

## Opinion No. 42-4161

September 26, 1942

**BY:** EDWARD P. CHASE, Attorney General

**TO:** Dr. Don R. Casados, Chairman State Corporation Commission Santa Fe, New Mexico

{\*255} In response to your letter of September 22 relative to the inquiry of the Hansell Motor Transport Company concerning whether or not, since they are engaged wholly in interstate commerce, they must pay the state mileage tax prescribed by Section 11-1071 of the 1938 Supplement (Laws of 1937, Chapter 224, Section 9) I submit the following:

As correctly noted in the letter of the Hansell Transport Company, the purpose of this tax is the support of local highways. The purpose, as more fully stated in Section 11-1071 of the 1938 Supplement is "for the administration of this act and for the maintenance repair and reconstruction of the public highways".

{\*256} It is further noted that this act is equally applicable to those engaged in intrastate commerce as it is to those engaged in interstate commerce. In no way does this act discriminate against interstate commerce.

The Supreme Court of the United States in the case of Interstate Transit, Inc. vs. Lindsey, 283 U.S. 183, 185 stated:

"While a State may not lay a tax on the privilege of engaging in interstate commerce, \* \* \* it may impose even upon motor vehicles engaged exclusively in interstate commerce a charge, as compensation for the use of the public highways, which is a fair contribution to the cost of constructing and maintaining them and of regulating the traffic thereon."

This same Court further stated in Western Livestock vs. Bureau, 303 U.S. 250, at 254:

"It was not the purpose of the commerce clause to relieve those engaged in interstate commerce from their just share of state tax burden even though it increases the cost of doing the business. 'Even interstate business must pay its **way**,' \* \* \* \*."

This case affirmed a decision of the New Mexico Supreme Court.

This identical quotation was cited in the recent United States Supreme Court case of McGoldrick vs. Berwind-White Company, 309 U.S. 33, 46, and the Court stated on page 47:

"Non - discriminatory taxation of the instrumentalities of interstate commerce is not prohibited."

In view of the foregoing, it is my opinion that this tax must be paid by the Hansell Transport Company even though they are engaged exclusively in interstate commerce.

By HARRY L. BIGBEE,

Asst. Atty. General