

Opinion No. 48-5139

March 18, 1948

BY: C. C. McCULLOH, Attorney General

TO: Mr. Victor Salazar Commissioner of Revenue Santa Fe, New Mexico

{*139} We wish to acknowledge receipt of your inquiry of March 16, 1948 wherein you state that the Reciprocity Committee has had numerous inquiries with reference to who falls within the meaning of "non-residents operating legally for hire between fixed termini in New Mexico" as referred to in Section 2, Chapter 56, Laws of 1947.

You then set forth four categories into which various operators fall, and request our opinion as to whether or not each of such non-resident operators would be covered by a reciprocity agreement between New Mexico and another state in view of their intra-state operations.

For the sake of clarity, I shall set forth one category and then follow with our opinion, in accordance with the manner in which the categories are set forth in your inquiry.

1. The first class of operator is one who holds a permit from the New Mexico Corporation Commission, granting him general authority to operate within the boundaries of the State of New Mexico, within the boundaries of one or several counties in the State of New Mexico, or within any given radius within the State of New Mexico but not naming any specific points to be served, and who operates upon call only and then to any point within his territory in this state.

Chapter 56, Laws of 1947 provides for the making of Reciprocal Agreements between New Mexico and other states concerning the operation of motor vehicles over the highways of this state but in accordance with Section 2 of said act, non-residents of the state, whose motor vehicles, trailers, or semitrailers are properly registered or licensed in another state or territory or the District of Columbia, are not entitled to come under the Reciprocity Agreement and claim exemptions, if such non-residents operate legally for hire between fixed termini in New Mexico even though they are engaged in interstate commerce in the State of New Mexico. (See Attorney General Opinion No. 5106.)

It is our opinion that those operations falling within the first category are entitled to the benefits forthcoming from any reciprocal agreement as it seems evident such operators do not operate for hire between fixed termini in the State of New Mexico.

2. The second class is a non-resident holding a permit as described above, but who operates under term contracts to haul between specified points within his territory in this state.

It is our opinion that those operations falling within the second category are not entitled to the exemptions allowed under a reciprocal agreement between New Mexico and some other state as said non-resident operator is operating legally for hire between fixed termini in New Mexico. The permit alone is {**140*} not determinative of the type of operations engaged in by the carrier but the determining factor, in our opinion, is the actual operations engaged in.

In this regard, the Supreme Court of Iowa, in the case of State ex rel Board of Railroad Commissioners vs. Thompson, 256 N. W. 256, made this statement, to-wit:

"A truck operator, who operates between fixed termini and on a regular route, is readily identified. But when one operates upon any and all routes, and between any and all termini, it becomes a question of degree whether sooner or later his business may not concentrate upon a regular route and two fixed termini. As between two termini there can hardly be other than a 'regular route', if the distance be short." (See also Holmes et al v. Railroad Comm'n. of Cal. et al, 242 P. 486.)

3. The third class is a non-resident holding a permit as described above, but who has an established service between fixed points within his territory in this state.

It is our opinion that operations falling within this category are not entitled to any exemptions under a reciprocal agreement entered into between New Mexico and some other state and we deem our reasons set out in answer to question No. 2 applicable in this instance also.

4. The fourth class is a non-resident operating under a permit from the New Mexico Corporation Commission, which permit specifically names the points between which the permittee is to serve and, who so operates under his permit.

It is likewise our opinion that operations coming within this category are not entitled to any exemptions under a reciprocal agreement between New Mexico and some other state for the reason that such operations are carried on for hire between fixed termini in the State of New Mexico.

Trusting the aforementioned satisfies your inquiry, I remain

By ROBERT V. WOLLARD,

Asst. Atty. General