

Opinion No. 18-2136

October 8, 1918

BY: C. A. HATCH, Assistant Attorney General

TO: Mr. J. L. Litchfield, Melrose, New Mexico.

License Must Be Paid on Automobiles Belonging to School Districts.

OPINION

Your letter of recent date addressed to the State Superintendent of Public Instruction has been referred to this office for reply. You say that you have a Ford Motor Truck which is used only for transportation of school children to and from the Melrose public schools. You ask an opinion as to whether or not a state license as specified in section 380 of the 1915 Codification can be lawfully required from your school district for this truck. You call our attention to the fact that school property is exempt from taxation.

In this connection you are advised that if the licensing of an automobile is taxation within the strict meaning of the word, your contention might be well taken, but there is a well defined distinction between taxation and a license tax or a license. A tax in legal contemplation is

"A burden or charge imposed by the legislative power upon persons or property to raise money for public purposes or to defray the expenses of administering the government."

A license is

"merely the permission or authority to do some act."

and a license fee is

"a sum of money charged to defray the expenses of issuing a license certificate and of regulating the business, vehicle or occupation so licensed."

In view of this distinction between a tax and a license it seems clear to us that the state may lawfully require a school district to comply with the statutes regulating and governing the securing of licenses of motor vehicles. The so doing by the state does not conflict with any exemption to schools from taxation, as in the strict sense of the word the license fee imposed is not a tax as contemplated by the exemption from taxation. One of the leading cases drawing a distinction between a tax and a license is that of Jackson vs. Neff, 64 Florida 326, wherein the Supreme Court of Florida held that a license tax might be imposed on a motor vehicle although an ad valorem tax was paid on such vehicle, and the so doing would not constitute double taxation.

It is therefore our opinion that the school district must pay the license required of owners of motor vehicles.