

Opinion No. 57-12

January 24, 1957

BY: OPINION OF FRED M. STANDLEY, Attorney General Joel B. Burr *2*Assistant Attorney General

TO: C. C. Boatright, Director, Traffic and Rate Department, State Corporation Commission, Santa Fe, New Mexico

QUESTIONS

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Would a common or contract carrier for hire, transporting a shipment five miles over a public highway, thence five miles across either private or public land not considered a public highway, be subject to regulation for the entire haul, or would the regulation of this transportation be confined to the portion of the haul on a public highway?

CONCLUSION

The entire haul would be subject to regulation.

OPINION

ANALYSIS

The New Mexico Motor Carriers Act (§§ 64-27-1 to 64-27-81, N.M.S.A., 1953 Compilation, and 1955 pocket supplement) was enacted to confer upon the State Corporation Commission the power and authority to supervise and regulate the transportation of persons and property by motor vehicle for hire upon or over the public highways of this state.

Specifically, § 64-27-5, N.M.S.A., 1953 Compilation, provides as follows:

"No common motor carrier of property or passengers shall operate any motor vehicle for the transportation of either persons or property for hire on any public highway in this state except in accordance with the provisions of this act." (New Mexico Motor Carrier Act)

Section 64-27-16, N.M.S.A., 1953 Compilation, contains the same language as the above statute except that it applies to contract motor carriers instead of common motor carriers.

It is the opinion of this office that a common or contract motor carrier becomes subject to regulation by the State Corporation Commission when (1) it operates a motor vehicle

for the transportation of either persons or property for hire, and (2) when the entire haul or any part of it is conducted on a public highway. Thus, even though a part of the transportation is conducted across an area not considered a public highway, if a part of that transportation takes place on a public highway, the entire haul is subject to regulation.

In *Jackson v. Harrison, Comptroller General, et al.*, 176 Ga. 686, 168 S.E. 780 (1932), a carrier who transported personal property from house to house, for different persons, in the city of Thomaston, Georgia, and who transported household goods, lumber and other commodities over paved and unpaved highways and roads not classed as public highways, commonly called private roads, and over different roads outside the city limits of Thomaston to different points within the State of Georgia, claimed that he was subject to exemption from a state tax imposed on motor carriers. A Georgia statute very similar to our New Mexico statute defines the term "motor carrier" to mean, "All persons, firms, associations or corporations engaged in the business of transporting for hire by motor vehicle persons or property, or both, on the public highways of this state, whether as common carriers or not." Section 1, Laws of 1931 (Ex. Sess.), P. 63. The Supreme Court of Georgia held that the carrier was subject to the tax since he was a motor carrier as defined by the above statute.

Any other interpretation of the act would make it possible for a carrier to render ineffective any attempt by the State at regulation. For example, in the factual situation presented in the question at hand, a holding by this office that regulation by the State is confined to the five mile portion of the haul on a public highway would mean that a carrier by increasing the rate on the remaining five miles across an area not considered a public highway could effectively circumvent any rate set by the commission. The privilege of using public highways for motor transportation does not amount to a natural or an absolute and unqualified right, but is a franchise, special and extraordinary, a mere privilege to be withheld or granted as the legislature sees fit, and subject to regulations by the state acting under its police power as sovereign authority. *Memphis v. State*, 133 Tenn. 83, 179 S.W. 631 (1915), *Stephenson v. Binford*, 287 U.S. 251, 77 L. Ed. 288. (1932).

The purpose of the Act being the effective regulation of motor carriers for hire who use the public highways of this State, a carrier's utilization of this privilege, and not the degree of use, is the important factor to be considered in determining whether or not a carrier is subject to regulation.