

## Opinion No. 53-5699

March 12, 1953

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

**TO:** Mr. W. F. Nance Chief Clerk State Corporation Commission State Capitol Building Santa Fe, New Mexico

{\*91} This is in reply to your request for an opinion upon the following question. Where the Corporation Commission has issued a Certificate of Convenience and Necessity to a Carrier authorizing him to transport "dirt, sand, gravel, rock, crushed rock, dry clay, coal, coke, manure, and pumice and cinder aggregates, \* \* \* does such certificate authorize the certified carrier to transport ore bearing rocks which have lead, zinc, copper, uranium, etc, content in them?

The word "rock" appearing on the Certificate of Convenience and Necessity and on the Order upon which the Certificate is based, taken alone and refined alone, would not in and of itself exclude the possibility that such rock contains minerals or ores or other materials. But where a certificate indicates that an authority is granted which contains not a single term but a group of descriptive terms describing the classification of materials or property that is authorized to be transported, in order to arrive at a clear and concise understanding of the meanings of the words and the authority granted under this certificate all of the terms of the certificate should be examined and construed as a whole. In **Vol. 60 CJS at page 186**, under the caption of Rules of Construction:

"In construing regulations pertaining to public service motor vehicles, the courts will look to the plain terms thereof and give them their ordinary meaning. Each regulation should be construed in its entirety, giving effect, if possible, to every part of it; and, if there are several regulations which do not conflict with each other, each should be so construed as to have its own sphere of operation. Legislation of this nature must be construed in view of the conditions which prompted its enactment and the evil or purpose which it was intended to correct; and, where the statute is remedial, it should be construed liberally. Regulations are to be construed in the interest of the traveling public, not the operator of the public service vehicle; and the court will not go out of its way to attain a construction that might benefit one individual, but would confuse the orderly application and administration thereof when applied to other situations."

In the text above quoted the term legislation would include acts of the Commission operating by and through {\*92} the statutes authorizing them to regulate as provided by law. The orders of the Commission have the force of legislative orders] being enacted by and through the authority of the Legislature. See **60 CJS 197**.

The acts or orders of the Commission are based primarily upon the needs of the public, and the coordination of facilities available. Section 68-1301 N.M.S.A., 1941 Compilation as amended.

In **60 CJS 187** the general purposes and policy of such legislation is discussed:

"The paramount purposes of statutes regulating public service motor vehicles are to promote the welfare of the state, serve the public interest, convenience, and necessity, and secure the best transportation service possible, and not primarily to serve the private interests of any carrier."

The order of the Commission granting a Certificate is subject to the continuing jurisdiction of the Commission acting within its statutory authority and in the public interest. In this respect see, Section 68-1311 N.M.S.A., 1941 Compilation as amended, wherein it is stated plainly that such Certificates are not franchises.

**60 CJS 269** states:

"A holder of a certificate of public convenience and necessity holds the certificate subject to all laws of the state which apply, including laws enacted after the certificate was issued as well as laws in force at the time of issuance; and in some jurisdictions the statute expressly provides that a certificate holder holds the certificate subject to the right of the state, at any time, to regulate, redistrict, or forbid its use. The holder of a certificate, is subject to valid regulations pertaining to the operation of public service motor vehicles properly imposed by the commission."

The Commission's order, based upon the application and the evidence before that body, takes into consideration conditions existing at that time and in the reasonably foreseeable future. Where a new industry, totally unforeseen, appears requiring new facilities to serve the public, the Commission cannot be precluded from answering the public need by re-classification to meet this need. The following citations may clarify these statements:

**60 CJS 287** states:

"What constitutes public convenience and necessity must fundamentally have reference to the facts and circumstances of each given case as it arises."

**60 CJS 290** states:

"The commission may and should look to the future as well as the present, (Alabama Public Service Commission vs. Crow, 22 S. 2d 721, Ala.) providing not only for present needs] but such as may reasonably be anticipated from the probable growth of population, industry, and community development, (Mulcahy vs. Public Service Commission, 117 P. 2d 298, 101 Utah 245) to the end that both the quality and quantity of that which is offered to the public for its necessity, convenience and pleasure may be improved and increased, and community development and life enriched and encouraged." See North Bend P. 780, 162 Wash, 46.

**60 CJS 302** states:

"The regulations apply in the case of an application by another {\*93} carrier to change its route or extend its service, as well as in the case of an original application. On the other hand, where a different and specialized or limited transportation service is required or proposed a new certificate authorizing such service may be granted without first affording existing motor carriers an opportunity to provide such service."

It is therefore the opinion of this office that where a carrier was certified to carry "rock, crushed rock, etc," and at that time as appears from the records of the Commission, there was no intention or desire of applicant to transport uranium, lead, ,etc., or ore-bearing rock, and subsequet to this the Commission recognizes a new and unforeseen growth and certifies other carriers for the more specialized operation, such carrier of "rock, crushed rock, \* \* \*" may not extend his operations to include the more specialized yield without prior application for such additional authority.

We trust this opinion may be of some assistance to you.

By: William J. Torrington

Assist. Attorney General