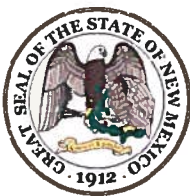


STATE OF NEW MEXICO
OFFICE OF THE ATTORNEY GENERAL



HECTOR H. BALDERAS
ATTORNEY GENERAL

December 12, 2017

The Honorable William R. Rehm
New Mexico State Representative
Post Office Box 14768
Albuquerque, NM 87191

Re: Opinion Request – Exemption from Driving School Licensing Act

Dear Representative Rehm:

You have requested our advice regarding an interpretation of the Driving School Licensing Act, NMSA 1978, Chapter 66, Article 10 (as amended through 2015) (“DSL Act”) by the Department of Transportation, Traffic Safety Bureau (“TSB”). Specifically, you ask:

1. Does TSB have authority under the DSL Act to approve a motor vehicle accident prevention course offered by a for-profit corporation exclusively to drivers who are fifty years old or older?
2. If so, does TSB have a duty to approve such a course, provided the course meets all of TSB’s requirements for the same course offered by a non-profit corporation?

As discussed in detail below, based on our review of the information available to us at this time and the applicable law, we conclude:

1. TSB has authority to approve a motor vehicle accident prevention course offered by a for-profit corporation exclusively to drivers who are at least fifty years old.
2. TSB is constitutionally obligated to apply laws it is charged with administering in an even-handed and fair manner. Absent a rational basis, it may not refuse to allow a for-profit company to offer the same motor vehicle accident prevention courses to drivers age 50 and above that non-profit companies provide.

Applicable Law

TSB’s obligations regarding the motor vehicle accident prevention courses for older drivers are referenced in three statutes. The first is the Motor Vehicle Code, which includes among TSB’s responsibilities the duty “to institute and administer an accident prevention course for elderly

drivers as provided for in Section 59A-32-14.” NMSA 1978, § 66-7-506(K) (2007). Second, Section 59A-32-14 of the New Mexico Insurance Code, referenced in Section 66-7-506(K), requires a reduction in motor vehicle insurance premium charges for drivers who are fifty-five years or older and who have “successfully completed a motor vehicle accident prevention course approved by [TSB].”

The third statute is the DSL Act, which provides, in pertinent part, that “[n]o person, firm, association or corporation shall operate a driver education school or engage in the business of giving instruction for hire in the driving of motor vehicles” without a license issued by the TSB. NMSA 1978, § 66-10-2. The Act sets out the qualifications applicants must meet to operate a driver education school or to be an instructor. *Id.* §§ 66-10-3, 66-10-4. TSB is required to issue licenses to applicants when it is satisfied that the applicants have met the qualifications required under the DSL Act and, for schools, if they comply with TSB’s minimum driver education program standards. *Id.* § 66-10-5(A). Your request focuses on an exception to the DSL Act, which provides that the Act “shall not apply to nonprofit corporations that provide motor vehicle accident prevention courses approved by [TSB] and that are engaged in providing courses exclusively for drivers who are fifty years of age or older.” NMSA 1978, § 66-10-12.¹

TSB’s Authority to Approve Accident Prevention Courses Offered by For-Profit Entities

As quoted above, Section 66-7-506(K) requires TSB to establish and administer the accident prevention course for older drivers provided for in Section 59A-32-14. According to your request, TSB contends that it does not have authority to approve accident prevention courses provided by for-profit entities to drivers who are age fifty or older. As support, TSB reportedly has relied on the exception for nonprofit corporations in Section 66-10-12 of the DSL and Section 59A-32-14.

Under the rules of statutory construction, the “primary focus is the plain language of the statute.” *Albuquerque Commons P’ship v. City Council*, 2011-NMSC-002, ¶ 13, 248 P.3d 856, 860. A court interpreting a statute “refrain[s] from adding words to the statutory text unless necessary to conform the statute to legislative intent or to prevent an absurd result.” *Id.* See also Uniform Statute and Rule Construction Act, NMSA 1978, § 12-2A-18(A) (statute is construed to “give effect to its objective and purpose” and “avoid an unconstitutional, absurd or unachievable result”), § 12-2A-19 (text of a statute is “the primary, essential source of its meaning”).

The DSL Act prohibits any “person, firm, association or corporation” from operating a driver education school or engaging in the business of teaching people to drive without a license from TSB. See NMSA 1978, § 66-10-2. TSB is required to issue a license if TSB “is satisfied” that the applicant “has met the qualifications required under the [DSL Act] and ... “complies with the minimum driver education program standards established by [TSB].” *Id.* § 66-10-5(A). The DSL Act requires TSB to “prescribe minimum driver training program standards,” *id.* § 66-10-5(B), but leaves the details of the prescribed standards to TSB’s discretion.²

¹ Before it was amended in 2015, Section 66-10-12, like Section 59A-32-14, referred to drivers age fifty-five and older. The 2015 amendment changed the age requirement in Section 66-10-12 to age fifty and older; see HB 91, 52nd Leg., 1st Sess., 2015 N.M. Laws, ch. 6. As introduced, HB 91 made a corresponding change in the age requirement in Section 59A-32-14, but that change did not make it into the final version of the bill.

Section 66-10-12 exempts from the DSL Act's requirements "nonprofit corporations" that provide motor vehicle accident prevention courses approved by TSB "exclusively for drivers who are fifty years of age or older." Because the DSL Act primarily governs the licensing of driver education schools and instructors, a reasonable interpretation of Section 66-10-12 is that it exempts from the Act's licensing requirements nonprofit corporations that provide motor vehicle accident prevention courses only to older drivers. Conversely, the provision does not prohibit TSB from issuing licenses to qualified for-profit entities that intend to provide the same courses exclusively to drivers age fifty and older. Section 66-10-12's reference to accident prevention courses suggests that the legislature viewed the courses as appropriately included in the "minimum driver training program standards" prescribed by TSB under the DSL Act.

We are unable to find anything in the DSL Act, including the exemption in Section 66-10-12, that precludes TSB from allowing for-profit entities that qualify for a driver education school license to provide motor vehicle accident prevention courses exclusively for drivers who are at least fifty years old. Section 66-10-12 simply exempts certain nonprofit corporations from the DSL Act's requirements; it does not suggest that TSB may only approve accident prevention courses for older drivers when they are provided by nonprofit corporations. Likewise, Section 59A-32-14 states only that drivers fifty-five years of age or older are allowed an insurance premium reduction if they complete a motor vehicle accident prevention course approved by TSB. Section 59A-32-14 does not address the qualifications of providers of the course or TSB's authority to approve providers.

TSB's Duty to Approve Accident Prevention Courses Offered by For-Profit Providers

Section 66-7-506(K) obligates TSB "to institute and administer an accident prevention course for elderly drivers as provided for in Section 59A-32-14...." NMSA 1978, § 66-7-506(K). As discussed above, Section 66-7-506(K) does not require TSB to institute and administer the accident prevention course in any particular manner. The DSL Act requires TSB to license any "person, firm, association or corporation," including for-profit entities, it deems qualified to provide an accident prevention course. It simultaneously exempts from its requirements nonprofit corporations providing the course exclusively to drivers age fifty and older. § 66-10-12.

Regardless of how TSB chooses to institute and administer the accident prevention course for older drivers, neither Section 66-7-506(K) nor the other statutes discussed above authorize TSB to limit its approval of the course to nonprofit corporations. State agencies are "creatures of statute and can act only on matters which are within the scope of authority delegated to them." *Matter of Proposed Revocation of Food & Drink Purveyor's Permit v. Envtl. Improvement Div.*, 102 N.M. 63, 66, 691 P.2d 64 (Ct. App. 1984). *See also Martinez v. N.M. State Eng'rs Office*, 2000-NMCA-74, ¶ 22, 9 P.3d 657, 662 (as a "public administrative body created by statute," the state personnel board "is limited to the power and authority expressly granted or necessarily implied by statute").

² In addition to driver training, the DSL Act permits licensed driver education schools to offer motorcycle driver education programs and requires TSB to "prescribe minimum motorcycle driver education program standards." NMSA 1978, § 66-10-9(A), (B). In contrast to its provisions governing the minimum driver education program standards, the DSL Act expressly lists topics that must be included in motorcycle driver education programs administered by TSB, including safe driving habits and defensive driving. *Id.* § 66-10-10(D).

Additionally, unless TSB can identify a rational basis for its policy of approving the course only for nonprofit providers, it may be vulnerable to court claims alleging violations of the equal protection clauses of the U.S. and New Mexico Constitutions. *See* U.S. Const. amend. XIV, § 1 (a state shall not “deny to any person within its jurisdiction the equal protection of the laws”); N.M. Const. art. II, §18 (no person “shall ... be denied equal protection of the laws”). *See also Rodriguez v. Brand West Dairy*, 2016-NMSC-029, 378 P.3d 13 (exclusion from Workers Compensation Act for employers of farm and ranch laborers violated the Equal Protection Clause because it made distinctions between similarly situated persons that were not rationally related to a legitimate government purpose).

To summarize, Section 66-7-506(K) requires TSB to implement and administer an accident prevention course for drivers age fifty-five and older, as provided for in Section 59A-32-14. Section 66-10-12 of the DSL Act exempts from the Act’s requirements nonprofit corporations that provide accident prevention courses approved by TSB exclusively to drivers age fifty and older. Neither Section 66-10-12 nor the other applicable statutes discussed above limits TSB’s authority to approve the accident prevention course contemplated under Section 66-7-506(K) and Section 59A-32-14 to non-profit providers only. Consequently, we conclude that, except as provided in Section 66-10-12, TSB may not distinguish between equally qualified providers of accident prevention courses for older drivers based on whether the providers are for-profit or nonprofit entities.

If we may be of further assistance, please let us know. Your request to us was for a formal Attorney General’s opinion on the matters discussed above. Such an opinion would be a public document, available to the general public. Although we are providing our legal advice in the form of a letter rather than an Attorney General’s Opinion, we believe this letter is also a public document, not subject to the attorney-client privilege. Therefore, we may provide copies of this letter to the public.

Sincerely,



Stephen A. Vigil
Assistant Attorney General

Cc: Tania Maestas, Deputy Attorney General for Civil Affairs