

Opinion No. 38-2021

August 2, 1938

BY: FRANK H. PATTON, Attorney General,

TO: State Corporation Commission Santa Fe, New Mexico

{*259} This is to acknowledge receipt of your request of even date. From correspondence submitted, it appears that Louis Usnik, Jr. is hauling merchandise exclusively for the Federal Government pursuant to contract. No other goods or merchandise are hauled. His attorney suggests that he is not required to secure a certificate pursuant to the provisions of Chapter 154, Laws of 1933, and relies upon a ruling from the General Accounting Office, Washington, D. C., dated November 17, 1937.

This office is unable to agree with the interpretation given in that ruling. Usnik is a contract carrier as defined by Section 14, Chapter 154, Laws of 1933. His operations are not exempt under any of the subsequent sections. The question then comes down to one of determining whether or not requiring Usnik to get a certificate would constitute a burden upon an instrumentality of the Federal Government. We agree that the ruling cited by Mr. Usnik's attorney is in point. However, we think that this ruling was necessarily nullified by the recent decision of *James vs. Dravo Contracting Co.*, 82 L. Ed. 125. In that case the Supreme Court of the United States sustained the Washington sales tax {*260} as applied to income from contracts with the Federal Government. The reasons are fully and concisely set out in the opinion and it is unnecessary for us to detail them here.

We think the same principle is applicable to the situation here presented. If the application of an excise tax to a contract with an agency of the Federal Government is not a burden, then we think it naturally follows that the state under its police powers may regulate a given motor carrier's business, even though such business is conducted only with the Federal Government. A different situation would, of course, prevail if an attempt was being made to require a certificate from an agency of the Federal Government as distinguished from one who is merely undertaking to haul for the Government for hire.

By: RICHARD E. MANSON,

Asst. Atty. Gen.