

Opinion No. 48-5124

January 12, 1948

BY: C. C. McCULLOH, Attorney General

TO: Mr. Lorenzo R. Burciaga, Chief Clerk State Corporation Commission Motor Transportation Department Santa Fe, New Mexico

{*127} We are in receipt of your letter of December 29, 1947 in which you ask whether the Commission should exempt private carriers transporting their own merchandise in their own equipment where a separate charge is added for the transportation costs.

Your attention is directed to the case of Rountree v. State Corporation Commission, 40 N.M. 152, 56 P. 2d 1121. In that case the Court held that a person transporting his own merchandise in his own motor vehicle was not a contract motor carrier for hire. There the Court said:

"Compensation 'for hire' must necessarily be paid by one who hires, so in transporting his own goods a carrier does not come within the statutory definition of 'contract motor carrier for hire', as no one 'hires' him."

In that case the Court also held that where the cost of transportation was not charged separately but merely added to the overhead, this did not amount to compensation but indicated that it would be compensation if transportation charges were separately billed.

However, in view of the first grounds of the Court's decision in this case that where a person transports his own goods in his own vehicles that he was not transporting for hire, it is my opinion that the Corporation Commission should continue exemption on private carriers transporting their own merchandise in their own equipment even though the charge for this service is separately billed.

I return herewith the waybills attached to your letter.

By ROBERT W. WARD,

Asst. Atty. General