

## Opinion No. 63-21

March 19, 1963

**BY:** OPINION of EARL E. HARTLEY, Attorney General

**TO:** TO: G. Y. Fails, Chairman State Corporation Commission Santa Fe, New Mexico.  
Attn: Motor Transportation Department

### QUESTION

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Does a transporter of race horses come under the provisions of Sec. 64-27-80, N.M. S. A., 1953 exempting "livestock" haulers from the Motor Carrier Act?

#### CONCLUSION

No.

### OPINION

#### {\*44} ANALYSIS

Sec. 64-27-80, N.M.S.A., 1953 applies to "any motor vehicle registered in New Mexico being used in the transportation for hire of a cargo consisting only of one or several of the following: **Livestock**, farm produce (including but not limited to grains, cotton, cottonseed, vegetables, hay and other farm products), livestock feed, stock salt, manure, wire, posts, dairy products, and farm or ranch machinery (except tractors weighing more than 15,000 pounds)." (Underline supplied) Carriers of these commodities are given a certificate of registration as a matter of course and thus are exempted from the provisions of the Motor Carrier Act requiring common carriers to show that public convenience and necessity justifies their operation.

The Interstate Commerce Act contains a similar exemption for "motor vehicles used in carrying property consisting of ordinary livestock. . . (etc.)" 49 USCA § 303 (b) (6). This exemption has been consistently construed as inapplicable to race horses. **Oswley Application**, 31 M.C.C. 778; **Baum Application**, 68 M.C. C. 882; **Morgan Application**, 82 M.C.C., 116; Bureau of Motor Carrier Rulings No. 46, April 15, 1937. We consider these interpretations of the federal law very persuasive. The Interstate Commerce Act does use the phrase "ordinary livestock" as compared to our law which just says "Livestock". However, when Sec. 64-27-80, supra, is read in its entirety it is clear that the meaning of "Livestock" is limited. The other items included in the exemption are either used in farm and ranch work or are ordinary products of a farm or ranch. The special use to which a horse is put so that it is a "race horse" clearly removes it from this category.

In excluding race horses from the scope of the term "livestock" we are giving that word a narrow interpretation, but properly so, because when it comes to application of an exception to a statute it is well established that strict construction is called for. **State v. Board of Commissioners of Lincoln Co.**, 46 N.M. 472, 131 P2 278; 82 C.J.S. "Statutes" § 382 (c). Anyone claiming the benefit of an exemption in a statute must clearly and unmistakably establish his right thereto. **State v. Board of Commissioners of Quay Co.**, 62 NM 137, 306 P2 259.

Relying on the interpretation given the interstate carrier livestock exemption by I. C. C. decisions and following the above stated rules of construction, it is our opinion that a transporter of race horses is not exempted from the Motor Carrier Act by Sec. 64-27-80. supra.

BY: J. E. Gallegos

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