

Opinion No. 69-141

December 4, 1969

BY: OPINION OF JAMES A. MALONEY, Attorney General Mark B. Thompson III,
Assistant Attorney General

TO: Mr. Floyd Cross, Chairman, State Corporation Commission PERA Building, Santa Fe, N.M. 87501

QUESTIONS

Are contributions under the Unemployment Compensation Law of New Mexico required to be paid to the Employment Security Commission of the State of New Mexico before the State Corporation Commission can authorize the transfer of a certificate of public convenience and necessity for a motor carrier?

CONCLUSION

Yes.

OPINION

{*226} ANALYSIS

Because a certificate of public convenience and necessity is not a property right which may be transferred at will by the holder, the State Corporation Commission must approve all transfers of certificates. The statute provides that "no certificate issued under this act shall be assigned, leased or transferred until the holder thereof shall establish to the satisfaction of the Commission that all indebtedness of transfer or that pertains to the certificate or operation under such certificate sought to be transferred has been fully paid, settled and discharged." § 64-27-11, N.M.S.A., 1953 Compilation.

Due to the general nature of the reference to indebtedness it was necessary for this office to construe the language of Section 64-27-11, and in doing so it was held that the indebtedness applied only to mileage taxes and funds due to the State and generally all indebtedness which is incurred as a result of the issuance of the certificate. Opinion of the Attorney General No. 1718, dated July 20, 1937. See also, **Bekins Van & Storage Co. v. State Corp. Comm'n**, 65 N.M. 423, 338 P.2d 1055 (1959).

Pursuant to the statute and the interpretation of the Attorney General, the State Corporation Commission has issued its Rule No. 21 (9) which advises the transferor and transferee of a certificate of public convenience and necessity that the State Corporation Commission must have "proof that all taxes to date of transfer have been paid to the State of New Mexico." The narrow question presented here is whether or not

the contributions under the unemployment compensation act are taxes due the State of New Mexico.

There is of course no doubt that the unemployment compensation law and the contributions required by it are not solely an independent {227} creation of the New Mexico Legislature. The unemployment compensation law is, instead, a state plan based upon the Federal Social Security Act. See generally, Annot. 121 A.L.R. 1002 (1939); Annot. 118 A.L.R. 1220, 1222 (1939); 109 A.L.R. 1346 (1937); Annot. 108 A.R.R. 613 (1937); Annot. 106 A.L.R. 243 (1937).

Regardless of their derivation from federal legislation, the unemployment compensation contributions are considered to be due and owing the State of New Mexico. §§ 59-9-7 (a), -22 (d), N.M.S.A., 1953 Compilation. The New Mexico Supreme Court has referred to the contributions as a New Mexico tax. See, **Employment Sec. Comm'n v. C. R. Davis Contracting Co., No. 8838, N.M. Supreme Court, November 10, 1969**. See Also **Graham v. Miera**, 59 N.M. 379, 285 P.2d 493 (1955).

Therefore, we conclude that for the purposes of the Motor Carrier Act and State Corporation Commission Rule 21 (9), the contributions under the Unemployment Compensation law of the State of New Mexico are a tax due the State of New Mexico. We would also add that the authority of the Commission under § 64-27-11 and Rule 21 (9) applies to both voluntary and involuntary transfers. We have considered **State ex rel. Clinton Realty Co. v. Scarborough**, 78 N.M. 132, 429 P.2d 330 (1967) and deem it not controlling in view of the differences between the statutes therein construed and § 64-27-11.