

Opinion No. 43-4348

July 31, 1943

BY: EDWARD P. CHASE, Attorney General

TO: Mr. M. A. Romero, Commissioner, Motor Vehicle Division, Bureau of Revenue, Santa Fe, New Mexico

In your letter dated July 29, 1943, you inquire whether you may classify a non-resident employed in the State as carrying on a business within the State, and require him to obtain a Motor Vehicle license, pursuant to Section 68-220, sub-section (d), in view of the decision of the Supreme Court handed down March 12, 1943 in Cause No. 4657, entitled State v. Pate.

This decision construed the 1941 Amendment to Section 68-220, subsection (a) of the 1941 Compilation, which reads as follows:

"Provided, however, a non-resident owner of a vehicle of a type subject to registration in this state, who, while residing in this state accepts gainful employment within this state, shall, for the purposes of, and subject to the provisions of this code, be considered a resident of this state."

Sub-section (d) provides, in part, as follows:

"Every non-resident, including any foreign corporation carrying on business within this state, and owning and legally operating in the State of New Mexico in such business any motor vehicle, trailer, or semi-trailer within this state, shall be required to register each such vehicle, and pay the same fee therefor as is required with reference to like vehicles owned by residents of the state."

The Supreme Court, in the Pate case that is above mentioned, held that the proviso in subsection (a) is unconstitutional in that it is an unreasonable classification within a class of non-residents. If sub-section (d) should be administered in such a way as to achieve the result sought in sub-section (a), as to non-residents obtaining gainful employment, then such a construction placed upon subsection (d) would likewise be unconstitutional.

For that reason, I am of the opinion that a non-resident who obtains employment in the state can only be required to obtain a license in the same manner as other non-residents who have not obtained employment.

By C. C. McCULLOH

First Asst. Atty. Gen.