

Opinion No. 46-4876

March 12, 1946

BY: C. C. McCULLOH, Attorney General

TO: C. J. Boyd, Chairman Aeronautical Commission of New Mexico Santa Fe, New Mexico

{*204} Replying to your letter of March 5, 1946, requesting an opinion on the following question:

Is there anything in the law or the rules and regulations of the Corporation Commission which permits them to regulate {*205} airplanes carrying persons or property for hire from airports in New Mexico to places outside of the State of New Mexico, when said planes return to this state with or without passengers or property and operate from an airport in the State of New Mexico?

The following provisions of the Constitution, Laws, and Rules and Regulations of the Corporation Commission are applicable to your question:

"The commission shall have power and be charged with the duty of fixing, determining, supervising, regulating and controlling all charges and rates of railway, express, telegraph, telephone, sleepingcar, and other transportation and transmission companies and common carriers within the state;" Article 11, Section 7, New Mexico Constitution.

"Every person, firm, corporation, association or company at any time engaged, either regularly or for the time being only, in the transportation of persons or property for hire between points within this state or from a point within this state and return thereto, is hereby declared to be a common carrier within the meaning and purview of section 7 of article 11 of the Constitution of the State of New Mexico." Section 47-106 of the 1941 Compilation.

"The public safety requiring and the advantages of uniform regulation making it desirable in the interest of aeronautical progress, the state corporation commission is hereby authorized to make, from time to time, regulations concerning such common carriers, and air traffic rules applicable to the operation of all aircraft within this state;" Section 47-107, 1941 Comp.

"No corporation, person, firm, or association, their lessees, trustees, or receivers, appointed by any court whatsoever, shall navigate any aircraft as a common carrier for compensation wholly, or partially within the State of New Mexico without first having obtained from the State Corporation Commission of New Mexico a certificate that public convenience and necessity require the exercise of such right or privilege." II, Rules & Regulations, Corporation Commission.

It is my opinion that common carrier aircraft, operating from an airport, or airports, in the State of New Mexico, and extending its operations outside the State of New Mexico, "from a point in this state and return thereto", delivering or returning a cargo or passengers, comes within the above provisions and is subject to such laws and regulations of the corporation commission.

This opinion does not include interstate aircraft carriers operating on a regular schedule.

By THOS. C. McCARTY,

Asst. Atty. General