

## Opinion No. 37-1820

November 18. 1937

**BY:** FRANK H. PATTON, Attorney General

**TO:** Mr. Coe Howard Member of House of Representatives Portales, New Mexico

{\*191} I have received your telegram wherein you inquire whether truckers moving unprocessed farm and livestock products into and out of New Mexico in vehicles properly licensed in this or other states should be subjected to the taxes imposed by virtue of Chapter 41 of the Session Laws of 1937, which are commonly known as the mileage fees under the Port of Entry Law.

Section 6 of Chapter 136 of the Laws of 1935 applies, under paragraph (d), to motor vehicles not registered or licensed in this state, but which are transporting passengers or property for hire, and paragraph (e) of said section applies to motor vehicles not registered or licensed in this state and which are transporting property not for hire.

Section 4 of Chapter 41 of the Laws of 1937 is amendatory of Section 8, Chapter 136 of the Laws of 1935, and is the section imposing mileage fees. Briefly, it is provided {\*192} that certain mileage fees are levied and assessed against motor vehicles in paragraphs (d) and (e), above cited. Your question apparently comes under paragraph (e) as being within the classification of vehicles not registered or licensed in this state and which are transporting property not for hire.

Under said Section 4 of Chapter 41 of the 1937 Law we find a proviso reading as follows:

"Provided, however, that none of the taxes levied by this section shall apply to motor vehicles properly licensed in any other state and being used in the transportation of or carrying a cargo consisting exclusively of livestock on the hoof, live poultry, shelled or thrashed grain not otherwise processed, hay either loose or baled, non-processed agricultural products, non-processed fruit, non-processed vegetables, non-processed milk or cream either sweet or sour from the place of production within the United States to market either into or out of this state but not through it, and provided further, that any motor vehicle properly licensed in any other State and entering this State without cargo but for the purpose of transporting a cargo as described in this sub-section shall be allowed to proceed to the place of loading said cargo within this State without the payment of any fee or license of any kind."

I know of my own personal knowledge from talking to legislators, attending committee hearings, etc., that a great many individual legislators intended to exempt out of state trucks carrying agricultural and livestock products into the state for purposes of trade and barter from the tax feature of the Port of Entry Law. This was on account of the

difficulty encountered in certain sections of the state in obtaining adequate markets for certain products.

In fact, it was shown that in some sections of the state the farmers, particularly, depended in a large measure upon out of state trucks as a means of marketing their products.

While I am not permitted to consider extrinsic evidence in arriving at an interpretation of a statute, nevertheless I cannot refrain from stating the facts as I know them to be and consequently I am positive that the legislature had these thoughts in mind when it wrote the above quoted proviso into the law and to my mind the language is plain and unequivocal.

It is my opinion, therefore, that this proviso shows an intention upon the part of the legislature to exempt from the payment of the mileage fees those motor vehicles which are properly licensed in any other state and which are used in the transportation of or carrying of a cargo which consists exclusively 1. of live-stock on the hoof, 2. live poultry, 3. shelled or thrashed grain not otherwise processed, 4. hay, either loose or baled, 5. non-processed agricultural products, 6. non-processed fruit, 7. non-processed vegetables, 8. non-processed milk or cream either sweet or sour.

You must realize, of course, that the term "agricultural products", is subject to interpretation also and I would not care to make an attempt to define what constitutes agricultural products at this time for the reason that it will be noted that the proviso includes the term "non-processed fruit" and "non-processed vegetables."

Strictly speaking, it would appear that both of these should be classed in the general term of "agricultural products" but I merely make these statements by way of a passing discussion.

Ordinarily, it would seem that the officials stationed at the various ports of entry would be able to determine {\*193} whether a motor vehicle is properly licensed in another state and whether such vehicle is loaded with any of the products outlined above and if, upon inquiry, it is determined that the motor vehicle is entering into this state but not through the state then mileage fees, in my belief, should not be imposed.