

Opinion No. 51-5437

October 2, 1951

BY: JOE L. MARTINEZ, Attorney General

TO: Tom C. Cox, Chief Clerk State Corporation Commission Santa Fe, New Mexico

{*143} This is in reply to your letter of June 15, 1951, in which you request an opinion defining specifically the authority transferred from the Corporation Commission to the Motor Transportation Division of the Bureau of Revenue by the Governor of New Mexico, by virtue of Chapter 40, Laws of 1937, which is compiled as §§ 68-1347 and 68-1348, N.M.S.A., 1941.

In 1937 when this power was granted to the Governor to divide the duties performed under the Motor Carrier Act, Chapter 154, Session Laws of 1933, the provisions for collection of mileage tax were properly deemed a simple revenue measure and more properly administered by our tax collecting agency, the State Bureau of Revenue. The powers granted to the Governor are strictly limited to the transfer of the powers and duties "for the administration and enforcement of the provisions therein levying mileage taxes and the collection thereof to the Bureau of Revenue."

The Legislature then to make certain that there was no misunderstanding as to just what power could be transferred to the Bureau of Revenue from the Corporation Commission went on to say in their enactment: "The power and authority so vested in the Governor shall not extend to or include any power and authority vested in the State Corporation Commission under said Chapter 154, with respect to the fixing of rates, fares, charges and classification; regulation of the facilities, service and safety of operation of common and motor contract carriers; regulation of operating and time schedule; filing of annual and other reports, tariffs, schedules and other data by said common and motor contract carriers; to the supervision and regulation of such common and contract motor carriers in any matter affecting the relation between such carriers and other carriers; to the issuance of certificates of public convenience and necessity or to the revocation or cancellation of a new license or permit issued thereunder; to the provisions of Chapter 79, Laws of 1935." this latter enactment amending certain provisions of the Motor Carrier Act, "or to any power or duty vested in the State Corporation Commission under the provisions of said Chapter 154, Session Laws of 1933, other than with respect to the powers and duties relating to the administration and enforcement of the provisions thereof levying and imposing a mileage tax for the maintenance, repair, and reconstruction of the public highways in the collection of such mileage tax."

It is evident from the language employed by the Legislature that {*144} the only power, duty and authority which could be granted to the Motor Transportation Division of the Bureau of Revenue is the duty to collect mileage taxes as imposed by Section 39, Chapter 154, Laws of 1933 as amended, the same being § 68-1346, N.M.S.A., 1941.

The assumption of any other duties or authority relative to motor transportation not specifically authorized by statute would be in excess of the power of the Motor Transportation Division and would be an encroachment on the powers, authority and duties of the Motor Transportation Department of the State Corporation Commission.

I trust that this will answer your inquiry fully.