

Opinion No. 37-1811

November 4, 1937

BY: FRANK H. PATTON, Attorney General

TO: Mr. E. J. House, Jr., Chief New Mexico State Police Santa Fe, New Mexico.
Attention: H. K. Dalbey, Sgt.

{*178} Your letter of November 3rd calls for an interpretation of Section 3, Chapter 196 of the Session Laws of 1937, which has reference to the carriage of equipment by certain motor vehicles operated over the highways of this state.

This Act is amendatory of Chapter 75 of the Session Laws of 1935, which Act was entitled:

"An Act To Require Motor Trucks and Combinations Thereof When Operating Upon The Public Highways Of This State At Night To Be Equipped With Portable Flares And Providing {*179} for Use Of Same; Providing Penalty For Violations."

The original Act provided that those vehicles during the period from one-half hour after sunset to one-half hour before sunrise should at all times be equipped with portable flares plainly visible for a distance of five hundred feet.

The Act provided that the operator of the vehicle should, immediately upon bringing his vehicle to a stop upon, or immediately adjacent to a traveled portion of the highway at any time during that period, place a flare at the side of the vehicle in plain view of all traffic, and maintain it in that position during the time the vehicle remained parked.

The present Act amends the old law and provides that motor vehicles, with truck licenses, of more than one ton capacity, and used in the transportation of passengers or property over the highways of this state, shall carry certain specified equipment such as oil burning torches, red flags, and emergency flares.

In any case of breakdown, or stops upon paved or traveled portion of the highways between sundown and sunrise, the driver of the vehicle shall proceed to make certain specified use of said equipment. The Act then makes special provision for use of certain equipment in cases where the operator becomes stalled upon railroad crossings, and also contains special provisions in regard to vehicles engaged in transportation of explosives and inflammables.

It is needless to state that both of the Acts in their entirety are purely and simply safety measures.

In view of the distinguishing features between public highways outside of incorporated municipalities and streets inside incorporated municipalities, it occurs to me that the

intention of the legislature did not intend to make the acts applicable to the operation of vehicles upon the public streets of incorporated municipalities.

When I refer to the distinguishing features of highways and streets I have in mind, of course, such things as street lighting, stop signals, traffic lights, the ordinary lights from business houses, street intersections, divisions of the municipality into blocks, and other matters of a similar nature. I can think of many instances where the use of the equipment is specified in the law within the limits of an incorporated municipality would be futile and useless.

It is my opinion, therefore, that the term public highway as used in the law refers only to those highways and roads which are not within the corporate limits of the municipalities.

I may also call your attention to the fact that the law does not require purchase of this equipment by vehicles unless used in the transportation of passengers or property. When so used over the public highways, as above defined, then, of course, the equipment should be purchased and carried.