Opinion No. 56-6453

May 31, 1956

BY: RICHARD H. ROBINSON, Attorney General

TO: Mr. Arthur T. Noble, Jr., District Attorney, Eighth Judicial District, Taos, New Mexico

You have asked this office for an opinion concerning the Motor Carrier Act. The factual situation you outline discloses that hotel owners in and about Red River, New Mexico, take some of their guests on sight-seeing trips around the mountains and lakes in that vicinity. There is apparently no direct charge for these trips. You ask whether the hotel owners are in violation of the Motor Carrier Act if they do not hold a Certificate of Public Convenience and Necessity from the Corporation Commission to provide this service.

I assume that these trips are of sufficient distance to take the operations out of the exemption stated in § 64-27-25 (d), N.M.S.A., 1953 Compilation.

Common carriers are defined in § 64-27-2, N.M.S.A., 1953 Compilation, as follows:

"The terms common motor carrier, when used in this act, shall mean any person who or which undertakes, whether directly or by lease, or any other arrangement, to transport passengers or property, or any class or classes of property for the general public, by motor vehicle for hire over regular routes, under scheduled service or over irregular routes under unscheduled service; Provided, however, that operators of motor vehicles engaged in the transportation of sand, gravel, rock, crushed rock, rock ballast, or dirt obtained or produced on the job or for a specified project under a federal, state, or municipal contract, transported over irregular routes under unscheduled service shall not be classified as a common motor carrier."

In your fact situation, there is no direct evidence of transportation of passengers by motor vehicle for hire. Should it be established that part of the compensation for the hotel room was for the sight-seeing trips, the operators of the service would still not fall within the above definition since the service does not appear to be open to the general public. See also 13 C.J.S., page 26, Section 3 (b), wherein it is stated that to be a common carrier, one has to hold himself out as engaged in public service for all persons indifferently.

The only other question is whether or not these hotel operators are contract motor carriers of passengers. Contract carriers are defined in § 64-27-14, N.M.S.A., 1953 Compilation, where the pertinent part hereto is as follows:

"(b) The term 'contract motor carrier of passengers' when used in this act, shall mean any person engaged in the transportation by motor vehicle of persons for hire and not included in the term 'common motor carrier of passengers' as hereinbefore defined; . . ."

Here again in your fact situation, there is no direct evidence of a transportation of persons by motor vehicle for hire. The case of Rountree v. State Corporation Commission, 40 N.M. 152, discusses the difference between transportation for hire and for compensation. The case states that the Legislature intended to regulate transportation for hire. In view of this in the absence of proof of a charge for transportation, the State Corporation Commission would have no jurisdiction to issue a Certificate.

By J. A. Smith

Assistant Attorney General