

Opinion No. 46-4878

March 14, 1946

BY: C. C. McCULLOH, Attorney General

TO: Eugene Allison, Chairman State Corporation Commission Santa Fe, New Mexico

{*206} Replying to your letter requesting an opinion on the following question:

"We are herewith submitting to you a copy of the Act Regulating Aircraft Common Carriers within the State of New Mexico and the Rules and Regulations promulgated by the State Corporation Commission. Although the matter of Public Convenience and Necessity is not in the law, we desire your opinion if Section 7 (47-107 N.M. S. A.) -- State Corporation Commission may make Rules and Regulations, is broad enough that it gives the State Corporation Commission the power to promulgate a rule as set out under Section 2 -- Aircraft Common Carriers, under the Aviation Rules and Regulations and that this rule is as effective as the law."

For convenience, I have segregated the request into two questions:

1. Does the following section, 47-107, N.M. S. A., give the State Corporation Commission authority to make rules and regulations as set out under rules and regulations No. II (interstate common carriers in regular schedule flights not included).
2. Would a rule or regulation made under Section 47-107 be "as effective" as the law?

"47-107. 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; * * * which said regulations and air traffic rules, so to be made by the state corporation commission, are hereby declared to be necessarily incident to the exercise of its jurisdiction over the common carriers mentioned in section 47-106 of this act."

"47-106. 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."

{*207} State v. Davidson, 33 N.M. 664, at page 671:

"It is a general rule of statutory construction that, where the Legislature imposes specific duties upon an agency of the state for the purpose of accomplishing specific objects, it

thereby confers by implication all powers necessary to the proper discharge of those duties."

Cooley's Constitutional Limitations, Volume I, page 231:

"The legislature cannot delegate its power to make a law; but it can make a law to delegate a power to determine some fact or state of things upon which the law makes, or intends to make, its own action depend, To deny this would be to stop the wheels of government. There are many things upon which wise and useful legislation must depend, which cannot be known to the law-making power, and must, therefore, be a subject of inquiry and determination, outside of the halls of legislation." Agnew, J., in Locke's Appeal, 72 Pa. St. 491, 498.

State v. Darazzo, 118 A. 81, 97 Conn. 728:

"The legislature may delegate to executive agencies power to make regulations governing transportation by motor vehicles for hire, whether as a public or common carrier * * * or to grant such permits on determination of public convenience and necessity;"

Answer to Question 1: It is my opinion that the Corporation Commission was duly authorized to make rules and regulations set out under Section II.

Answer to Question 2: It is my further opinion that if a rule or regulation made under Section 47-107 is reasonable, non-discriminatory and within the purview of the Constitution, Article 11, Section 7, and legislative acts relating thereto, it would be "as effective as the law."

By THOS. C. McCARTY,

Asst. Atty. General