

## Opinion No. 52-5560

July 1, 1952

**BY:** JOE L. MARTINEZ, Attorney General

**TO:** Mr. Ingram B. Pickett Chairman State Corporation Commission Santa Fe, New Mexico

{\*271} This is in reply to the request for an opinion which you forwarded concerning insurance requirements for interstate carriers which you received from the firm of Seth & Montgomery, attorneys for the Greyhound Corporation.

The question is whether, insofar as exclusive interstate commerce operations are concerned compliance with the federal law and Interstate Commerce Commission regulations should exempt the carriers from compliance with the State law and regulations insofar as they require the posting of bonds or filing copies of insurance policies covering injury to persons or damage to property.

The New Mexico Motor Carriers Act Sec. 68-1309 N.M.S.A. provides for registration of interstate carriers and Sec. 68-1344 N.M.S.A. also requires that said carriers shall file with the Commission surety bond or policy of insurance to cover public liability and property damage (68-1344 N.M.S.A.).

The Federal Motor Carrier Act of 1935 provides that the Interstate Commerce Commission may prescribe rules and regulations governing the filing and approval of surety bonds policies of insurance or other security covering damages for bodily injury or death or loss or damage to property. All purely interstate carriers are required to file such bond or policy of insurance.

Since 1935 when the Federal Motor Carriers Act was enacted the {\*272} courts have consistently held that State laws and regulations covering financial responsibility of an exclusively interstate motor carrier has been superseded by the federal law and regulations.

The general rule on the exclusiveness of the Federal law and regulations is stated in 15 C. J. S. Section 71, page 395, as follows:

"Those provisions of the Motor Carrier Act which relate to the furnishing of surety bonds, policies of insurance, qualifications as a self-insurer, or other securities or agreements conditioned to pay final judgments against a motor carrier for death, personal injury, or loss of, or damage to, property, are valid and they, together with the rules and regulations prescribed by the I. C. C. in pursuance of authority conferred by the statute, are operative to supersede and exclude state laws, regulations and orders on the same subject."

Cases supporting this view of the question are: **University Overland Express v. Alsop** 189 Atl. 458; **Hendrick v. Maryland**, 235 U.S. 610, 622; **Sprout v. South Bend**, 277 U.S. 163, at page 169, 62 A. L. R. 45; **Morris v. Doby**, 274 U.S. 135, 143.

Under Sec. 68-1344 N.M.S.A. an interstate carrier is required to file a surety bond or insurance policy to cover bodily injury or death to persons or damage to property. Under the I.C.C. regulation the same carrier must file a similar insurance policy or bond with the I.C.C. to cover injuries or death to persons and damage to property. This results in a clear duplication of coverage. If the carrier operated in several states, each requiring liability insurance coverage of different amounts the result would be an unreasonable burden on interstate carriers by such overlapping and conflicting State requirements.

The insurance or bond filed with the I.C.C. protects not only passengers but the general public with public liability and property damage or its qualified as a self-insurer so that the citizens of the State are not left unprotected.

As a practical matter therefore protection has been provided for any person who may sustain bodily injury or damage to the property by the carrier in the State of New Mexico. It would be unreasonable to require such motor carrier to furnish duplicate protection by complying with the State statutes in addition to compliance with the federal statute where no intra-state commerce is involved.

In view of the cases on the subject and of the practical result, it is my conclusion and opinion that Sec. 68-1344, insofar as it shall require a motor carrier engaged exclusively in interstate commerce to file with the corporation commission either a surety bond or policy of insurance covering bodily injury or death to persons or property damage for the protection of the public is superseded by the federal law and regulations with respect to operations solely in interstate commerce.

I trust that this will answer your inquiry fully.