

## Opinion No. 53-5689

February 27, 1953

**BY:** RICHARD H. ROBINSON, Attorney General

**TO:** Mr. James F. Lamb Chairman State Corporation Commission Santa Fe, New Mexico

{\*81} This is in answer to your request for an opinion upon the question of whether Indians transporting Indians or other persons for hire come within the provisions of the Motor Carrier Act of New Mexico, Section 68-1301 et seq, N.M.S.A., 1941 Compilation, as amended.

It is the opinion of this office that the State Corporation Commission acting under the authority of the Motor Carrier Act can regulate transportation and hire conducted by Indians while off the reservation and while operating to points and places over state and county roads in the State of New Mexico. Operation upon the Indian Reservation is not subject to regulation by the State Corporation Commission, and the State of New Mexico in this field, has no jurisdiction to so control such activities.

Although, Section 68-1302 N.M.S.A., 1941 Compilation and other pertinent sections of the Motor Carrier Act do not expressly exempt Indians from control, the provisions of the Constitution of the United States has expressly reserved the right to regulate and control Indians who are wards of the government and living on reservations, to the Federal government. In the landmark case of Trujillo vs. Prince cited in 42 N.M. 337, the court had to say on this subject.

"The power of congress to regulate Indian affairs is granted exclusively to congress so far as such affairs involve matters of national concern; (b) but the Constitution does not take away from the states their police power and legislation under that power may operate even with respect to matters of national concern if it does not conflict with the will of Congress; (c) the silence of Congress in respect to a matter of national concern is generally interpreted by the court as evidence of its will that the matter shall not be regulated by the states; (d) but Congress may break this silence and permit state police laws to operate even where they involve matters of national concern; (c) in matters of local concern the power of Congress is not exclusive; and (f) as to such matters the silence of Congress discloses no objection to the operation of state laws. To this summary might be appended another principle, namely, (g) when Congress acts affirmatively in any situation involving a matter of national concern, a state statute will be inoperative which (1) conflicts with some positive regulation of the federal legislation, or (2) is regarded by the court as intruding into the field which Congress meant to occupy by its legislation."

42 SJS at page 783 summarizes this matter as follows:

"In general a state has no power to interfere by state regulations with Indians who are wards of the federal government and who reside in reservations. In the absence of contravening statutes or treaties, when Indians are off the reservation, they may be subject to, and may claim the benefit of, the laws of the state or territory in which they reside, and, where Congress has relinquished its superior power over Indians and their property such Indians and their property in general are subject to the laws of the state in which the Indian reside."

In the case of State vs. Tucker, 296 N.W. 645, 237 Wis., 310, a {\*82} Wisconsin case where the court had this question before it, the court held the state could require an Indian who lived on the reservation to register his motor truck and to pay a registration fee for its operation over that part of a state highway which was within the exterior boundaries of the reservation. That case in question involved a highway within the boundaries of the reservation but to which the state had acquired a right-of-way from the reservation. Where the highway is not on the reservation and is wholly under the jurisdiction of the state it would appear that the Indians utilizing such facility should be subject to regulation.

It is therefore the opinion of this office that the State Corporation Commission acting under the provisions of the Motor Carrier Act has jurisdiction to regulate and control as provided therein, Indians operating transportation for hire, when such transportation is not on an Indian Reservation.

We trust this answers your inquiry,

By: William J. Torrington

Assist. Attorney General