

Opinion No. 26-3892

May 27, 1926

BY: ROBERT C. DOW, Assistant Attorney General

TO: Honorable R. H. Carter, State Comptroller, Santa Fe, New Mexico.

This office is in receipt of your request for an opinion with reference to whether or not passenger automobiles owned and operated by non-residents and carrying passengers thru the State, are required to pay the necessary registration fee and obtain a license as required under the law for resident owners of automobiles in the State.

Section 6, Chapter 96, Session Laws of 1923, is as follows:

"No registration or license fee shall be required of a tourist resident of another State or country operating a passenger automobile in this State, not carrying passengers or articles for hire or peddling or delivering goods to customers, for the first three months, provided the owner of such vehicle shall have paid the registration or license fees and shall constantly display the registration and number plates required by the laws of such another State or country for the then current year.

In case such vehicle be operated in this State for more than three months, the owner thereof shall be required to apply for registration and to pay the fees and display the plates required by this Act for resident owners; provided, that the non-resident or resident owner of every passenger automobile, motor truck, or trailer carrying passengers, freight, express or articles for hire, or operated as a commercial truck or commercial car within this State or between points without and points within this State, shall be required to apply for registration and pay the registration fees, and to secure and constantly display the plates specified in this Act for vehicles and trailers of like class and capacity."

Should said passenger automobiles receive passengers for hire within the State and convey them to other points of the State, or should it carry passengers for hire between points without and points within the State, then, in either instance, the owner thereof would be required to procure a license for said passenger automobile.

Just whether or not this law was intended to apply to interstate business is not entirely clear; from a close reading of the whole section, I am inclined to believe that the Legislature was so intending, but even though the Legislature did intend that this law be applied to interstate business there is still some question as to whether the wording of the Act is broad enough to permit of such construction. The statute applies to owners of non-resident automobiles whether they be tourists or non-resident owners of passenger automobiles; non-resident tourists not carrying passengers for hire may remain in the State three months before procuring a license; whereas, non-resident owners of

passenger automobiles carrying passengers for hire within the State, or between points without and points within the State, must procure license upon entering the State.

"Carrying passengers for hire within the State" does not necessarily mean that the passenger must be carried between points in the State; the passenger might be carried from Colorado to California, but in such case he would be paying for conveyance over our highways within the State. I am inclined to believe that the Legislature did not intend to limit this provision to carrying passengers for hire from one point to another; to the contrary, it seems that the Legislature intended that all passenger automobile owners collecting fares for carrying passengers over our public highways should first procure a license; that non-resident owners of automobiles transporting passengers for hire should pay a registration fee, is the primary object of the law, and the point of receiving said passenger, or his point of destination, is a minor consideration.

Our highways have been constructed and maintained at great expense, and to allow a regular bus line to make daily practice of carrying passengers over such highways without paying a license, would be to discriminate against local citizens and owners of local transportation companies who contribute toward the construction of such highways and who pay a license for using the same. The argument that this would be an unconstitutional interference with interstate commerce is unsound; this question was settled in the case of *Kane v. State of New Jersey*, L. R. A. 1917-B, 553.

I therefore advise that you proceed to collect such registration fees from non-resident owners of all passenger automobiles where they are making a practice of carrying passengers for hire over the highways of the State.