

Opinion No. 13-1059

June 10, 1913

BY: FRANK W. CLANCY, Attorney General

TO: Howard L. Bickley, City Attorney, Raton, New Mexico.

AUTOMOBILES.

No reason why cities should not collect a license fee of 50 cents from owners or operators of motor vehicles.

OPINION

{*228} Your letter of the 7th inst. was received yesterday and I have given it some careful consideration. You say that you have been told {*229} that one of the district judges has decided that an incorporated city does not have the power, under Chapter 19 of the Laws of 1913, to collect a license from the owners or operators of motor vehicles other than the registration fee of fifty cents, provided in Section 8 of said Chapter 19, and say that, whether or not there has been such a decision, you would be glad to have my opinion on this subject.

I think that the investigation which you have made fairly covers the matter and that your opinion is substantially the same as mine. If there were nothing in our statutes as to the power of municipalities beyond what is contained in the proviso in Section 8, I believe that it would be within the municipal power to provide for the licensing of motor vehicles, but the preceding sentence clearly puts some limitation upon the power of cities and in consequence makes the New York case, which you cite, of *Buffalo vs. Lewis*, 192 N. Y. 193, quite applicable, although the New York statute, more explicitly, took away from local authorities any power to pass an ordinance requiring any license or permit to use the public highways. Our statute distinctly provides that no owner of a motor vehicle shall be required to obtain any certificate to use or operate such motor vehicles other than that provided by the statute. It seems clear that the certificate issued by the Secretary of State was, by the legislature, considered as a license to use and operate, the motor vehicle registered, on the public highways of the state and no other certificate for that purpose can be required.

When we come to the consideration of the qualifications of persons who may be allowed to operate these dangerous vehicles, I cannot believe that the power of municipalities, to provide regulations for the operation of such vehicles, does not include the power to prohibit such operation by unskilled or careless persons. If licenses to permit persons to operate these vehicles are provided by municipal ordinances as a necessary pre-requisite, the license would not be one imposed upon the vehicle or upon the right to use or operate the vehicle on the public highways, but would be in the nature of a burden or requirement imposed upon the individuals who undertake to engage in

the dangerous occupation. There is practically nothing on this subject in the statute, although Section 13 mentions two disqualifications and therefore it seems to be left open for municipal action. In the adoption of any such ordinance, care should be taken to see that it does not, in any way, impinge upon what the legislature has done, as legislative action would exclude any power in the municipality.

The fact that the legislature has imposed some regulations applicable throughout the entire state does not exclude power in the municipalities to impose other regulations, provided they are not inconsistent with the general law.

I can see no good reason why such municipal regulations, as to the qualifications of drivers of motor vehicles, and the necessity of their having and paying for a license, should not extend to owners of such vehicles as well as to other persons. The registration or license imposed by the state is required to permit the use and operation of the particular vehicle registered, while a municipal license to permit a person to drive motor vehicles extends to the driving of any motor vehicle and is not restricted to one vehicle. The making {230} of such ordinances is referable, principally, to the police power and would seem to be highly necessary for the protection of the public against danger.

P. S. -- I notice, upon reading over the foregoing letter, that I have failed to say anything about what you asked, as to whether a district judge has decided that cities have not the power to collect license fees from the owners or operators of motor vehicles, other than the fifty cent fee provided in Section 8. If there has been any such decision, it has not been brought to my attention.

Yours truly,

FRANK W. CLANCY,

Attorney General.