

Opinion No. 54-6059

December 17, 1954

BY: RICHARD H. ROBINSON, Attorney General

TO: New Mexico Public Service Commission Post Office Box 561 Santa Fe, New Mexico. Attention: F. Wayne Laws, Commissioner

{*533} You have requested the opinion of this office relative to whether or not the New Mexico Public Service Commission has authority over a certain interstate motor carrier of liquefied gases, to-wit, Collett Tank Lines.

This requires an examination and interpretation of §§ 71-803 -- 71-825, New Mexico Statutes Annotated, 1941 Compilation (Chapter 214, Laws of 1947 and Chapter 122, Laws of 1949).

You forwarded with your request an excellent memorandum of law, prepared by your legal staff, which we have used to great benefit.

As we view this problem, there are two inquiries to discuss relative to an interstate carrier of liquefied gases. (1) Does this statute we are discussing run counter to the commerce clause of the Federal Constitution (2) Does the exemption contained in § 71-807, N.M.S.A., 1941, exclude regulation by the State Commission, and in conjunction therewith exclude an interstate carrier of liquefied gases from compliance with the requirements set forth in the full and complete act?

Our answer to the first inquiry is in the negative. Without burdening you with direct quotes from the various authorities, we shall merely state that the general principle of the law in this regard in construing a statute such as the one herein involved is to the effect that although the Congress of the United States, by constitutional grant, has the power to regulate interstate commerce, nevertheless the states reserved and never surrendered to Congress the power to provide for the public health, the public morals, and the public safety of its citizens. So long as the legislation in question shows a real and bona fide exercise of these police powers, together with an absence of direct conflict with a Federal regulation, the legislation will be upheld. It is our opinion, after studying the act in question, that there is a legislative intent expressed to protect the public health and safety of the citizens of this state and that this legislation is not in direct conflict with a Federal regulation and, in addition, is not an undue burden upon interstate commerce.

The more perplexing problem is addressed in the second inquiry, to-wit, does the exemption set forth in § 71-807, N.M.S.A., 1941, and quoted immediately below, preclude the Commission from exercising any authority over the operations of Collett Tank Lines?

"Regulations by public service commission: -- The commission shall have full power and authority to adopt and promulgate such rules and regulations as shall be necessary to carry out the purpose of this act (§§ 71-804 -- 71-825) and for the public peace, health and safety as it is affected by the use of such materials. The regulations so made shall be substantially in conformity with the regulations of the National Board of Fire Underwriters as recommended by the National Fire Protection Association, covering the same subject matter. Nothing contained in this act shall apply to containers subject to the regulation of the Interstate Commerce Commission, nor to containers owned and used by the U. S. Government, nor to containers installed in refineries, gasoline plants, and pipe-line terminals."

{*534} Here we have an express statement by the Legislature that there should not be an interference by the state with the regulations of the Federal government in this regard. Clearly, if the Interstate Commerce Commission has provided regulations governing the operation of Collett Tank Lines with respect to containers used in their business, these Federal Regulations are exclusive and paramount. Therefore, the exemption cited above precludes a state's direct interference with Federal regulations in this regard.

There is certainly authority for the proposition that states are enabled to deal with local problems and to exert in the absence of conflict with Federal legislation an essential protective power. (**Kelly et al v. Washington et al**, 302 U.S. 1). However, the exemption which the State Legislature saw fit to place into this act has, in effect, prevented the state from occupying a certain field or area of regulation with respect to interstate transporters. It, therefore, is apparent that this is a problem which should be taken to the forthcoming Legislature for correction.

By: Jack A. Smith

Assist. Attorney General