

**Opinion No. 45-4789**

September 14, 1945

**BY:** C. C. McCULLOH, Attorney General

**TO:** Mr. Harry D. Robins Assistant District Attorney Second Floor Court House  
Albuquerque, New Mexico

{\*131} Replying to your letter of August 21, 1945, wherein you request an opinion on the following question:

"Are travel bureaus, using private automobiles for hire, legal -- are they acting contrary to any law in our state?"

Section 68-1402 of the 1941 Compilation defines a motor carrier transportation agent and the carrier who operates under his agency in carrying passengers; whenever a charge is paid or requested to be paid by or on behalf of the person or persons transported and the one transporting "shall be deemed transportation provided by a motor carrier within the meaning of this act."

However, this section, 68-1402, was amended by the Legislature in 1943 and you will note one provision which reads as follows:

"Provided further, that for the time during which the United States of America shall remain at war with any foreign nation, this act shall not apply to any person who **is not engaged in furnishing transportation as a means of livelihood**, but who, himself, having need for transportation connected with and incidental to his usual business, avocation, profession or employment, shall, in connection with his own transportation, furnish to another or others similarly situated and having the same need, such transportation as shall be connected with and incidental to the usual business, avocation, profession or employment of such other person or persons, at such compensation {\*132} or division of expense as may be agreed upon between them; and for the duration of the war, as aforesaid, but not thereafter, such person, so furnishing such transportation, shall not be taken or considered as a 'Motor Carrier' within the meaning of this act."

By reason of the foregoing, it is my opinion that the transportation as outlined in your letter would be legal until an official proclamation ending the war is made. You will note that the facts in a particular case might take the transportation out of the exemption provided during the war period.

By THOS. C. McCARTY,

Asst. Atty. General