered to:

enforce and collect all excise taxes, license fees and other fees and charges of every nature and perform all inspections and collect all information considered necessary to enforce the laws of all departments, commissions and other agencies of state government, in addition to those specifically assigned by law to the division, whenever the division is so requested and agrees, and the agreement is in writing containing all reasonable detail concerning the responsibilities of the parties to the agreement. The division shall also assist, as far as is practicable and in accordance with a proper written agreement, in enforcement of statutory, administrative and judicial provisions of the federal Motor Carrier Act. Enforcement employees of the division shall be considered to have the same powers as the enforcement officers of the department, commission or other agency having the primary responsibility.

[n2](#) The Mutual Aid Act, NMSA 1978, §§ 29-8-1 to -3 (Repl. Pamp. 1990), also does not apply here. This act allows law enforcement agencies, with gubernatorial approval, to enter into "mutual aid agreements" with other public agencies "with respect to law enforcement." But it is axiomatic that absent specific legislative authority, an interagency agreement of this type cannot confer substantive law enforcement authority on an agency which does not otherwise have such authority. See, e.g., *Kerr-McGee Nuclear Corp. v. New Mexico Env'tl. Improvement Bd.*, 97 N.M. 88, 97, 637 P.2d 38 (Ct. App.), cert. quashed, 97 N.M. 242, 637 P.2d 1087 (1981). See generally 2 Am.Jur.2d Administrative Law, § 222 (1962); 73 C.J.S. Public Administrative Law and Procedure § 56 (1983). The purpose of the Mutual Aid Act appears to be to allow state and local general jurisdiction law enforcement agencies (i.e., police departments) to enter agreements to assist other public agencies in their law enforcement duties. It does not authorize law enforcement agencies to exercise substantive powers they do not already possess. Unlike section 66-2-12 of the Motor Vehicle Code discussed in part 1 of this Opinion, the Mutual Aid Act is not specific authority for delegation of law enforcement power.