

CHAPTER 65

MOTOR CARRIERS

ARTICLE 1

MOTOR TRANSPORTATION

65-1-1. Short title.

Chapter 65, Articles 1, 3 and 5 NMSA 1978 may be cited as the Motor Transportation Act.

History: 1978 Comp., § 65-1-1, enacted by Laws 1989, ch. 201, § 1.

ANNOTATIONS

Repeals and reenactments. - Laws 1989, ch. 201, § 1 repeals former 65-1-1 NMSA 1978, as amended by Laws 1977, ch. 250, § 98, relating to short title, and enacts the above section, effective July 1, 1989. For provisions of former section, see 1981 Replacement Pamphlet.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 13 Am. Jur. 2d Carriers § 20.

Liability of land carrier to passenger who becomes victim of third party's assault on or about carrier's vehicle or premises, 34 A.L.R.4th 1054.

60 C.J.S. Motor Vehicles §§ 44, 45.

65-1-2. Definitions.

As used in the Motor Transportation Act [Chapter 65, Articles 1, 3 and 5 NMSA 1978]:

A. "combination" means any connected assemblage of a motor vehicle and one or more semitrailers, trailers or semitrailers converted to trailers by means of a converter gear;

B. "combination gross vehicle weight" means the sum total of the gross vehicle weights of all units of a combination;

C. "commercial motor carrier vehicle" means any motor vehicle with a gross vehicle weight of twelve thousand pounds or more used or reserved for use in the transportation of persons or property for hire, compensation or profit or in the furtherance of a commercial enterprise or any vehicle designed, used or maintained primarily for the transportation of property or for drawing other vehicles so designed, used or maintained;

D. "converter gear" means any assemblage of one or more axles with a fifth wheel mounted thereon designed for use in a combination to support the front end of a semitrailer, but not permanently attached thereto. A "converter gear" shall not be considered a vehicle as that term is used in Chapter 66 NMSA 1978, but weight attributable thereto shall be included in declared gross weight;

E. "declared gross weight" means maximum gross vehicle weight or combination gross vehicle weight at which a vehicle or combination will be operated during the registration period as declared by the registrant for registration and fee purposes. The vehicle or combination shall have only one "declared gross weight" for all operating considerations;

F. "department", without modification, means the department of public safety, the secretary of public safety or any employee of the department exercising authority lawfully delegated to that employee by the secretary;

G. "director" means the secretary;

H. "division" means the motor transportation division of the department;

I. "evidence of registration" means any documentation issued by the taxation and revenue department identifying a motor carrier vehicle as being registered with New Mexico or documentation issued by another state pursuant to the terms of a multistate agreement on registration of vehicles to which this state is a party identifying a motor carrier vehicle as being registered with that state; provided that evidence of payment of the weight distance tax and permits obtained under either the Special Fuels Supplier Tax Act [Chapter 7, Article 16A NMSA 1978] or Trip Tax Act [Chapter 7, Article 15 NMSA 1978] are not "evidence of registration";

J. "field enforcement" or "in the field" means patrolling of the highway, stopping of commercial motor carrier vehicles or establishing ports of entry and roadblocks for the purpose of checking motor carriers and includes similar activities;

K. "freight trailer" means any trailer, semitrailer or pole trailer drawn by a truck tractor or road tractor and any trailer, semitrailer or pole trailer drawn by a truck that has a gross vehicle weight of more than twenty-six thousand pounds, but the term does not include house trailers, trailers of less than one-ton carrying capacity used to transport animals or fertilizer trailers of less than three thousand five hundred pounds empty weight;

L. "gross vehicle weight" means the weight of a vehicle without load plus the weight of any load thereon;

M. "motor carrier" means any person or firm that owns, controls, operates or manages any motor vehicle with gross vehicle weight of twelve thousand pounds or more that is used to transport persons or property on the public highways of this state;

N. "motor vehicle" means any vehicle or device that is propelled by an internal combustion engine or electric motor power that is used or may be used on the public highways for the purpose of transporting persons or property and includes any connected trailer or semitrailer;

O. "one-way rental fleet" means two or more vehicles each having a gross vehicle weight of under twenty-six thousand one pounds and rented to the public without a driver;

P. "person" means any individual, estate, trust, receiver, cooperative association, club, corporation, company, firm, partnership, joint venture, syndicate or other association; "person" also means, to the extent permitted by law, any federal, state or other governmental unit or subdivision or an agency, department or instrumentality thereof; "person" also includes an officer or employee of a corporation, a member or employee of a partnership or any individual who, as such, is under a duty to perform any act in respect of which a violation occurs;

Q. "properly registered" means bearing the lawfully issued and currently valid evidence of registration of this or another jurisdiction, regardless of the owner's residence, except in those cases where the evidence has been procured by misrepresentation or fraud;

R. "public highway" means every way or place generally open to the use of the public as a matter of right for the purpose of vehicular travel, even though it may be temporarily closed or restricted for the purpose of construction, maintenance, repair or reconstruction;

S. "secretary" means the secretary of public safety and, except for the purposes of 65-1-33 NMSA 1978, also includes the deputy secretary and any division director delegated by the secretary;

T. "state" or "jurisdiction" means a state, territory or possession of the United States, the District of Columbia, the commonwealth of Puerto Rico, a foreign country or a state or province of a foreign country; and

U. "utility trailer" means any trailer, semitrailer or pole trailer and includes house trailers that exceed neither eight feet in width nor forty feet in length, but does not include freight trailers, trailers of less than one-ton carrying capacity used to transport animals or fertilizer trailers of less than three thousand five hundred pounds empty weight.

History: 1953 Comp., § 64-34-2, enacted by Laws 1978, ch. 19, § 1; 1987, ch. 268, § 11; 1992, ch. 106, § 1; 1993, ch. 294, § 1; 1998 (1st S.S.), ch. 10, § 4.

ANNOTATIONS

Repeals and reenactments. - Laws 1978, ch. 19, § 1, repealed 64-34-2, 1953 Comp. (former 65-1-2 NMSA 1978), relating to definitions in the Motor Transportation Act, and enacted a new 65-1-2 NMSA 1978.

The 1992 amendment, effective July 1, 1992, substituted "gross vehicle weight" for "gross weight" and twice deleted "or merchandise" following "property" in Subsection C; rewrote Subsection F, which formerly read: " 'department' means the taxation and revenue department"; substituted "secretary" for "head of the division" in Subsection G; rewrote Subsection H, which formerly read: " 'division' means the motor transportation division of the taxation and revenue department"; added present Subsection I; redesignated former Subsection I as present Subsection J, while inserting "stopping of commercial motor carrier vehicles" therein; added present Subsection K; redesignated former Subsections J through M as present Subsections L through O; added present Subsections P through S; redesignated former Subsections N through Q as present Subsections T through W; substituted all of the present language of Subsection U beginning with "secretary of taxation and revenue" for "head of the taxation and revenue department"; and made minor stylistic changes throughout the section.

The 1993 amendment, effective July 1, 1993, substituted "Sections 65-1-10 and 65-1-33 NMSA 1978" for "Section 65-1-33 NMSA 1978" in Subsection U.

The 1998 amendment, effective July 1, 1998, substituted "department of public safety" and "secretary of public safety" for "taxation and revenue department" and "secretary of taxation and revenue" in Subsection F; rewrote Subsection H, which read: "'division' or 'motor transportation division' means the department;"; inserted "taxation and revenue" near the beginning of Subsection I; deleted former Subsection K, relating to the definition of "fleet", and redesignated former Subsections L through Q as K through P; deleted former Subsection R, relating to the definition of "preceding year", and redesignated former Subsections S through W as Q through U; and in present Subsection S, substituted "public safety" for "taxation and revenue", and deleted "Sections 65-1-10 and" preceding "65-1-33".

Appropriations. - Laws 1998 (1st S.S.), ch. 10, § 12, effective July 1, 1998, appropriates \$1,200,000 from the general fund and \$2,070,000 from the state road fund to the department of public safety for expenditure in fiscal year 1999 to carry out the provisions of that act. Any unexpended or unencumbered balances remaining at the end of fiscal year 1999 shall revert to the general fund.

Compiler's notes. - Section 65-1-10 NMSA 1978, referred to in this section, was repealed in 1995. For similar provisions, see 9-11-6.2 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 60 C.J.S. Motor Vehicles §§ 4, 7(2), 46.

65-1-3. Public policy.

It is the public policy of New Mexico to provide for fair and impartial enforcement of the motor transportation regulation and taxation laws of this state, and to promote safe, adequate, economical and efficient motor carrier service for the public benefit, without discrimination, preference, advantage or unfair competitive practices between carriers.

History: 1953 Comp., § 64-34-4, enacted by Laws 1967, ch. 97, § 4.

65-1-4, 65-1-5. Repealed.

ANNOTATIONS

Repeals. - Laws 1992, ch. 106, § 23 repeals 65-1-4 and 65-1-5 NMSA 1978, as amended by Laws 1987, ch. 268, §§ 12 and 13, relating to director of the motor transportation division and to organization of the division, effective July 1, 1992. For provisions of former sections, see 1990 Replacement Pamphlet.

65-1-6. Field enforcement of Motor Carrier Act and regulations.

The department has the authority to:

A. enforce in the field the provisions of the Motor Carrier Act [Chapter 65, Article 2 NMSA 1978] and the regulations promulgated by the state corporation commission or the public regulation commission pursuant to that act; and

B. maintain sufficient personnel in the field to enforce the provisions of the Motor Carrier Act and the regulations promulgated by the state corporation commission or the public regulation commission pursuant to that act.

History: 1953 Comp., § 64-34-8, enacted by Laws 1967, ch. 97, § 8; 1977, ch. 250, § 104; 1989, ch. 319, § 1; 1992, ch. 106, § 2; 1998 (1st S.S.), ch. 10, § 5.

ANNOTATIONS

Cross references. - For references to state corporation commission being construed as references to the public regulation commission, see 8-8-21 NMSA 1978.

The 1989 amendment, effective July 1, 1989, in the introductory language, deleted "motor transportation" preceding "division"; and in Subsections A and B, substituted "the Motor Carrier Act" for "Sections 64-27-1 through 64-27-81 NMSA 1953" and "pursuant to that act" for "thereunder" and inserted "state" preceding "corporation commission".

The 1992 amendment, effective July 1, 1992, substituted the present section catchline for "Field enforcement of motor carrier regulations" and made minor stylistic changes throughout the section.

The 1998 amendment, effective July 1, 1998, inserted "or the public regulation commission" in Subsections A and B.

Appropriations. - Laws 1998 (1st S.S.), ch. 10, § 12, effective July 1, 1998, appropriates \$1,200,000 from the general fund and \$2,070,000 from the state road fund to the department of public safety for expenditure in fiscal year 1999 to carry out the provisions of that act. Any unexpended or unencumbered balances remaining at the end of fiscal year 1999 shall revert to the general fund.

No authority to enforce Criminal Code. - Department inspectors may not make arrests under and otherwise enforce the Criminal Code. These inspectors have no statutory authority to make arrests for any offenses not specified in the Motor Carrier Act and other laws regulating commercial vehicles or enforcing state taxes or fees. 1992 Op. Att'y Gen. No. 92-02.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 64 Am. Jur. 2d Public Utilities § 232.

60 C.J.S. Motor Vehicles § 45.

65-1-7. Enforcement employees of division are police officers.

The enforcement employees of the division designated by the director of the division are police officers as defined in Section 29-7-7 NMSA 1978.

History: 1978 Comp., § 65-1-7, enacted by Laws 1998 (1st S.S.), ch. 10, § 6.

ANNOTATIONS

Cross references. - For police powers of state corporation commission (now public regulation commission) inspectors, see 65-2-114 NMSA 1978.

The 1992 amendment, effective July 1, 1992, substituted the present section catchline for "Motor transportation division inspectors; powers" and rewrote this section, which formerly read: "The inspectors designated by the motor transportation division have all the powers of peace officers in all cities, towns, villages and counties in New Mexico with respect to any law or regulation which the motor transportation division is empowered to administer or enforce".

The 1993 amendment, effective July 1, 1993, added the second sentence.

Repeals and reenactments. - Laws 1998 (1st S.S.), ch. 10, § 6, effective July 1, 1998, repealed former 65-1-7 NMSA 1978, as enacted by Laws 1967, ch. 97, § 9, and as last amended by Laws 1993, ch. 294, § 2, relating to police powers of enforcement employees, and enacts the above section.

Effective dates. - Laws 1998, (1st S.S.), ch. 10, §§ 13 and 14 make the act effective July 1, 1998.

Appropriations. - Laws 1998 (1st S.S.), ch. 10, § 12, effective July 1, 1998, appropriates \$1,200,000 from the general fund and \$2,070,000 from the state road fund to the department of public safety for expenditure in fiscal year 1999 to carry out the provisions of that act. Any unexpended or unencumbered balances remaining at the end of fiscal year 1999 shall revert to the general fund.

Invalid stopping of vehicles. - Motor transportation division officer's stop of a rental truck was not made at a port of entry and was invalid, where the officer had not set out any signs or other indication to vehicle drivers that they would be required to stop, had stopped vehicles randomly and at his own discretion, and had chosen his own schedule of where to patrol, as opposed to his supervisor making the decision. *State v. Clark*, 112 N.M. 500, 816 P.2d 1122 (Ct. App. 1991).

Comparison to powers of peace officers. - This section does not grant motor transportation inspectors more power than other peace officers. *State v. Clark*, 112 N.M. 500, 816 P.2d 1122 (Ct. App. 1991).

No authority to enforce Criminal Code. - Division inspectors may not make arrests under and otherwise enforce the Criminal Code. These inspectors have no statutory authority to make arrests for any offenses not specified in the Motor Carrier Act and other laws regulating commercial vehicles or enforcing state taxes or fees. 1992 Op. Att'y Gen. No. 92-02.

Attendance at law enforcement academy. - Inspectors of the motor transportation division of the New Mexico department of transportation are required to attend a New Mexico law enforcement academy approved course and receive certification from the academy. 1987 Op. Att'y Gen. No. 87-25.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 60 C.J.S. Motor Vehicles § 44.

65-1-8. Repealed.

ANNOTATIONS

Repeals. - Laws 1992, ch. 106, § 23 repeals 65-1-8 NMSA 1978, as amended by Laws 1977, ch. 250, § 106, relating to bonding of division employees, effective July 1, 1992. For provisions of former section, see 1990 Replacement Pamphlet.

65-1-9. Department to enforce laws.

The department shall enforce and collect all excise taxes, license fees and other fees and charges of every nature and perform all inspections and collect all information considered necessary to enforce the laws of all departments, commissions and other

agencies of state government, in addition to those specifically assigned to the department, whenever the department is so requested and agrees and the agreement is in writing containing all reasonable detail concerning the responsibilities of the parties to the agreement. The department shall also assist, as far as practicable and in accordance with a proper written agreement, in the enforcement of statutory, administrative and judicial provisions of the federal Motor Carrier Act.

History: 1953 Comp., § 64-34-11, enacted by Laws 1967, ch. 97, § 11; 1977, ch. 250, § 107; 1992, ch. 106, § 4; 1998 (1st S.S.), ch. 10, § 7.

ANNOTATIONS

The 1992 amendment, effective July 1, 1992, substituted "Department" for "Division" in the section catchline; and substituted "department" for "division" several times throughout the section.

The 1998 amendment, effective July 1, 1998, deleted "by law" following "assigned" near the middle of the first sentence, and deleted the former last sentence, which read: "Enforcement employees of the department shall be considered to have the same powers as the enforcement officers of the department, commission or other agency having the primary responsibility."

Appropriations. - Laws 1998 (1st S.S.), ch. 10, § 12, effective July 1, 1998, appropriates \$1,200,000 from the general fund and \$2,070,000 from the state road fund to the department of public safety for expenditure in fiscal year 1999 to carry out the provisions of that act. Any unexpended or unencumbered balances remaining at the end of fiscal year 1999 shall revert to the general fund.

Motor Carrier Act. - The federal Motor Carrier Act (part II of the Interstate Commerce Act) was compiled as 49 U.S.C. App. §§ 301 to 327, before being repealed in 1978 and 1983.

Appointment of division inspectors to enforce Motor Vehicle Code. - Although motor transportation division (MTD) statutes do not specifically grant MTD inspectors authority to enforce traffic laws against noncommercial drivers and vehicles, the Motor Vehicle Code, 66-1-1 to 66-8-140 NMSA 1978, allows the director of the motor vehicle division to appoint MTD inspectors to assist him in the enforcement of the Motor Vehicle Code. 1992 Op. Att'y Gen. No. 92-02.

65-1-10. Repealed.

ANNOTATIONS

Repeals. - Laws 1995, ch. 31, § 7 repeals 65-1-10 NMSA 1978, as amended by Laws 1933, ch. 294, § 3, relating to issuance of regulations, rulings, instructions and orders by

the secretary, effective July 1, 1995. For provisions of the former section, see the 1993 Cumulative Supplement. For present comparable provisions, see 9-11-6.2 NMSA 1978.

65-1-11. Ports of entry.

The department shall designate the main highways upon which motor carriers shall enter and leave the state and shall designate stations or establish places, either temporary or permanent, where inspection, registration and permit services shall be maintained. The state highway and transportation department shall provide the necessary right-of-way, approach roads, ramps and other road facilities required by the department for places established after June 17, 1967.

History: 1953 Comp., § 64-34-13, enacted by Laws 1967, ch. 97, § 13; 1977, ch. 250, § 109; 1987, ch. 268, § 15; 1992, ch. 106, § 5.

ANNOTATIONS

Cross references. - For vehicles entering or leaving state, to stop at registration places, see 65-5-1 to 65-5-3 NMSA 1978.

The 1992 amendment, effective July 1, 1992, twice substituted "department" for "division"; and substituted "June 17, 1967" for "the effective date of this section, unless the governor certifies in writing that the location selected will result in an intolerable traffic hazard" at the end of the second sentence.

Legal stop ripening into illegal arrest. - Although initial stop of commercial truck was legal under New Mexico's inspection statutes, the stop ripened into an unlawful de facto arrest when, without probable cause, officer required the driver to wait an hour; the illegality of the arrest vitiated driver's subsequent consent to the search of his truck, and rendered stolen motorcycles which were found inadmissible under the exclusionary rule. *State v. Jutte*, 1998-NMCA-150, 126 N.M. 244, 968 P.2d 334, cert. denied, 126 N.M. 533, 972 P.2d 352 (1998).

Invalid stopping of vehicles. - Motor transportation division officer's stop of a rental truck was not made at a port of entry and was invalid, where the officer had not set out any signs or other indication to vehicle drivers that they would be required to stop, had stopped vehicles randomly and at his own discretion, and had chosen his own schedule of where to patrol, as opposed to his supervisor making the decision. *State v. Clark*, 112 N.M. 500, 816 P.2d 1122 (Ct. App. 1991).

65-1-12. Recompiled.

ANNOTATIONS

Recompilations. - Laws 1998 (1st S.S.), ch. 10, § 10, recompiles former 65-1-12 NMSA 1978, relating to motor carriers required to register with the department, as 66-3-1.1 NMSA 1978, effective July 1, 1998.

65-1-12.1. Recompiled.

ANNOTATIONS

Recompilations. - Laws 1998 (1st S.S.), ch. 10, § 10, recompiles former 65-1-12.1 NMSA 1978, relating to tax identification card, as 66-3-3.1 NMSA 1978, effective July 1, 1998.

65-1-13 to 65-1-22. Recompiled.

ANNOTATIONS

Recompilations. - Laws 1998 (1st S.S.), ch. 10, § 10, recompiles former 65-1-13 through 65-1-22 NMSA 1978, relating to proportional registration of fleets, registration of additional motor vehicles, withdrawal of fleet motor vehicles, preservation of proportional registration records, estimated mileage of new fleets, denial of fleet registration, relationship to other state laws, and nonexclusivity of proportional registration, as 66-3-2.1 through 66-3-2.10 NMSA 1978, respectively, effective July 1, 1998.

65-1-23. Repealed.

ANNOTATIONS

Repeals. - Laws 1992, ch. 106, § 23 repeals 65-1-23 NMSA 1978, as amended by Laws 1988, ch. 24, § 6, relating to definitions concerning proportional registration, effective July 1, 1992. For provisions of former section, see 1990 Replacement Pamphlet.

65-1-24. Recompiled.

ANNOTATIONS

Recompilations. - Laws 1998 (1st S.S.), ch. 10, § 10, recompiles former 65-1-24 NMSA 1978, relating to allocation registration, one-way rental fleet vehicles, allocation of vehicles, fee, and identification, as 66-3-2.11 NMSA 1978, effective July 1, 1998.

65-1-25. Repealed.

ANNOTATIONS

Repeals. - Laws 1992, ch. 106, § 23 repeals 65-1-25 NMSA 1978, as amended by Laws 1977, ch. 250, § 118, relating to exemption of certain motor carriers, effective July 1, 1992. For provisions of former section, see 1990 Replacement Pamphlet.

65-1-25.1. Reserved.

65-1-25.2. Recompiled.

ANNOTATIONS

Recompilations. - Laws 1998 (1st S.S.), ch. 10, § 10, recompiles former 65-1-25.2 NMSA 1978, relating to intrastate livestock haulers, as 66-3-29 NMSA 1978, effective July 1, 1998.

65-1-26. Documents; required in each commercial motor carrier vehicle; detention of vehicles.

A. Every commercial motor carrier vehicle operated on any New Mexico public highway by a motor carrier required to be registered with the department shall have in it at all times:

(1) proof of payment of the trip tax; or

(2) both evidence of registration and a tax identification card issued by the department.

B. The driver of the vehicle must be able to display either proof of payment of the trip tax or both the evidence of registration and the tax identification card upon request by any law enforcement officer or any employee of the department.

C. Upon failure of the driver to display either proof of payment of the trip tax or evidence of registration, it shall be presumed that the vehicle is subject to registration under the laws of New Mexico unless it can be demonstrated that the vehicle is exempt from registration requirements of the Motor Vehicle Code. A vehicle presumed subject to registration may be detained until registration, including payment of all required fees, is completed.

D. Upon failure of the driver to display either proof of payment of the trip tax or a tax identification card issued by the department, the trip tax shall be presumed due. A vehicle presumed subject to the trip tax may be detained until the trip tax is paid.

History: 1953 Comp., § 64-34-16, enacted by Laws 1967, ch. 97, § 16; 1969, ch. 19, § 2; 1972, ch. 7, § 45; 1977, ch. 250, § 119; 1988, ch. 24, § 8; 1990, ch. 21, § 1; 1992, ch. 106, § 9.

ANNOTATIONS

The 1990 amendment, effective July 1, 1990, substituted "Documents" for "Cab cards" in the catchline; designated the former section as Subsection A; in Subsection A, rewrote the first sentence following "registered" which read "with the division shall have in it at all times an identification card, issued by the division, known as a 'cab card' ", substituted "tax identification card" for "cab card" and "motor vehicle division" for "division" in the second sentence, deleted the former third sentence which read "The cab card shall include all information necessary for use as a user permit under the provisions of Section 7-16-6 NMSA 1978", and substituted " 'evidence of registration' " for " 'cab card' " in the present third sentence; and added Subsection B.

The 1992 amendment, effective July 1, 1992, substituted the present section catchline for "Documents; required in each motor carrier vehicle"; rewrote Subsection A; inserted "either proof of payment of the trip tax or" in Subsection B; and added Subsections C and D.

Motor Vehicle Code. - See 66-1-1 NMSA 1978 and notes thereto.

65-1-27. Hearings; attendance.

The secretary or the secretary's representative may attend all hearings held by the state corporation commission [public regulation commission] concerning motor transportation. The state corporation commission [public regulation commission] shall notify the secretary of all such hearings, and the department is declared to be an interested party and as such may present any evidence pertaining to matters under consideration by the commission. The state corporation commission [public regulation commission] shall send copies of all orders entered by the commission in motor transportation matters to the department.

History: 1953 Comp., § 64-34-17, enacted by Laws 1967, ch. 97, § 17; 1977, ch. 250, § 120; 1992, ch. 106, § 10.

ANNOTATIONS

Cross references. - For hearings before state corporation commission (now public regulation commission), see 65-2-106 NMSA 1978.

For references to state corporation commission being construed as references to the public regulation commission, see 8-8-21 NMSA 1978.

Bracketed material. - The bracketed material in this section was inserted by the compiler. It was not enacted by the legislature and is not part of the law.

The 1992 amendment, effective July 1, 1992, substituted "secretary or the secretary's representative" for "director or his designated representative" in the first sentence; substituted "secretary" for "motor transportation director" and "department is declared" for "division is hereby declared" in the second sentence; substituted "department" for

"motor transportation division" in the last sentence; and substituted "state corporation commission" for "corporation commission" several times throughout the section.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 64 Am. Jur. 2d Public Utilities §§ 264, 266.

73B C.J.S. Public Utilities §§ 44, 50, 79, 87.

65-1-28. Payment by credit card; optional services; fees; appropriations.

A. Notwithstanding any other provision of law, the department is authorized to enter into agreements with financial institutions and credit card companies under which the department may accept payment by credit card from motor carriers of the taxes, fees or other charges due pursuant to the Motor Transportation Act [Chapter 65, Articles 1, 3 and 5 NMSA 1978], Motor Vehicle Code, Trip Tax Act [Chapter 7, Article 15 NMSA 1978], Special Fuels Tax Act or Weight Distance Tax Act [Chapter 7, Article 15A NMSA 1978]. Any fee payable to the financial institution or credit card company for a payment by credit card authorized under this section may be deducted from the proceeds of the taxes, fees or other charges paid on a pro-rata basis prior to any other distribution of the proceeds required by law. The necessary portion of the proceeds of the taxes, fees and other charges collected under this subsection is hereby appropriated for the purpose of paying the fee payable to the financial institution or credit card company.

B. The secretary is authorized to establish by regulation fees to cover the expense of providing additional services for the convenience of the motoring public. Any service established for which a fee is adopted under this section shall be optional, with the fee not being charged to any person not taking advantage of the service. Amounts collected pursuant to this subsection are appropriated to the department for the purpose of defraying the expense of providing the service.

History: 1978 Comp., § 65-1-28, enacted by Laws 1987, ch. 128, § 1; 1992, ch. 106, § 11.

ANNOTATIONS

Cross references. - For provisions regarding payment in foreign currency, see 66-6-36 NMSA 1978.

The 1992 amendment, effective July 1, 1992, substituted the present section catchline for "Optional services; fees; appropriations"; added Subsection A; designated the formerly undesignated provisions as Subsection B; and, in Subsection B, substituted "secretary" for "director" in the first sentence and substituted "subsection" for "section" and "department" for "division" in the last sentence.

Compiler's notes. - The Special Fuels Tax Act, referred to in Subsection A, appeared as 7-16-1 to 7-16-26 NMSA 1978 before being repealed by Laws 1992, ch. 51, § 23, effective January 1, 1993. For present comparable provisions, see Chapter 7, Article 16A NMSA 1978.

Motor Vehicle Code. - See 66-1-1 NMSA 1978 and notes thereto.

65-1-28.1. Special methods of payment.

The department may require the motor carriers specified in this section to make payment of taxes, fees and other charges due under the Motor Transportation Act [Chapter 65, Articles 1, 3 and 5 NMSA 1978], Motor Vehicle Code, Trip Tax Act [Chapter 7, Article 15 NMSA 1978], Special Fuels Tax Act or Weight Distance Tax Act [Chapter 7, Article 15A NMSA 1978] by credit card, certified check or other method of guaranteed payment. The provisions of this section apply to any motor carrier whose check in payment of any amount due under any act administered by the department has been dishonored upon presentment on two or more occasions within the previous two years.

History: 1978 Comp., § 65-1-28.1, enacted by Laws 1992, ch. 106, § 12.

ANNOTATIONS

Compiler's notes. - The Special Fuels Tax Act, referred to in this section, appeared as 7-16-1 to 7-16-26 NMSA 1978 before being repealed by Laws 1992, ch. 51, § 23, effective January 1, 1993. For present comparable provisions, see Chapter 7, Article 16A NMSA 1978.

Motor Vehicle Code. - See 66-1-1 NMSA 1978 and notes thereto.

65-1-29. Disposition of certain money collected.

All money collected by the department as agent for any other department, commission or agency of state government shall forthwith be remitted to them and by them distributed in the same manner as all other collections for the same items under their respective laws.

All money collected by the department for other jurisdictions shall forthwith be remitted to them.

History: 1953 Comp., § 64-34-19, enacted by Laws 1967, ch. 97, § 19; 1969, ch. 17, § 3; 1976, ch. 13, § 1; 1977, ch. 250, § 122; 1992, ch. 106, § 13.

ANNOTATIONS

The 1992 amendment, effective July 1, 1992, rewrote this section to the extent that a detailed comparison would be impracticable.

65-1-29.1. Receipts; disbursements.

Money collected under the Motor Transportation Act [Chapter 65, Article 2 NMSA 1978] shall be paid to the state treasurer for the credit of the motor vehicle suspense fund not later than the close of the second business day after their [its] receipt. At the same time, the department shall deliver to the taxation and revenue department documentation sufficient to make refunds, distributions and other disbursements of the money paid into the fund by the department.

History: Laws 1998 (1st S.S.), ch. 10, § 8.

ANNOTATIONS

Bracketed material. - The bracketed material in this section was inserted by the compiler. It was not enacted by the legislature and is not part of the law.

Effective dates. - Laws 1998 (1st S.S.), ch. 10, §§ 13 and 14 make the act effective July 1, 1998.

Appropriations. - Laws 1998 (1st S.S.), ch. 10, § 12, effective July 1, 1998, appropriates \$1,200,000 from the general fund and \$2,070,000 from the state road fund to the department of public safety for expenditure in fiscal year 1999 to carry out the provisions of that act. Any unexpended or unencumbered balances remaining at the end of fiscal year 1999 shall revert to the general fund.

65-1-30. Reciprocity commission; saving clause; transfer of records.

All current valid agreements entered into with other states by the commission created for the purpose of representing New Mexico in the matter of making reciprocal agreements relating to the operation of motor vehicles shall continue in effect according to their terms until such time as they are otherwise acted upon by the reciprocity commission created by the Motor Transportation Act [Chapter 65, Articles 1, 3 and 5 NMSA 1978]. All records and property of the commission are transferred to the reciprocity commission.

History: 1953 Comp., § 64-34-21, enacted by Laws 1967, ch. 97, § 40.

ANNOTATIONS

Meaning of "commission". - The commission referred to in the first and last sentences was established by Laws 1947, ch. 56, § 1, and differed from the reciprocity commission; it was repealed by Laws 1967, ch. 97, § 22.

65-1-31. Repealed.

ANNOTATIONS

Repeals. - Laws 1989, ch. 319, § 15 repeals 65-1-31 NMSA 1978, as amended by Laws 1977, ch. 250, § 123, relating to members, terms and duties of the reciprocity commission, effective July 1, 1989. For provisions of former section, see 1981 Replacement Pamphlet.

65-1-32. Reciprocity policy.

It is the policy of New Mexico to grant to vehicles properly registered or licensed in another jurisdiction, while engaged in interstate commerce in New Mexico, exemption from all or part of the fees, taxes or compensation required for unusual use of the highways and exemption from all or part of the requirements for the display of registration numbers, compensation permits or other numbers or permits. As a condition for application of this policy, however, it is required that vehicles properly registered in New Mexico, while engaged in interstate commerce in the other jurisdictions, be granted like privileges or exemptions to those which New Mexico extends to vehicles properly registered or licensed in the other jurisdiction.

History: 1953 Comp., § 64-34-21.2, enacted by Laws 1972, ch. 7, § 47; 1989, ch. 319, § 2.

ANNOTATIONS

Repeals and reenactments. - Laws 1972, ch. 7, § 47, repealed Laws 1947, ch. 56, § 2, compiled as former 64-12-2, 1953 Comp., relating to the policy for reciprocal agreements and proportional registration privileges, and enacted a new 65-1-32 NMSA 1978.

The 1989 amendment, effective July 1, 1989, in the first sentence, inserted "and" preceding "exemption" and, in the second sentence, inserted "As a condition for application of this policy, however", deleted "however" following "required", and substituted "be granted" for "are granted".

Am. Jur. 2d, A.L.R. and C.J.S. references. - 15A C.J.S. Conflict of Laws § 5.

65-1-32.1. Reciprocity.

The director shall extend to qualified motor vehicle fleets from states with which New Mexico has reciprocal agreements the privilege of either full reciprocity or proportional registration, as appropriate, of such motor vehicles engaged in interstate commerce in this state.

History: 1978 Comp., § 65-1-32.1, enacted by Laws 1989, ch. 319, § 3.

65-1-33. Negotiation of reciprocal agreements; proportional registration rules.

A. The secretary shall enter into agreements with the authorities of other jurisdictions to carry out the policy stated in Section 65-1-32 NMSA 1978. The secretary shall negotiate and perfect such agreements.

B. The secretary may enter into agreements with other jurisdictions on behalf of this state relating to proportional registration under the Motor Transportation Act [Chapter 65, Articles 1, 3 and 5 NMSA 1978] for the purpose of facilitating the administration of that act, including arrangements or agreements with other jurisdictions for exchange of information for audit and enforcement activities in connection with proportional registration.

C. The director, in accordance with the provisions of Section 65-1-10 NMSA 1978, may prescribe rules and regulations necessary to effectuate and administer the proportional registration of vehicles, which registration is subject to the rights, terms and conditions granted or contained in any applicable agreement made under the authority of Subsection B of this section.

D. In the absence of an agreement or arrangement with an other jurisdiction, the director, with the approval of the secretary, may examine the laws and requirements of such jurisdiction and declare the extent and nature of exemptions, benefits and privileges to be extended to vehicles properly registered or licensed in the other jurisdiction or to the owners of the vehicles which, in the judgment of the director, are in the best interest of this state and its citizens, and all of the same shall be determined on the basis and recognition of the benefits which accrue to the economy of this state from the uninterrupted flow of commerce.

E. Reciprocity shall not exist for fleet vehicles between this state and another jurisdiction which has adopted proportional registration for vehicles subject to this section.

History: 1953 Comp., § 64-34-21.3, enacted by Laws 1972, ch. 7, § 48; 1977, ch. 250, § 124; 1989, ch. 319, § 4.

ANNOTATIONS

Repeals and reenactments. - Laws 1972, ch. 7, § 48, repealed Laws 1947, ch. 56, § 3, compiled as former 64-12-3, 1953 Comp., relating to the negotiation and reciprocal agreements and providing for proportional registration privileges, and enacted a new 65-1-33 NMSA 1978.

The 1989 amendment, effective July 1, 1989, substituted references to the secretary for references to the reciprocity commission and deleted "motor transportation" preceding "director" throughout the section; in Subsection A, substituted "Section 65-1-32 NMSA 1978" for "Section 64-34-21.2 NMSA 1953"; in Subsection C, inserted "in

accordance with the provisions of Section 65-1-10 NMSA 1978"; in Subsection E, substituted "for fleet vehicles" for "for fleets of two or more vehicles" and "subject to this section" for "subject to Sections 64-34-21.1 through 64-34-21.3 NMSA 1953"; and made minor stylistic changes.

Compiler's notes. - Section 65-1-10 NMSA 1978, referred to in this section, was repealed in 1995. For similar provisions, see 9-11-6.2 NMSA 1978.

The annotations appearing below are taken from opinions rendered under former law.

Reciprocity statute constitutional. - That the reciprocity statute in force in the state of New Mexico is constitutional is answered by the following quotation from 11 Am. Jur., § 220, p. 931, which reads as follows: ". . . [I]n most jurisdictions such retaliatory legislation has been sustained and held not to be an improper delegation of legislative authority. Similarly, no invalid delegation is involved in making an exemption on foreign motor vehicles, provided similar exemption is accorded to vehicles by the enacting state in which the foreign-owned vehicles are registered, such exemption to be contingent upon the making of an agreement for such reciprocal exemption between the local secretary of state and the proper officer of the other state . . ." 1961-62 Op. Att'y Gen. No. 61-76.

Domicile not considered in prorating fleets. - The question of domicile cannot legally be a consideration in the determination of what fleets should be prorated and what fleets should not be prorated. 1961-62 Op. Att'y Gen. No. 61-76.

Formula for payment of vehicle registration. - The practice of the motor vehicle division and the reciprocity commission has been to require payment for registration of vehicles based on the mathematical formula of : in-state miles x total fleet fees total miles. 1961-62 Op. Att'y Gen. No. 61-76.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 7A Am. Jur. 2d Automobiles and Highway Traffic § 82; 13 Am. Jur. 2d Carriers § 228.

65-1-34. Repealed.

ANNOTATIONS

Repeals. - Laws 1992, ch. 106, § 23 repeals 65-1-34 NMSA 1978, as amended by Laws 1977, ch. 250, § 127, relating to assistance to carriers and motor vehicle division, effective July 1, 1992. For provisions of former section, see 1990 Replacement Pamphlet.

65-1-35. Duplicate records.

If the motor transportation division in carrying out any of the powers and duties granted or imposed on it by the Motor Transportation Act needs duplicates of any records not

transferred to it by this act, all departments, agencies and commissions of this state shall, upon request, make the records available to the division for copying.

History: 1953 Comp., § 64-34-25, enacted by Laws 1967, ch. 97, § 44; 1977, ch. 250, § 128.

65-1-36. Penalty for violations of act.

A. Violation of Section 65-1-12 or 65-5-2 NMSA 1978 is a misdemeanor punishable by a fine of not less than one hundred dollars (\$100) or more than five hundred dollars (\$500) or imprisonment not exceeding ninety days or by both the fine and imprisonment.

B. Violation of any section of the Motor Transportation Act [Chapter 65, Articles 1, 3 and 5 NMSA 1978] other than a violation of Section 65-1-12, 65-1-26, 65-1-36.1 or 65-5-2 NMSA 1978 or of the Motor Carrier Safety Act [65-3-1 to 65-3-13 NMSA 1978] is a misdemeanor punishable by a fine of not more than one hundred dollars (\$100) or by imprisonment not exceeding thirty days or by both the fine and imprisonment or is subject to the penalty assessment and fee provisions pursuant to Sections 66-8-116 through 66-8-116.3 NMSA 1978.

C. The payment of a fine under the provisions of any act under the jurisdiction of the department pursuant to the Motor Transportation Act shall not relieve the offender from the payment of any fees or taxes or from any other of the provisions of the Motor Transportation Act.

D. The department may also, for the proper enforcement of the duties imposed upon the department pursuant to the Motor Transportation Act, detain any motor vehicle whose operator or owner is in violation of any law the department is empowered under the Motor Transportation Act to administer or enforce.

History: 1953 Comp., § 64-34-27, enacted by Laws 1978, ch. 16, § 1; 1989, ch. 319, § 5; 1992, ch. 106, § 14.

ANNOTATIONS

Repeals and reenactments. - Laws 1978, ch. 16, § 1, repealed 64-34-27, 1953 Comp. (former 65-1-36 NMSA 1978), relating to penalty for violations, and enacted a new 65-1-36 NMSA 1978.

The 1989 amendment, effective July 1, 1989, in Subsections A and B, substituted "Section 65-1-12 NMSA 1978" for "Section 64-34-14 NMSA 1953"; in Subsection B, inserted "or is subject to the penalty assessment provisions pursuant to Section 66-8-116 NMSA 1978"; in Subsection C, deleted "motor transportation" preceding "division"; and, in Subsection D, substituted "violation of any law that the division is empowered to administer or enforce" for "violation of the Motor Transportation Act"; and made minor stylistic changes.

The 1992 amendment, effective July 1, 1992, inserted "or 65-5-2", and substituted "the fine" for "such fine" in Subsection A; rewrote Subsection B; substituted "department pursuant to the Motor Transportation Act" for "division" in Subsection C; and, in Subsection D, substituted "Department" for "division" near the beginning of the subsection, substituted "department pursuant to the Motor Transportation Act" for "division" near the middle of the section, and substituted "department is empowered under the Motor Transportation Act" for "division is empowered" near the end of the subsection.

Jurisdiction of magistrate court. - Section 35-3-4 NMSA 1978, prior to its 1973 amendment, did not give magistrate courts jurisdiction to try cases arising out of violations of the Motor Transportation Act. 1969 Op. Att'y Gen. No. 69-53 (opinion rendered under former law).

Am. Jur. 2d, A.L.R. and C.J.S. references. - Am. Jur. 2d Automobiles and Highway Traffic §§ 312 to 346.

60 C.J.S. Motor Vehicles § 135.

65-1-36.1. Civil penalty for bad checks.

If any payment required pursuant to the Motor Transportation Act [Chapter 65, Articles 1, 3 and 5 NMSA 1978] is attempted to be made by check that is not paid upon presentment, such dishonor is presumptive of negligence. The penalty for such dishonor shall be not less than ten dollars (\$10.00). This penalty is in addition to any other penalty imposed under any other law.

History: 1978 Comp., § 65-1-36.1, enacted by Laws 1992, ch. 106, § 15.

65-1-37. Recompiled.

ANNOTATIONS

Recompilations. - Laws 1998 (1st S.S.), ch. 10, § 10, recompiles former 65-1-37 NMSA 1978, relating to proportional registration or reciprocal agreements with other jurisdictions for a declared gross weight, as 66-3-1.2 NMSA 1978, effective July 1, 1998.

ARTICLE 2 MOTOR CARRIER REGULATION

65-2-1 to 65-2-79. Repealed.

ANNOTATIONS

Repeals. - Laws 1981, ch. 358, § 49, repeals 65-2-1 to 65-2-79 NMSA 1978, relating to motor carrier regulation, effective April 10, 1981. For present provisions, see 65-2-80 NMSA 1978 et seq.

65-2-80. Short title.

Chapter 65, Article 2 NMSA 1978 may be cited as the "Motor Carrier Act".

History: 1978 Comp., § 65-2-80, enacted by Laws 1981, ch. 358, § 1; 1989, ch. 319, § 6.

ANNOTATIONS

Cross references. - For motor transportation division to enforce motor carrier regulations, see 65-1-6 NMSA 1978.

For registration of commercial motor carriers with motor transportation division, see 65-1-12 to 65-1-26 NMSA 1978.

For manifest or bill of lading required to transport gasoline, see 7-13-12 NMSA 1978.

For common carriers' liens on goods carried, see 48-3-8 NMSA 1978.

For shipping regulations for cotton, see 76-14-3 to 76-14-7 NMSA 1978.

For certificates required for transportation of livestock or carcasses, see 77-9-41 NMSA 1978 et seq.

The 1989 amendment, effective July 1, 1989, substituted "Chapter 65, Article 2 NMSA 1978" for "This act".

Compiler's notes. - The notes which appear in the annotations under 65-2-80 to 65-2-127 NMSA 1978 were extracted from opinions rendered under the former Motor Carriers Act of 1933, as amended, and need to be viewed in connection with the present motor carrier provisions in that context. As to repeal of the previous law on this subject, see the catchline "Repeals" under 65-2-1 to 65-2-79 NMSA 1978.

Purpose of the 1933 Motor Carriers Act being the effective regulation of motor carriers for hire who use the public highways of this state, a carrier's utilization of this privilege, and not the degree of use, was the important factor to be considered in determining whether or not a carrier was subject to regulation. 1957-58 Op. Att'y Gen. No. 57-12.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 13 Am. Jur. 2d Carriers §§ 1 to 20.

60 C.J.S. Motor Vehicles § 44.

65-2-81. Declaration of policy.

It is declared to be the policy of New Mexico that the transportation of persons and property by motor vehicle for hire upon or over the public highways of this state be supervised and regulated so as to provide for the development, coordination and preservation of a safe, sound, adequate, economical and efficient intrastate motor carrier system that is vital to the public interest of New Mexico. To that end, it is necessary that regulation promote competitive, economical and efficient service by motor carrier, and reasonable charges therefor, without undue preference or advantage; enable efficient and well-managed motor carriers to earn adequate profits, attract capital, and maintain fair wages and working conditions; and provide for competitive motor carrier services at affordable rates for all municipalities, towns, villages and rural communities of New Mexico.

History: 1978 Comp., § 65-2-81, enacted by Laws 1981, ch. 358, § 2.

ANNOTATIONS

Policy requires notice and hearing to common carriers. - Giving notice and hearing to interested carriers allows them to present evidence indicating whether a certificate should be canceled rather than suspended. Allowing such evidence to be presented fosters the avowed policy of the Motor Carrier Act by helping the state corporation commission (now public regulation commission) weed out inefficient carriers at an earlier point in time than might be possible if the Motor Carrier Act were interpreted to require notice and hearing only when a carrier sought to transfer its certificate. Thus, common carriers operating over the same routes are "interested parties" within the meaning of the Motor Carrier Act and are entitled to notice and hearing, prior to issuance, of the Commission's order granting a petition for voluntary suspension. AA Oilfield Serv., Inc. v. New Mexico SCC, 118 N.M. 273, 881 P.2d 18 (1994).

When specific municipal transit law governs. - Where enforcement of 3-52-4 NMSA 1978 and the policies of the Motor Carriers Act of 1933 would lead to a contradiction of home rule autonomy as guaranteed by N.M. Const., art. X, § 6, and a construction of the express language in 3-52-4 NMSA 1978 of the municipal transit law, which authorizes a municipality to engage in the business of transportation of passengers and property, the more specific municipal transit law governs. City of Albuquerque v. SCC, 93 N.M. 719, 605 P.2d 227 (1979) (decided under former law).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 13 Am. Jur. 2d Carriers §§ 21, 29.

Contract of unlicensed motor carrier, validity and enforceability of, 118 A.L.R. 665.

Estoppel of applicant or licensee to attack validity of license laws, 65 A.L.R.2d 660.

Liability of land carrier to passenger who becomes victim of third party's assault on or about carrier's vehicle or premises, 34 A.L.R.4th 1054.

60 C.J.S. Motor Vehicles §§ 44, 46.

65-2-82. Definitions.

As used in the Motor Carrier Act [this article]:

A. "antitrust laws" means the laws of this state relating to combinations in restraint of trade;

B. "broker" means a person not included in the term "motor carrier" and not a bona fide employee or agent of any motor carrier who, as principal or agent, sells or offers for sale any transportation subject to the Motor Carrier Act or negotiates for or holds himself out by solicitation, advertisement or otherwise as one who sells, provides, furnishes, contracts or arranges for that transportation;

C. "certificate" means a certificate of public convenience and necessity issued under authority of the laws of the state to common motor carriers;

D. "clerk" or "chief clerk" means the chief clerk of the public regulation commission;

E. "commission" means the public regulation commission;

F. "common motor carrier" means a person who undertakes, whether directly or indirectly or by lease of equipment or operating rights or any other arrangement, to transport persons or property or any class of property for the general public by motor vehicle for compensation, whether over regular or irregular routes and under scheduled or nonscheduled service, but does not include farm carriers;

G. "contract motor carrier" means a person not a common motor carrier who, under individual contracts or agreements and whether directly or indirectly or by lease of equipment or operating rights or any other arrangements, transports persons or property by motor vehicle for compensation, but does not include farm carriers;

H. "farm carrier" means a motor vehicle registered in this state being used in the transportation for hire of a cargo consisting of one or several of the following: farm produce, including grains, cotton, cottonseed, vegetables, hay and other farm products; livestock feed; livestock; stock salt; manure; wire; posts; dairy products; and farm or ranch machinery except tractors weighing more than forty-five thousand pounds;

I. "highway" means the public roads, highways, streets and ways in this state;

J. "household goods" means:

(1) personal effects and property used or to be used in a dwelling when a part of the equipment or supply of the dwelling and other similar property as the commission may provide by rule; except that this paragraph shall not be construed to include property

moving from a factory or store, except property as the householder has purchased with intent to use in his dwelling and that is transported at the request of, and the transportation charges paid to the carrier by, the householder;

(2) furniture, fixtures, equipment and the property of stores, offices, museums, institutions, hospitals or other establishments when a part of the stock, equipment or supply of stores, offices, museums, institutions, hospitals or other establishments and other similar property as the commission may provide by rule; except that this paragraph shall not be construed to include the stock-in-trade of any establishment, whether consignor or consignee, other than used furniture and used fixtures, except when transported as incidental to the moving of the establishment, or a portion of it, from one location to another; and

(3) articles, including objects of art, displays and exhibits, that, because of their unusual nature or value require the specialized handling and equipment usually employed in moving household goods and other similar articles as the commission may provide by rule; except that this paragraph shall not be construed to include any article, whether crated or uncrated, that does not, because of its unusual nature or value, require the specialized handling and equipment usually employed in moving household goods;

K. "interested parties" shall in all cases include all carriers operating over the routes or any part thereof or in the territory involved in an application for a certificate or permit or an application to file or change a schedule of rates, charges or fares or a rule or practice, and other parties as the commission may deem interested in the particular matter;

L. "irregular route" means that the route to be used by a motor carrier is not restricted to any specific highway within the area the motor carrier is authorized to serve;

M. "lease" means an arrangement whereby a motor carrier augments his equipment by use of equipment owned by others;

N. "license" means a license issued pursuant to the Motor Carrier Act to a broker;

O. "motor carrier" includes common motor carriers, contract motor carriers and any person performing for-hire transportation service without authority from the commission and farm carriers;

P. "motor vehicle" means a vehicle, machine, tractor, trailer or semi-trailer propelled or drawn by mechanical power and used upon the highways in the transportation of property or persons, but does not include any vehicle, locomotive or car operated exclusively on rail or rails;

Q. "permit" means a permit issued under authority of the laws of this state to contract motor carriers;

R. "person" means an individual, firm, partnership, corporation, company, association or organization and includes any trustee, receiver, assignee or personal representative thereof;

S. "regular route" means a fixed, specific and determined course to be traveled by a motor carrier's vehicles rendering service to, from or between various points, localities or municipalities in this state;

T. the "services" and "transportation" to which the Motor Carrier Act applies include all vehicles operated by, for or in the interest of any motor carrier irrespective of ownership or of contract, express or implied, together with all facilities and property controlled by any motor carrier and used in the transportation of persons or property or in the performance of any service in connection therewith;

U. "shipper" means a person who consigns or receives goods for transportation;

V. "single-line rate" means a rate, charge or allowance proposed by a single common motor carrier of property that is applicable only over its line and for which the transportation can be provided by that common motor carrier;

W. "state" means New Mexico;

X. "towing company" means a common motor carrier engaged in transporting for hire disabled or abandoned motor vehicles by means of a tow truck or flatbed vehicle carrier; and

Y. "weight-bumping" means the knowing and willful making or securing of a fraudulent weight on a shipment of household goods that is subject to the jurisdiction of the commission under the Motor Carrier Act.

History: 1978 Comp., § 65-2-82, enacted by Laws 1981, ch. 358, § 3; 1989, ch. 250, § 1; 1989, ch. 375, § 1; 1998, ch. 108, § 74.

ANNOTATIONS

- I. General Consideration.
- II. Common Motor Carrier.
- III. Contract Motor Carrier.
 - A. In General.
 - B. Primary Business Test.

I. GENERAL CONSIDERATION.

1989 amendments. - Laws 1989, ch. 250, § 1, effective June 16, 1989, inserting "common motor" in Subsection U, adding a Subsection W defining "towing company", redesignating Subsection W as Subsection X, and making minor stylistic changes

throughout the section, was approved on April 5, 1989. However, Laws 1989, ch. 375, § 1, also effective June 16, 1989, adding present Subsections U and X, redesignating former Subsections U, V, and W as present Subsections V, W, and Y, respectively, and also making minor stylistic changes throughout the section, was approved on April 7, 1989. The section is set out as amended by Laws 1989, ch. 375, § 1. See 12-1-8 NMSA 1978.

The 1998 amendment, effective January 1, 1999, made minor stylistic changes throughout the section.

Compiler's notes. - The notes which appear in the annotations below were extracted from opinions rendered under the former Motor Carriers Act of 1933, as amended, and need to be viewed in connection with the present motor carrier provisions in that context.

Lakeshores or beaches not deemed to be public highways. 1969 Op. Att'y Gen. No. 69-4.

But streets, alleys, thoroughfares, etc., considered to be well-defined ways or passages, open at both ends, for the use of motor vehicles. 1969 Op. Att'y Gen. No. 69-4.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 13 Am. Jur. 2d Carriers §§ 1 to 20.

One operating bus or stage as common carrier, 42 A.L.R. 853.

Rail service, substitution of motor buses for, 75 A.L.R. 240.

"Compensation" or "hire," when automobile or truck deemed to be operated for, within contemplation of license or tax statute or ordinance, 80 A.L.R. 574.

Discrimination between commercial vehicles depending on whether a direct charge is made for the services, 81 A.L.R. 1145.

Private motor carriers and contract motor carriers for hire, regulation of use of highways by, 109 A.L.R. 550, 175 A.L.R. 1333.

Isolated, occasional or incidental transportation of person or property for compensation as within statute regulating transportation of person or property on highway, 123 A.L.R. 229.

Motor vehicles, what carriers are within statutory definition of common carriers by, 161 A.L.R. 417.

Liability of operator of ambulance service for personal injuries to person being transported, 68 A.L.R.4th 14.

Car pool regulated as motor carrier, 51 A.L.R.2d 1193.

60 C.J.S. Motor Vehicles §§ 46, 47.

II. COMMON MOTOR CARRIER.

Criterion generally. - To be a common carrier, it has been stated, one has to hold himself out as engaged in public service for all persons indifferently. 1955-56 Op. Att'y Gen. No. 6453.

Includes irregular routes under unscheduled service. - Persons who transport passengers for general public by motor vehicle for hire have been deemed to be a common motor carrier even though transportation is over irregular routes under unscheduled service. 1964 Op. Att'y Gen. No. 64-150.

Mail carrier covered. - A mail carrier operating a star route and hauling property and passengers for hire on such route was deemed engaged in business of common carrier and should have been required to secure a permit. 1937-38 Op. Att'y Gen. 252.

As well as school bus carrier. - The language of this statute is clear and clearly brings within the provisions of the regulations for motor carriers a school bus carrier who is transporting various groups of people throughout the state by means of a lease agreement entered into with the group. 1957-58 Op. Att'y Gen. No. 57-120.

And traders buying and transporting livestock. - A livestock trader who bought livestock for his customers and transported the livestock to them for a fee was transporting property for hire. He was, therefore, either a common or contract carrier depending upon the terms of his arrangement with his customers. 1972 Op. Att'y Gen. No. 72-43.

One transporting own property for sale not covered. - Person operating trucks for purpose of transporting his own property for sale was not common carrier nor contract carrier within scope of provisions regulating transportation by motor vehicles for hire. Rountree v. SCC, 40 N.M. 152, 56 P.2d 1121 (1936).

Individuals transporting their own commodities should not be required to obtain either certificate of registration or contract carrier permit. 1935-36 Op. Att'y Gen. 129.

Common carriers entitled to notice and hearing. - Giving notice and hearing to interested carriers allows them to present evidence indicating whether a certificate should be canceled rather than suspended. Allowing such evidence to be presented fosters the avowed policy of the Motor Carrier Act by helping the state corporation commission (now public regulation commission) weed out inefficient carriers at an earlier point in time than might be possible if the Motor Carrier Act were interpreted to require notice and hearing only when a carrier sought to transfer its certificate. Thus, common carriers operating over the same routes are "interested parties" within the

meaning of the Motor Carrier Act and are entitled to notice and hearing, prior to issuance, of the Commission's order granting a petition for voluntary suspension. AA Oilfield Serv., Inc. v. New Mexico SCC, 118 N.M. 273, 881 P.2d 18 (1994).

III. CONTRACT MOTOR CARRIER.

A. IN GENERAL.

Compiler's notes. - See notes above under analysis line II, "Common Motor Carrier," as well.

Contract carrier deemed to include party hauling merchandise exclusively for federal government under contract and required to secure a certificate as a contract carrier. 1937-38 Op. Att'y Gen. 259.

But not on Indian reservation. - Trucks transporting government material for use on government projects in the Navajo Indian reservation were not deemed within the provisions of the 1933 act. Op. Att'y Gen. 44.

When ambulances and wreckers included. - Except when operating exclusively within the limits of municipalities, ambulances and wreckers were deemed subject to regulation by the state corporation commission (now public regulation commission) as contract carriers. 1949-50 Op. Att'y Gen. No. 5199.

Where much of a wrecker-towing service was devoted to customers who would pay specifically for the tow, where the charge was dependent upon the distance travelled and the time of day and where the service was available to anyone who desired to have their automobile worked on at the wrecker-towing facilities, such an operation was for hire and was subject to regulation by the state corporation commission (now public regulation commission). Lloyd McKee Motors, Inc. v. New Mexico SCC, 93 N.M. 539, 602 P.2d 1026 (1979).

Truck owner leasing out his truck covered. - A truck owner who leased his truck to a merchant, contractor or other business concern, but drove the truck himself or hired and paid a driver to operate it under his exclusive control and supervision, paid all operating expenses and transported the lessee's commodities was transporting property for hire, and the lease or contract was a mere subterfuge or device to evade the law. 1939-40 Op. Att'y Gen. 79.

But not car rental agent. - Person engaged in the business of letting passenger motor vehicles for hire without drivers or operators was not considered contract motor carrier of passengers. Roeske v. Lamb, 39 N.M. 111, 41 P.2d 522 (1935).

Nor one transporting own merchandise to sell. - A person selling merchandise within the state and transporting it in his own motor vehicles was not considered a contract carrier for hire. Rountree v. SCC, 40 N.M. 152, 56 P.2d 1121 (1936).

Or otherwise transporting own goods. - Compensation "for hire" must necessarily be paid by one who hires, so in transporting his own goods a carrier does not come within the definition of "contract motor carrier for hire" as no one "hires" him. *McWood Corp. v. SCC*, 78 N.M. 319, 431 P.2d 52 (1967).

Nor limousine service furnished by motel. - Cars and limousines used by a motel to transport customers from an airport to the motel, which were without charge and were not for hire were not deemed contract or common motor carriers; therefore, the motels are not subject to regulations as such. 1968 Op. Att'y Gen. No. 68-59.

Considerations of title to goods and charges for transportation. - The fact that title to the goods being transported was vested in the carrier did not alone compel the conclusion that it was not a carrier for hire. The same could be said in regard to carrier's assertion it made no specific charge for transportation. *McWood Corp. v. SCC*, 78 N.M. 319, 431 P.2d 52 (1967). See notes below under analysis line B, "Primary Business Test".

B. PRIMARY BUSINESS TEST.

Generally. - As a general rule, carriage was for hire if the primary business of the carrier was transportation of the goods, but the carriage was private if its primary business was the sale of its own goods which the owner transported in furtherance of that business and the transportation was merely incidental thereto. *McWood Corp. v. SCC*, 78 N.M. 319, 431 P.2d 52 (1967); *Lloyd McKee Motors, Inc. v. New Mexico SCC*, 93 N.M. 539, 602 P.2d 1026 (1979).

Purpose of "primary business test" is to prevent a carrier from buying items solely for the reason of having title during transportation, then selling the items upon delivery, in order to be characterized as a private carrier. *Lloyd McKee Motors, Inc. v. New Mexico SCC*, 93 N.M. 539, 602 P.2d 1026 (1979).

When used. - "Primary business test" should be used only when title to the goods being transported is held by the carrier. *Lloyd McKee Motors, Inc. v. New Mexico SCC*, 93 N.M. 539, 602 P.2d 1026 (1979).

And when not used. - When carrier did not hold title to goods, the court had to look to the manner in which the carrier charged its customers and how the charges were determined. *Lloyd McKee Motors, Inc. v. New Mexico SCC*, 93 N.M. 539, 602 P.2d 1026 (1979).

65-2-83. Powers and duties of commission.

The commission is vested with power and authority, and it is its duty to:

A. regulate common motor carriers as provided in the Motor Carrier Act [this article], and to that end, the commission shall establish reasonable requirements with respect to

continuous and adequate service and shall establish reasonable requirements with respect to uniform systems of accounts, records and reports and preservation of records;

B. regulate contract motor carriers as provided in the Motor Carrier Act, and to that end, the commission shall establish reasonable requirements with respect to uniform systems of accounts, records and reports and preservation of records;

C. regulate brokers as provided in the Motor Carrier Act, and to that end, the commission shall establish reasonable requirements with respect to licensing, financial responsibility, accounts, records, reports, operations and practices of any such person;

D. prescribe rules, regulations and procedures for the administration of the Motor Carrier Act, to make all necessary orders and do all things necessary to administer, execute, carry out and enforce the provisions of that act, except those powers set forth in Section 65-1-6 NMSA 1978; and

E. prescribe rules and procedures for default proceedings. In the event no protest or intervention is filed by a party within thirty (30) days of the date of notice to parties required to be notified by statute, and to such other persons as the commission shall direct, a default proceeding may be held at any time thereafter pursuant to rules and procedures promulgated pursuant to this subsection.

History: 1978 Comp., § 65-2-83, enacted by Laws 1981, ch. 358, § 4; 1983, ch. 9, § 1.

ANNOTATIONS

Cross references. - For hearing in actions involving motor carriers, see 65-2-106 NMSA 1978.

Compiler's notes. - The notes which appear in the annotations below were extracted from opinions rendered under the former Motor Carriers Act of 1933, as amended, and need to be viewed in connection with the present motor carrier provisions in that context.

Generally. - It has been held that agencies of the nature of the state corporation commission (now public regulation commission) derive their powers only from the constitution or statutory provisions granting such and have no authority except such as is expressly bestowed upon them. *Ferguson-Steere Motor Co. v. SCC*, 63 N.M. 137, 314 P.2d 894 (1957).

Functions legislative and/or administrative, not judicial. - The powers and authority conferred on the state corporation commission (now public regulation commission) by the legislation providing for regulation and supervision of transportation for hire by motor carriers held not a judicial function, but considered "legislative and/or administrative." *State ex rel. SCC v. Zinn*, 72 N.M. 29, 380 P.2d 182 (1963).

But no court jurisdiction until administrative remedies exhausted. - So long as the state corporation commission (now public regulation commission) was proceeding under its statutory authority and administrative remedies had not been exhausted, a district court was without jurisdiction to entertain the proceedings, and accordingly was subject to prohibition by the supreme court. *State ex rel. SCC v. Zinn*, 72 N.M. 29, 380 P.2d 182 (1963).

Authority limited. - State corporation commission's (now public regulation commission's) authority under the motor carrier regulations held expressly limited to the supervision and regulation of the transportation for hire of persons and property by motor vehicle over the public highways. *McWood Corp. v. SCC*, 78 N.M. 319, 431 P.2d 52 (1967).

No jurisdiction over private carriers. - The state corporation commission (now public regulation commission) has been deemed to have jurisdiction over common and contract motor carriers for hire and is without jurisdiction over private carriers. 1955-56 Op. Att'y Gen. No. 6409.

Or public service vehicles. - By its terms, the 1933 Motor Carriers Act regulated, not public service vehicles, but carriers, and carriers only. The act nowhere used the phrase "public service vehicles." *Roeske v. Lamb*, 39 N.M. 111, 41 P.2d 522 (1935).

"U-Drive-It" and "U-Haul-It" not subject. - The operation of "U-Drive-It" cars, trucks and trailers was deemed not subject to regulation by the state corporation commission (now public regulation commission). 1955-56 Op. Att'y Gen. No. 6230.

Nor operations exclusively on Indian reservation. - The state corporation commission (now public regulation commission) acting under the authority of the 1933 act could regulate transportation for hire conducted by Indians while off the reservation and while operating to points and places over state and county roads in the state of New Mexico. Operation upon the Indian reservation was not subject to regulation by the commission, and the state of New Mexico in this field had no jurisdiction to so control such activities. 1953-54 Op. Att'y Gen. No. 5689.

Ambulances and wreckers generally subject to regulation. - Except when operating exclusively within the limits of municipalities, ambulances and wreckers are subject to regulation by the state corporation commission (now public regulation commission) as contract carriers. 1949-50 Op. Att'y Gen. No. 5199.

Where much of a wrecker-towing service was devoted to customers who would pay specifically for the tow, where the charge was dependent upon the distance travelled and the time of day and where the service was available to anyone who desired to have his automobile worked on at the wrecker-towing facilities, such an operation was for hire and was subject to regulation by the state corporation commission (now public regulation commission). *Lloyd McKee Motors, Inc. v. New Mexico SCC*, 93 N.M. 539, 602 P.2d 1026 (1979).

But not one occasionally assisting vehicles at lakeshore. - Since a lakeshore is not a "public highway" the regulations on motor carriers have not been deemed applicable to one who occasionally assists motor vehicle operators in dislodging their vehicles from the sand in and around a lakeshore area. 1969 Op. Att'y Gen. No. 69-4.

If part of transportation on public highway, entire haul subject to regulation. - Common or contract carrier deemed to become subject to regulation by state corporation commission (now public regulation commission) when: (1) it operates a motor vehicle for the transportation of either persons or property for hire, and (2) when the entire haul or any part of it is conducted on a public highway. Thus, even though a part of the transportation is conducted across an area not considered a public highway, if a part of that transportation takes place on a public highway, the entire haul is subject to regulation. 1957-58 Op. Att'y Gen. No. 57-12.

Carrier extending operation requires authorization. - Where a carrier was certified to carry "rocks, crushed rock, etc." at a time as appeared from the records of the state corporation commission (now public regulation commission) when there was no intention or desire on the part of the applicant to transport uranium, ore bearing rock, etc., and subsequent thereto the commission certified other carriers for the more specialized operation, the carrier of "rock, crushed rock, etc." could not extend its operations to include the more specialized yield without prior application for such additional authority. 1953-54 Op. Att'y Gen. No. 5699.

Powers include interpreting exemptions. - Since the state corporation commission (now public regulation commission) could promulgate regulations interpreting the 1933 Motor Carriers Act, that power extended to interpreting the exemptions listed therein. 1969 Op. Att'y Gen. No. 69-100.

Law reviews. - For comment on State ex rel. State Corp. Comm'n v. Zinn, see 3 Nat. Resources J. 356 (1963).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 13 Am. Jur. 2d Carriers §§ 20 to 32.

Jurisdiction over carriers transporting by motor trucks or buses. 1 A.L.R. 1460, 9 A.L.R. 1011, 51 A.L.R. 820, 103 A.L.R. 268.

Injunction against taxicab driver's picking up intended passenger, bus company's or street car company's right to, 66 A.L.R. 1380.

Delegation of legislative power as to public regulation and control, 87 A.L.R. 551.

60 C.J.S. Motor Vehicles §§ 44, 45.

65-2-84. Certificate of convenience and necessity; requirement; standards for issuance.

A. It shall be unlawful for any common motor carrier to operate within this state without first having obtained from the commission a certificate of public convenience and necessity.

B. Except as provided in this section, the commission shall issue a certificate to a person authorizing that person to provide transportation subject to the jurisdiction of the commission under the Motor Carrier Act [this article] as a common motor carrier of persons if the commission finds that:

(1) the person is fit, willing and able to provide the transportation to be authorized by the certificate and to comply with the Motor Carrier Act and the regulations of the commission; and

(2) the transportation to be provided under the certificate is or will be required by the present or future public convenience and necessity.

C. Before granting a certificate to a common motor carrier of persons, the commission shall take into consideration existing transportation facilities in the territory for which a certificate is sought, and in case it finds from the evidence that the service furnished by existing transportation facilities is reasonably adequate, the commission shall not grant the certificate.

D. Except as provided in this section, the commission shall issue a certificate to a person authorizing that person to provide transportation subject to the jurisdiction of the commission under the Motor Carrier Act as a common motor carrier of property if the commission finds:

(1) that the person is fit, willing and able to provide the transportation to be authorized by the certificate and to comply with the Motor Carrier Act and the regulations of the commission; and

(2) on the basis of evidence presented by persons supporting the issuance of the certificate, that the service proposed will serve a useful public purpose, responsive to a public demand or need.

E. The commission shall not issue a certificate as a common motor carrier of property under Subsection D of this section if it finds, on the basis of evidence presented by persons objecting to the issuance of a certificate, that the transportation to be authorized by the certificate is inconsistent with the public convenience and necessity.

F. Before granting a certificate to a common motor carrier of property under Subsection D of this section, the commission shall take into consideration the transportation policy of Section 65-2-81 NMSA 1978 and the effect of issuance of the certificate on existing carriers; provided, however, that the commission shall not find diversion of revenue or traffic from an existing carrier to be, in and of itself, inconsistent with the public convenience and necessity.

G. The commission shall issue a certificate to a person authorizing that person to provide transportation subject to the jurisdiction of the commission under the Motor Carrier Act as a common motor carrier of property if the commission finds that the person is fit, willing and able to provide the transportation to be authorized by the certificate and to comply with that act and the regulations of the commission and if the application is for authority to provide transportation;

(1) to any community not regularly served by a common motor carrier of property certified under this section;

(2) services which will be a direct substitute for abandoned rail service to a community if such abandonment results in the community not having any rail service and if the application is filed within one hundred twenty days after the abandonment has been approved by the commission or by the United States interstate commerce commission;

(3) for the United States government of property other than used household goods, hazardous or secret materials and sensitive weapons and munitions;

(4) by motor vehicle of food and other edible products (including edible byproducts but excluding alcoholic beverages and drugs) intended for human consumption, agricultural limestone and other soil conditioners and agricultural fertilizers;

(5) of shipments weighing five hundred pounds or less if transported in a motor vehicle in which no one package exceeds five hundred pounds; or

(6) for the United States government of used household goods which is incidental to a pack and crate service on behalf of the department of defense.

History: 1978 Comp., § 65-2-84, enacted by Laws 1981, ch. 358, § 5.

ANNOTATIONS

Cross references. - For registration of commercial motor carriers with motor transportation division, see 65-1-12 to 65-1-26 NMSA 1978.

For Ambulance Standards Act, see 65-6-1 NMSA 1978 et seq.

Compiler's notes. - The notes which appear in the annotations below were extracted from opinions rendered under the former Motor Carriers Act of 1933, as amended, and need to be viewed in connection with the present motor carrier provisions in that context.

Terms "necessity" and "convenience" held not to refer to the necessity and convenience of the carrier, but to the necessity and convenience of the public. *Ferguson-Steere Motor Co. v. SCC*, 63 N.M. 137, 314 P.2d 894 (1957).

The convenience and necessity which the law required to support the state corporation commission's (now public regulation commission's) order were the convenience and necessity of the public, as distinguished from that of a few individuals. *Transcontinental Bus Sys. v. SCC*, 61 N.M. 369, 300 P.2d 948 (1956).

Necessity held not to mean indispensably requisite, but the state corporation commission (now public regulation commission) was bound to consider whether the proposed service was necessary in keeping with the public policy of regulating utilities that the public could be more efficiently served at lower cost than would be the case in the absence of such regulation. *Ferguson-Steere Motor Co. v. SCC*, 63 N.M. 137, 314 P.2d 894 (1957).

Public welfare paramount concern of commission. - While the private rights of the carrier were to be recognized and protected within limits, the first and paramount concern of the state corporation commission (now public regulation commission) in determining whether a certificate of public convenience and necessity should be issued was the public welfare. *Ferguson-Steere Motor Co. v. SCC*, 63 N.M. 137, 314 P.2d 894 (1957).

Findings required as to public convenience and necessity. - Where the commission, in its award of a certificate of public convenience and necessity, did not make findings comparing the merits of carriers and addressing evidence of the effect on existing carriers and its relationship to public convenience and necessity, or findings showing any rational connection between factors such as competition, duplication of facilities, deteriorating market causing decreased service potential, and the welfare of existing New Mexico citizens as those factors would affect public convenience and necessity, the award was in error and remanded to the Commission to determine whether the grant of a certificate was inconsistent with public convenience and necessity. *Groendyke, Inc. v. New Mexico State Corp. Comm'n*, 113 N.M. 477, 827 P.2d 1291 (1992).

Commission to consider all factors. - This section requires the commission, when viewing applications for certificates, to consider all of the various factors set forth, not simply those favorable to the applicant. *Groendyke Transp., Inc. v. SCC*, 101 N.M. 470, 684 P.2d 1135 (1984).

When authority to issue certificate. - The state corporation commission (now public regulation commission) had the authority to issue certificate of public convenience and necessity once the carrier established a public need for additional services and the inadequacy of existing services in the territory for which the certificate was sought. *Whitfield Transp., Inc. v. New Mexico SCC*, 85 N.M. 632, 515 P.2d 557 (1973).

Illegal operations held not per se bar to granting of certificate of public convenience and necessity because the primary consideration is the public welfare. *Greyhound Lines v. New Mexico SCC*, 94 N.M. 496, 612 P.2d 1307 (1980).

Reliance by motor carrier on its prior illegal operations over the subject route as a basis for establishing a need for its proposed services was strongly condemned but was not an absolute bar to receiving a certificate of public convenience and necessity. *Greyhound Lines v. New Mexico SCC*, 94 N.M. 496, 612 P.2d 1307 (1980).

Renewal. - In an order of the state corporation commission (now public regulation commission) renewing a certificate of public convenience and necessity, a specific finding of the ultimate fact of public convenience and necessity had to be found in that order. *Ferguson-Steere Motor Co. v. SCC*, 60 N.M. 114, 288 P.2d 440 (1955).

Authority legislative and/or administrative, not judicial. - The powers and authority conferred on the state corporation commission (now public regulation commission) by the legislation providing for regulation and supervision of transportation for hire by motor carriers held not a judicial function, but considered "legislative and/or administrative." *State ex rel. SCC v. Zinn*, 72 N.M. 29, 380 P.2d 182 (1963).

But no court jurisdiction until administrative remedies exhausted. - So long as the state corporation commission (now public regulation commission) was proceeding under its statutory authority and administrative remedies had not been exhausted, a district court was without jurisdiction to entertain the proceedings, and accordingly was subject to prohibition by the supreme court. *State ex rel. SCC v. Zinn*, 72 N.M. 29, 380 P.2d 182 (1963).

Standard on review held to be whether the state corporation commission's (now public regulation commission's) action was supported by substantial evidence. *Greyhound Lines v. New Mexico SCC*, 94 N.M. 496, 612 P.2d 1307 (1980).

Use of evidence in comparative review. - Where the commission determined that two applications for certificate of public convenience and necessity were not mutually exclusive, and the district court ordered a comparative review of the applications on remand, the commission should have considered on applicant's evidence of "public need" in evaluating the other applicant's of the substantial evidence necessary to support its application and was arbitrary. *Oil Transp. Co. v. New Mexico SCC*, 110 N.M. 568, 798 P.2d 169 (1990).

Order of state corporation commission (now public regulation commission) was required to be based upon substantial evidence. *Ferguson-Steere Motor Co. v. SCC*, 63 N.M. 137, 314 P.2d 894 (1957).

Court cannot both approve and disapprove certificate in part. - Where the certificate of public convenience and necessity covered entirely too much territory, the supreme court could not approve it in part and disapprove in part. It had to stand or fall as it was written. *National Trailer Convoy, Inc. v. SCC*, 64 N.M. 97, 324 P.2d 1023 (1958).

Where evidence clearly showed unnecessary duplication of services between competing bus companies, action of state corporation commission (now public regulation commission) in issuing certificate of convenience and necessity to second bus company was unlawful and unreasonable. *Transcontinental Bus Sys. v. SCC*, 61 N.M. 369, 300 P.2d 948 (1956).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 13 Am. Jur. 2d Carriers §§ 77 to 89.

Municipality's power to deny use of its streets to carrier which has obtained from state commission certificate of public convenience, 66 A.L.R. 847.

When granting or refusing of certificate of necessity or convenience for operation of motor buses justified, 67 A.L.R. 957.

Jurisdiction of public service commission over carriers transporting by motor trucks or buses, 103 A.L.R. 268.

Jurisdiction over issue of certificates or permits to carriers transporting by motor trucks or buses, 103 A.L.R. 287.

Territorial coverage of motor carrier's public liability policy required by statute or ordinance as co-extensive with area of authorized operation, 154 A.L.R. 520.

Certificates by state authorizing operation of motor-bus lines over section of highway as affected by its subsequent annexation to city, 154 A.L.R. 1440.

13 C.J.S. Carriers §§ 60 to 83; 60 C.J.S. Motor Vehicles §§ 82 to 91.

65-2-85. Certificate of convenience and necessity; application; hearing and notice; protests.

A. A person must file an application with the commission for a certificate of public convenience and necessity to provide transportation as a common motor carrier. The commission may approve an application in whole or in part, or the application may be denied.

B. Applications for certificates shall be made in writing to the commission, shall be verified under oath and shall be in a form and contain information and be accompanied by proof of service upon the interested parties as the commission shall by regulation require.

C. No certificate shall be issued by the commission until after a public hearing held upon at least ten days' notice to interested parties.

D. The commission shall streamline and simplify, to the maximum extent possible, the process for issuance of certificates to which the provisions of Paragraph (4) of Subsection G of Section 65-2-84 NMSA 1978 apply.

E. No common motor carrier of property may protest an application for a certificate unless:

(1) it possesses authority to handle, in whole or in part, the traffic for which authority is applied; and

(2) it is willing and able to provide service that meets the reasonable needs of the shippers involved; and

(3) it has performed service within the scope of the application during the previous twelve-month period or has, actively and in good faith, solicited service within the scope of the application during such period; or

(4) it has pending before the commission an application filed prior to the application being considered for substantially the same traffic; or

(5) the commission grants leave to intervene upon a showing of other interests that are not contrary to the transportation policy set forth in Section 65-2-81 NMSA 1978.

F. No contract motor carrier of property may protest an application for a certificate.

History: 1978 Comp., § 65-2-85, enacted by Laws 1981, ch. 358, § 6.

ANNOTATIONS

Compiler's notes. - Some of the notes which appear in the annotations below were extracted from opinions rendered under the former Motor Carriers Act of 1933, as amended, and need to be viewed in connection with the present motor carrier provisions in that context.

Notice required. - Neither constitution nor statutes required notice by newspaper publication. The requirements were that notice be given to or served upon the parties concerned, which, under the statutes, consisted of every common carrier that was operating or had applied for a certificate of public convenience and necessity to operate in the territory proposed to be served by the applicant, and on other interested parties as determined by the state corporation commission (now public regulation commission). *Groendyke Transp., Inc. v. New Mexico SCC*, 85 N.M. 531, 514 P.2d 50 (1973).

Burden held to be on individual who alleged invalidity of notice to at least show that some concerned or interested party or parties had not received the notice. *Groendyke Transp., Inc. v. New Mexico SCC*, 85 N.M. 531, 514 P.2d 50 (1973).

Failure to give notice to interested parties held to render state corporation commission's (now public regulation commission's) order void and subject to collateral attack. *Groendyke Transp., Inc. v. New Mexico SCC*, 85 N.M. 531, 514 P.2d 50 (1973).

Alteration of certificate of public convenience issued by state corporation commission (now public regulation commission) with no notice of hearing given to interested parties rendered the orders void and subject to collateral attack. *Groendyke Transp., Inc. v. New Mexico SCC*, 79 N.M. 60, 439 P.2d 709 (1968).

Intervention of interested party. - If a party seeking to intervene in the hearing had an interest in the subject and object of the hearing, then he was an interested party and had to be permitted to intervene. 1965 Op. Att'y Gen. No. 65-235.

Conduct of hearings generally. - Hearings before state corporation commission (now public regulation commission) need not be conducted generally with the formality of a court hearing or trial, but the procedure before such bodies had to be consistent with the essentials of a fair trial. *Ferguson-Steere Motor Co. v. SCC*, 63 N.M. 137, 314 P.2d 894 (1957).

Rules governing admissibility of evidence. - The state corporation commission (now public regulation commission) is an administrative agency and the rules governing the admissibility of evidence before administrative boards have been held to be frequently relaxed for the purpose of expediting administrative procedure. *Ferguson-Steere Motor Co. v. SCC*, 63 N.M. 137, 314 P.2d 894 (1957).

What applicant must prove. - The applicant for a certificate of public convenience and necessity had to prove by substantial and competent evidence that such need on the part of the public exists or will exist. The applicant had not only to prove that he could render adequate service, but also that existing facilities were inadequate to meet the requirements of public convenience and necessity. *Ferguson-Steere Motor Co. v. SCC*, 63 N.M. 137, 314 P.2d 894 (1957).

In action to extend certificate of public convenience and necessity, the burden was on appellants to establish by the evidence, not only a public need for additional services, state-wide, but the inadequacy of existing services in the territory for which the certificate was sought. *Ferguson-Steere Motor Co. v. SCC*, 62 N.M. 143, 306 P.2d 637 (1957).

No requirement to consider effect upon existing facilities. - Provisions required consideration of existing facilities to determine if service was afforded was reasonably adequate; it did not make mention of considering effect of certificate upon existing facilities; where competitor had been granted permit after close of applicant's hearing, protesting carrier was entitled to hearing at which he could present evidence concerning sufficiency of competitor's service and its effect upon applicant's request for certificate. *Transcontinental Bus Sys. v. SCC*, 56 N.M. 158, 241 P.2d 829 (1952).

When proof of certificate not required. - Where plaintiff asserted that defendant wrecker owner failed to prove that he held a certificate of public convenience and necessity from the state corporation commission (now public regulation commission) or its "class" if he held one, but where defendant's counterclaim alleged that at all times material to lawsuit he was lawfully engaged in the wrecker service business operating under license of the commission, and this allegation was admitted, no proof was therefore required. *Trujillo v. Romero*, 82 N.M. 301, 481 P.2d 89 (1971).

Duty if more adequate findings desired. - If more adequate findings by state corporation commission (now public regulation commission) be desired, a duty rested on party complaining of their absence to have made a request for them. *Ferguson-Steere Motor Co. v. SCC*, 60 N.M. 114, 288 P.2d 440 (1955).

Evidence required by courts to reverse commission's decision. - Absent an unreasonable or unlawful order, a showing of bias, arbitrary or capricious acts, an abuse of discretion by the commission, or an order lacking substantial support in the record, appellate court and district court are without power to change the decision of state corporation commission (now public regulation commission). *Groendyke Transp., Inc. v. SCC*, 101 N.M. 470, 684 P.2d 1135 (1984).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 13 Am. Jur. 2d Carriers §§ 80, 81.

60 C.J.S. Motor Vehicles § 92(1) et seq.

65-2-86. Certificate of convenience and necessity; terms and conditions; removal of certain restrictions.

A. Any certificate issued under the Motor Carrier Act [this article] shall specify the service to be rendered and the route over which, the specific terminals, if any, between which, and the intermediate and off-route points, if any, at which and, in case of operations not over specified routes or between specific terminals, the territory within which the motor carrier is authorized to operate. At the time of issuance and from time to time thereafter, there shall be attached to the exercise of the privileges granted by the certificate reasonable terms, conditions and limitations as the public convenience and necessity may from time to time require, including terms, conditions and limitations as to the extension of the route or routes of the carrier, and the terms and conditions as are necessary to carry out, with respect to the operations of the carrier, the requirements established by the commission under that act.

B. Not later than December 31, 1981, the commission shall:

(1) eliminate gateway restriction and circuitous route limitations imposed upon common motor carriers of property; and

(2) implement by regulation procedures to process expeditiously applications of individual motor carriers of property seeking removal of operating restrictions in order to:

- (a) reasonably broaden the categories of property authorized by the carrier's certificate;
- (b) authorize transportation or service to intermediate points on the carrier's routes;
- (c) provide round-trip authority where only one-way authority exists;
- (d) eliminate unreasonable or excessively narrow territorial limitations; or
- (e) eliminate any other unreasonable restriction that the commission deems to be wasteful of fuel, inefficient or contrary to the public interest.

C. The commission shall take final action on an application under Paragraph (2) of Subsection B of this section no later than sixty days after the date on which the application is filed with the commission. For good cause, the commission may extend such deadline for a period not to exceed an additional thirty days. The commission shall provide interested parties with notice and an opportunity to be heard regarding such applications. In granting or denying applications under Paragraph (2) of Subsection B of this section, the commission shall:

- (1) consider, among other things, the impact of the proposed restriction removal upon the consumption of energy resources, potential cost savings and improved efficiency, and the transportation policy set forth in Section 65-2-81 NMSA 1978; and
- (2) give special consideration to providing and maintaining service to small and rural communities and small shippers.

History: 1978 Comp., § 65-2-86, enacted by Laws 1981, ch. 358, § 7.

ANNOTATIONS

Compiler's notes. - The notes which appear in the annotations below were extracted from opinions rendered under the former Motor Carriers Act of 1933, as amended, and need to be viewed in connection with the present motor carrier provisions in that context.

Service rendered in one area does not entitle facility to operate elsewhere. - The fact that a transportation facility has rendered service in one area or territory does not of itself entitle it to authority to operate in another area or territory in which reasonably adequate transportation facilities exist. *Ferguson-Steere Motor Co. v. SCC*, 63 N.M. 137, 314 P.2d 894 (1957).

Effect of competitor's potential injury to common motor carrier considered. - That issuance of a certificate of public convenience and necessity to a competing common carrier interstate freight line to serve intermediate points would injure the contestant's business was only a circumstance to be considered by the state corporation

commission (now public regulation commission) along with other evidence. *Harris v. SCC*, 46 N.M. 352, 129 P.2d 323 (1942).

65-2-87. Permit; requirement; standards for issuance; contracts to be filed.

A. It shall be unlawful for any contract motor carrier to operate within this state without first having obtained a permit from the commission.

B. Except as provided in this section, the commission shall issue a permit to a person authorizing that person to provide transportation subject to the jurisdiction of the commission under the Motor Carrier Act [this article] as a contract motor carrier if the commission finds that:

(1) the person is fit, willing and able to provide the transportation to be authorized by the permit and to comply with the Motor Carrier Act and the regulations of the commission; and

(2) the transportation to be provided under the permit is or will be consistent with the public interest and the transportation policy set forth in Section 65-2-81 NMSA 1978.

C. Before granting a permit to a contract motor carrier of persons, the commission shall take into consideration:

(1) the number of customers to be served by the carrier;

(2) the nature of the transportation proposed to be provided;

(3) the effect that granting the permit would have on the transportation by carriers protesting the granting of the permit;

(4) the effect that denying the permit would have on the person applying for the permit and its customers; and

(5) the changing character of the requirements of those customers.

D. The commission shall not issue a permit to a contract motor carrier of persons unless it is established by competent evidence that the privilege sought will not impair the efficient public service of any certified common motor carrier then adequately serving the same territory.

E. Before granting a permit to a contract motor carrier of property under Subsection B of this section, the commission shall take into consideration:

(1) the nature of the transportation proposed to be provided;

(2) the effect that granting the permit would have on the protesting carriers if the grant would endanger or impair their operations to an extent contrary to the public interest;

(3) the effect that denying the permit would have on the person applying for the permit and its shippers; and

(4) the changing character of the requirements of those shippers.

F. The commission shall issue a permit to a person authorizing that person to provide transportation subject to the jurisdiction of the commission under the Motor Carrier Act as a contract motor carrier of property if the commission finds that the person is fit, willing and able to provide the transportation to be authorized by the permit and to comply with the Motor Carrier Act and the regulations of the commission if the application is for authority to provide transportation by motor vehicle of food and other edible products (including edible byproducts but excluding alcoholic beverages and drugs) intended for human consumption, agricultural limestone and other soil conditioners and agricultural fertilizers.

G. Each contract motor carrier shall file with the commission each contract under which it intends to operate. The commission shall approve a contract and permit operations thereunder if it finds that the contract is consistent with the public interest, the transportation policy set forth in Section 65-2-81 NMSA 1978 and the provisions of Subsections C and D of this section or Subsection E or F of this section, whichever may be applicable.

History: 1978 Comp., § 65-2-87, enacted by Laws 1981, ch. 358, § 8.

ANNOTATIONS

Cross references. - For registration of commercial motor carriers with motor transportation division, see 65-1-12 to 65-1-26 NMSA 1978.

Filing of contracts required. - Valid contracts had to be filed with state corporation commission (now public regulation commission) prior to its granting the applicant authority to transport the subject commodities. 1966 Op. Att'y Gen. No. 66-102 (decided under former law).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 13 Am. Jur. 2d Carriers §§ 100 to 104.

60 C.J.S. Motor Vehicles §§ 80, 81.

65-2-88. Permit; application; hearing and notice; protests.

A. A person shall file an application with the commission for a permit to provide transportation as a contract motor carrier. The commission may approve an application in whole or in part, or the application may be denied. Applications for permits shall be

made to the commission in writing, be verified under oath and shall be in a form and contain information and be accompanied by proof of service upon interested parties as the commission shall, by regulation, require.

B. No permit shall be issued by the commission until after a public hearing held upon at least ten days' notice to interested parties.

C. The commission shall streamline and simplify, to the maximum extent possible, the process for issuance of permits to which the provisions of Subsection F of Section 65-2-87 NMSA 1978 apply.

D. No motor carrier may protest an application to provide transportation as a contract motor carrier of property unless:

(1) it possesses authority to handle, in whole or in part, the traffic for which authority is applied; and

(2) it is willing and able to provide service that meets the reasonable needs of the shippers involved; and

(3) it has performed service within the scope of the application during the previous twelve-month period or has, actively and in good faith, solicited service within the scope of the application during such period; or

(4) it has pending before the commission an application filed prior in time to the application being considered for substantially the same traffic; or

(5) the commission grants leave to intervene upon a showing of other interests that are not contrary to the transportation policy set forth in Section 65-2-81 NMSA 1978.

History: 1978 Comp., § 65-2-88, enacted by Laws 1981, ch. 358, § 9.

ANNOTATIONS

Compiler's notes. - The notes which appear in the annotations below were extracted from opinions rendered under the former Motor Carriers Act of 1933, as amended, and need to be viewed in connection with the present motor carrier provisions in that context.

Notice required. - Neither constitution nor statutes required notice by newspaper publication. The requirements were that notice be given to or served upon the parties concerned, which, under the statutes, consisted of every common carrier that was operating or had applied for a permit to operate in the territory proposed to be served by the applicant, and on other interested parties as determined by the state corporation commission (now public regulation commission). *Groendyke Transp., Inc. v. New Mexico SCC*, 85 N.M. 531, 514 P.2d 50 (1973).

Burden held to be on individual who alleged invalidity of notice to at least show that some concerned or interested party or parties had not received the notice. Groendyke Transp., Inc. v. New Mexico SCC, 85 N.M. 531, 514 P.2d 50 (1973).

Failure to give notice to interested parties held to render state corporation commission's (now public corporation commission's) order void and subject to collateral attack. Groendyke Transp., Inc. v. New Mexico SCC, 85 N.M. 531, 514 P.2d 50 (1973).

65-2-89. Permit; terms and conditions; no limit on number of contracts.

A. The commission shall specify in the permit the business of the contract carrier covered thereby and the scope thereof and shall attach to it, at the time of issuance, and from time to time thereafter, such reasonable terms, conditions and limitations consistent with the character of the holder as a contract carrier as are necessary to carry out, with respect to the operations of such carrier, the requirements established by the commission under the Motor Carrier Act [this article].

B. The commission may not require a contract motor carrier of property to limit its operations to carriage for a particular industry or within a particular geographic area.

C. The commission shall not limit any contract motor carrier to a fixed number of contracts.

History: 1978 Comp., § 65-2-89, enacted by Laws 1981, ch. 358, § 10.

ANNOTATIONS

Commission's approval required to add additional contracts. 1966 Op. Att'y Gen. No. 66-102 (decided under former law).

65-2-90. Common carriers and contract carriers; dual authority to transport property.

A person may, at the same time, hold a certificate as a common motor carrier and a permit as a contract motor carrier authorizing the operation for the transportation of property by motor vehicle over the same routes or within the same territory unless the commission shall find that such combination of certificate and permit will not promote the public interest and the transportation policy set forth in Section 65-2-81 NMSA 1978. Motor carriers possessing such dual authority may transport mixed loads of common and contract carrier property.

History: 1978 Comp., § 65-2-90, enacted by Laws 1981, ch. 358, § 11.

65-2-91. Motor carrier brokers [for transportation] of property; license required; standards for issuance; rules and regulations; commission authority; exemptions.

A. No person shall, for compensation, sell or offer to sell transportation of property subject to the Motor Carrier Act [this article] or shall make any contract, agreement or arrangement to provide, procure, furnish or arrange for such transportation or shall hold himself or itself out by advertisements, solicitation or otherwise as one who sells, provides, procures, contracts or arranges for such transportation, unless such person holds a broker's license issued by the commission to engage in such transactions. In the execution of any contract, agreement or arrangement to sell, provide, procure, furnish or arrange for such transportation, it shall be unlawful for such person to employ any motor carrier who or which is not the lawful holder of an effective certificate or permit issued as provided in that act.

B. A brokerage license shall be issued to any qualified applicant therefor, authorizing the whole or any part of the operations covered by the application, if it is found that the applicant is fit, willing and able properly to perform the service and to conform to the provisions of the Motor Carrier Act and the requirements, rules and regulations of the commission thereunder, and that the proposed service, to the extent authorized, by the licensee will promote the public interest and transportation policy set forth in Section 65-2-81 NMSA 1978, otherwise such application shall be denied.

C. The commission shall prescribe reasonable rules and regulations for the protection of shippers by motor vehicles to be observed by any person holding a brokerage license, and no such license shall be issued or remain in force unless the person shall have furnished a bond or other security approved by the commission in the form and amount as will insure financial responsibility and the supplying of authorized transportation in accordance with contracts, agreements or arrangements therefor.

D. The commission and its agents shall have the same authority as to accounts, reports and records, including inspection and preservation thereof, of any person holding a brokerage license issued under the provisions of this section that they have under the Motor Carrier Act with respect to motor carriers subject thereto.

E. This section shall not apply to any carrier holding a certificate or a permit under the provisions of the Motor Carrier Act or to any bona fide employee or agent of any motor carrier so far as concerns transportation to be furnished wholly by the carrier or jointly with other motor carriers holding like certificates or permits or with a common carrier by railroad or express, nor shall it apply to the transportation of household goods.

History: 1978 Comp., § 65-2-91, enacted by Laws 1981, ch. 358, § 12.

65-2-92. Suspension, revocation or amendment of certificates, permits and licenses.

Certificates, permits and licenses shall be effective from the date specified therein and shall remain in effect until terminated as herein provided. Any certificate, permit or license may, upon application of the holder thereof, in the discretion of the commission, be amended or revoked in whole or in part or may, upon complaint, or on the commission's own initiative, after notice and hearing be suspended, amended or revoked, in whole or in part for failure to comply with any provision of the Motor Carrier Act [this article] or with any lawful order, rule or regulation of the commission promulgated thereunder, or with any term, condition or limitation of any certificate, permit or license, or for failure to render reasonably continuous service in the transportation of all the commodities authorized to be transported over all the routes authorized to be traversed. The commission shall suspend or revoke, after notice and hearing as provided by law, all or any part of the authority granted by any certificate which is not exercised reasonably continuously.

History: 1978 Comp., § 65-2-92, enacted by Laws 1981, ch. 358, § 13.

ANNOTATIONS

Compiler's notes. - The notes which appear in the annotations below were extracted from opinions rendered under the former Motor Carriers Act of 1933, as amended, and need to be viewed in connection with the present motor carrier provisions in that context.

Generally. - Provisions provided that the state corporation commission (now public regulation commission) could alter or amend any certificate for good cause after proper notice and opportunity for a hearing. *Groendyke Transp., Inc. v. New Mexico SCC*, 79 N.M. 60, 439 P.2d 709 (1968).

Authority of state corporation commission (now public regulation commission). - The state corporation commission (now public regulation commission) has implicit authority to grant a voluntary suspension of a common carrier's certificate. *AA Oilfield Serv., Inc. v. New Mexico SCC*, 118 N.M. 273, 881 P.2d 18 (1994).

Alteration of certificate without notice of hearing given to interested parties rendered the orders void and subject to collateral attack. *Groendyke Transp., Inc. v. New Mexico SCC*, 79 N.M. 60, 439 P.2d 709 (1968).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 13 Am. Jur. 2d Carriers §§ 95 to 97.

Bias of members of license revocation board, 97 A.L.R.2d 1210.

60 C.J.S. Motor Vehicles § 96(1), 96(2).

65-2-93. Transfers of certificates, permits and licenses.

Permits, certificates or licenses shall not be assigned or transferred in any manner, nor shall the operation under any permits, certificates or licenses be leased without authority of the commission and on written application and after ten days' notice to interested parties and hearings. The transfer, lease or assignment of the permits, certificates or licenses shall not be authorized when the commission finds such action will be inconsistent with the public interest or does not include operating equipment or will have the effect of destroying competition or creating a monopoly, nor where it appears that reasonably continuous service under the authority or that part of the authority, granted by the permit, certificate or license which is sought to be transferred has not been rendered prior to the application for transfer or assignment. All applications for transfer shall be made on proper forms prescribed by the commission and there shall be attached to the application for a transfer of a certificate, permit or license a joint affidavit executed by the transferor and transferee, certifying that all accrued taxes, rents, wages of employees and all other indebtedness incident to the transferor's operations have been paid in full, or if such is not the case, will be assumed by the transferee.

History: 1978 Comp., § 65-2-93, enacted by Laws 1981, ch. 358, § 14.

ANNOTATIONS

Compiler's notes. - The notes which appear in the annotations below were extracted from opinions rendered under the former Motor Carriers Act of 1933, as amended, and need to be viewed in connection with the present motor carrier provisions in that context.

Authority of commission held to apply to both voluntary and involuntary transfers. 1969 Op. Att'y Gen. No. 69-141.

Reasonably continuous service is fact question. - Whether reasonably continuous service has been provided prior to transfer is a question of fact and must be decided by the state corporation commission (now public regulation commission) on a case by case basis. If such service has not been provided, then the Commission is obligated to deny the transfer application. AA Oilfield Serv., Inc. v. New Mexico SCC, 118 N.M. 273, 881 P.2d 18 (1994).

Transfers precluded. - A lease which operates as a transfer of the carrier's rights for a specified period deemed to fall within the prohibition. 1943-44 Op. Att'y Gen. No. 4608.

Transfer to the majority stockholder of a contract carrier's permit originally issued to the corporation would be a violation. 1949-50 Op. Att'y Gen. No. 5268.

Transferee did not have to make new showing of public convenience and necessity in order to have the transfer approved by the state corporation commission (now public regulation commission), but only had to satisfy the commission that all debts pertaining to the certificate had been paid. 1964 Op. Att'y Gen. No. 64-150.

No new showing of public convenience and necessity was necessary in a hearing on an application to approve a transfer were the transferee had proposed to conduct its operations strictly in conformity within the limits of the authority conferred by the certificate in question. *Bekins Van & Storage Co. v. SCC*, 65 N.M. 423, 338 P.2d 1055 (1959).

Holder must satisfy commission that all indebtedness paid. - The only express condition authorizing approval of transfers was that the holder had to satisfy the state corporation commission (now public regulation commission) that all indebtedness pertaining to the certificate had been paid, such indebtedness being that which was directly attributable to the certificate, such as mileage taxes and funds due the state. *Bekins Van & Storage Co. v. SCC*, 65 N.M. 423, 338 P.2d 1055 (1959).

Indebtedness held applicable only to that directly attributable to certificate, such as mileage taxes and funds due the state and not to bills incurred from the business under which it is operated. 1937-38 Op. Att'y Gen. 142.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 13 Am. Jur. 2d Carriers § 90.

Transfer or encumbrance, carrier's certificate of convenience and necessity, franchise, or permit as subject to, 15 A.L.R.2d 883.

60 C.J.S. Motor Vehicles §§ 84(4), 84(5).

65-2-94. Power to grant temporary authority; notice to authorized carriers; hearings; requirements.

To provide motor carrier service for which there is an urgent and immediate need to, from or between a point or points within a territory having no motor carrier service deemed capable of meeting the need, the commission may, in its discretion and without hearing or other proceeding, grant authority for a period not exceeding ninety days for service by a common or contract carrier as the case may be. Satisfactory proof of such urgent and immediate need shall be made by affidavit or other verified proof as the commission shall prescribe. After temporary authority has been granted, the commission shall notify any carrier already authorized to perform all or any part of the service so authorized temporarily, and upon application in writing by the carrier, shall hold hearings and make such further determination with respect to temporary authority as the public interest may require. The grant of temporary authority may be extended as deemed necessary by the commission. Issuance of the temporary authority shall create no presumption that corresponding permanent authority will be granted thereafter. Applicants for temporary authority shall file tariffs covering the service for which temporary authority is being sought and shall comply with the provisions of Section 65-2-110 NMSA 1978.

History: 1978 Comp., § 65-2-94, enacted by Laws 1981, ch. 358, § 15.

65-2-95. Household goods agents; responsibilities of carriers; complaints; investigations; hearing and notice; compliance; antitrust exemption.

A. Each common motor carrier providing transportation of household goods subject to the jurisdiction of the commission under the Motor Carrier Act [this article] shall be responsible for all acts or omissions of any of its agents which relate to the performance of household goods transportation services, including accessorial or terminal services, subject to the jurisdiction of the commission under that act and which are within the actual or apparent authority of the agent [derived] from the carrier or which are ratified by the carrier.

B. Each common motor carrier providing transportation of household goods subject to the jurisdiction of the commission under the Motor Carrier Act shall use due diligence and reasonable care in selecting and maintaining agents who are sufficiently knowledgeable, fit, willing and able to provide adequate household goods transportation services, including accessorial and terminal services, and to fulfill the obligations imposed upon them by that act and by the carrier.

C. Whenever the commission has reason to believe from a complaint or investigation, that an agent providing household goods transportation services, including accessorial and terminal services, under the authority of a common motor carrier providing transportation of household goods subject to the jurisdiction of the commission under the Motor Carrier Act, has violated Subsections E or G of Section 65-2-121 NMSA 1978 or is consistently not fit, willing or able to provide adequate household goods transportation services, including accessorial and terminal services, it may issue to that agent a complaint stating the charges and containing notice of the time and place for hearing on the complaint which shall be held upon at least ten days' notice and no later than sixty days after service of the complaint to the agent. The agent shall have the right to appear at the hearing and rebut the charges contained in the complaint.

D. If the agent does not appear at the complaint hearing or if the commission finds that the agent has violated Subsections E or G of Section 65-2-121 NMSA 1978 or is consistently not fit, willing or able to provide adequate household goods transportation services, including accessorial and terminal services, it may issue an order to compel compliance by the agent. Thereafter, the commission may issue an order to limit, condition or prohibit the agent from any involvement in the transportation or provision of services incidental to the transportation of household goods subject to the jurisdiction of the commission under the Motor Carrier Act if, after notice and an opportunity to be heard, it finds that the agent, within a reasonable time after the date of issuance of a compliance order, but in no event less than thirty days after the issuance, has failed to comply with the order. An agent may file a petition with the commission seeking rescission of any order entered by the commission pursuant to this section.

E. The antitrust laws of the state do not apply to discussions or agreements between a common motor carrier providing transportation of household goods subject to the

jurisdiction of the commission under the Motor Carrier Act and its agents, whether or not an agent is also a carrier, related solely to:

(1) rates for the transportation of household goods under the authority of the principal carrier;

(2) accessorial, terminal, storage or other charges for services incidental to the transportation of household goods transported under the authority of the principal carrier;

(3) allowances relating to transportation of household goods under the authority of the principal carrier; or

(4) ownership of a common motor carrier providing transportation of household goods subject to the jurisdiction of the commission under that act by an agent or membership on the board of directors of any such common motor carrier by an agent.

History: 1978 Comp., § 65-2-95, enacted by Laws 1981, ch. 358, § 16.

65-2-96. Establishment of just and reasonable rates and practices; joint rates; through routes; unreasonable preferences; suspension; complaints; rate standards.

A. It shall be the duty of every common motor carrier to provide safe and adequate service, equipment and facilities for the rendition of transportation services and to establish and observe just and reasonable rates, charges and classifications and just and reasonable regulations and practices relating thereto and all other matters relating to or connected with the rendition of transportation services.

B. Common motor carriers of property shall also establish and observe just and reasonable regulations and practices relating to the manner and method of presenting, marking, packing and delivering property for transportation and all other matters relating to or connected with the transportation of property.

C. Common motor carriers shall establish reasonable through routes and joint rates, charges and classifications with other carriers. In case of joint rates, fares or charges, it shall be the duty of the carriers' parties thereto to establish just and reasonable regulations and practices in connection therewith and just, reasonable and equitable divisions thereof as between the carriers participating therein which shall not unduly prefer or prejudice any such participating carriers.

D. All charges made for any service rendered or to be rendered by any common motor carrier engaged in the rendition of transportation services as aforesaid or in connection therewith shall be just and reasonable, and every unjust and unreasonable charge for service or any part thereof is prohibited and declared to be unlawful. It is unlawful for any common motor carrier to make, give or cause any undue or unreasonable

preference or advantage to any particular persons, port, gateway, locality or region, district, territory or description of traffic in any respect whatsoever or to subject any particular person, port, gateway, locality, region, district, territory or description of traffic to any unjust discrimination or any undue or unreasonable prejudice or disadvantage in any respect whatsoever; provided, however, that this subsection shall not be construed to apply to discrimination, prejudices or disadvantages to the traffic of any other carrier of whatever description.

E. Any person, organization or body politic may make complaint in writing to the commission that any rate, fare, charge, classification, rule, regulation or practice in effect or proposed to be put into effect is in violation of the Motor Carrier Act [this article]. Whenever, after hearing upon complaint or in an investigation on its own initiative, the commission is of the opinion that any individual or joint rate, fare or charge demanded, charged or collected by any common motor carrier or carriers by railroad or express for transportation or any classification, rule, regulation or practice whatsoever of any carrier affecting the rate, fare or charge or the value of the service is unjust or unreasonable or unjustly discriminatory or unduly preferential or unduly prejudicial, it shall determine and prescribe the lawful rate, fare or charge or the maximum or minimum rate, fare or charge thereafter to be observed or the lawful classification, rule, regulation or practice thereafter to be made effective.

F. Whenever, after hearing upon complaint or upon its own initiative, the commission is of the opinion that the divisions of joint rates, fares or charges applicable to the transportation services of common motor carriers or by the carriers in conjunction with common carriers by railroad or express are unjust, unreasonable, inequitable or unduly preferential or prejudicial as between the carriers' parties thereto, whatever agreed upon by the carriers or any of them or otherwise established, the commission shall by order prescribe the just, reasonable and equitable divisions thereof to be received by the several carriers, and in cases where the joint rate, fare or charge was established pursuant to a finding or order of the commission, the commission may also by order determine what would have been the just, reasonable and equitable divisions thereof to be received by the several carriers and adjustment to be made in accordance therewith. The order of the commission may require the adjustment of divisions between the carriers, in accordance with the order, from the date of filing the complaint or entry of order of investigation or such other date subsequent as the commission finds justified and, in the case of joint rates described by the commission, the order as to divisions may be made effective as a part of the original order.

G. In proceedings to determine the reasonableness of rate levels for a common motor carrier or group of common motor carriers, the commission shall authorize revenue levels that are adequate under honest, economical and efficient management to cover total operating expenses, including the operation of leased equipment and depreciation, plus a reasonable profit. The standards and procedures adopted by the commission under this subsection shall allow the carriers to achieve revenue levels that will provide a flow of net income, plus depreciation, adequate to support prudent capital outlays, assure the repayment of a reasonable level of debt, permit the raising of needed equity

capital and attract and retain capital in amounts adequate to provide a sound motor carrier transportation system in the state.

H. For purposes of investigating the reasonableness of any proposed rate, fare, charge, classification, rule, regulation or practice, the commission may suspend the operation of that proposal for a period not in excess of sixty days.

History: 1978 Comp., § 65-2-96, enacted by Laws 1981, ch. 358, § 17; 1989, ch. 359, § 1.

ANNOTATIONS

The 1989 amendment, effective June 16, 1989, in the catchline, deleted "zone of rate freedom" from the end; deleted former Subsection I, relating to establishment by the commission of a zone of rate freedom; and made minor stylistic changes throughout the section.

Compiler's notes. - The notes which appear in the annotations below were extracted from opinions rendered under the former Motor Carriers Act of 1933, as amended, and need to be viewed in connection with the present motor carrier provisions in that context.

Carrier who charged less than established rate could collect difference between such established rate and the amount of the undercharge which was made. 1969 Op. Att'y Gen. No. 69-41.

Charges for first aid materials and equipment subject to regulation. - The state corporation commission (now public regulation commission) had jurisdiction to regulate charges assessed by ambulance service for such items as bandages and splints, disposable masks, use of resuscitation or suction equipment. Since the first aid was an integral part of the ambulance's service, charges for materials and equipment used in first aid were clearly subject to regulation. 1972 Op. Att'y Gen. No. 72-47.

Authority legislative and/or administrative, not judicial. - The powers and authority conferred on the state corporation commission (now public regulation commission) by legislation providing for regulation and supervision of transportation for hire by motor carriers held not a judicial function, but "legislative and/or administrative." State ex rel. SCC v. Zinn, 72 N.M. 29, 380 P.2d 182 (1963).

But no court jurisdiction until administrative remedies exhausted. - So long as the state corporation commission (now public regulation commission) was proceeding under its statutory authority and administrative remedies had not been exhausted, a district court was without jurisdiction to entertain the proceedings and, accordingly, was subject to prohibition by the supreme court. State ex rel. SCC v. Zinn, 72 N.M. 29, 380 P.2d 182 (1963).

And commission's interpretation binding on court; exceptions. - The state corporation commission's (now public regulation commission's) interpretation and construction of a certificate was binding on the court unless the commission's findings were unsupported by substantial evidence or the commission acted unlawfully, arbitrarily, capriciously or in abuse of its discretion. Springer Corp. v. SCC, 81 N.M. 133, 464 P.2d 552 (1969).

Public hearing necessary for ultimate interpretation. - The ultimate interpretation and construction by the state corporation commission (now public regulation commission) of a certificate constituted an adjudication as to the extent of authority under the certificate, and this adjudication required a public hearing after notice as provided by law. Springer Corp. v. SCC, 81 N.M. 133, 464 P.2d 552 (1969).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 13 Am. Jur. 2d Carriers §§ 105 to 141, 215 to 222.

Unfair competition by simulation of physical appearance of cabs and buses, 17 A.L.R. 787, 28 A.L.R. 114.

Joinder or representation of several claimants in action to recover overcharge, 1 A.L.R.2d 160.

Carrier's understatement of charges where discrimination is forbidden, 88 A.L.R.2d 1375.

Validity and construction of statute or ordinance requiring or prohibiting posting or other publication of price of commodity or services, 89 A.L.R.2d 901, 80 A.L.R.3d 740.

60 C.J.S. Motor Vehicles §§ 45(1), 45(2), 52 to 54(3).

65-2-97. Filing of tariffs; deviations and refunds prohibited; tariff changes.

A. Whenever an applicable tariff has not already been prescribed by the commission, every common motor carrier shall file with the commission and shall at all times keep open to public inspection tariffs showing all the rates, fares and charges for transportation, and all services in connection therewith, between points on its own routes and of any common carrier by railroad or express when a through route and joint rate have been established. The rates, fares and charges shall be stated in terms of lawful money of the United States. The tariffs required by this section shall be published, filed and posted in such form and manner and shall contain such information as the commission by regulation prescribes. The commission is authorized to reject any tariff filed with it which is not in consonance with the Motor Carrier Act [this article] and with its regulations. Any tariff rejected by the commission shall be void and its use shall be unlawful.

B. No common motor carrier shall charge or demand or collect or receive a greater or lesser or different compensation for transportation or for any service in connection therewith between the points enumerated in such tariff than the rates, fares and charges specified in the tariffs in effect at the time. No carrier shall refund or remit in any manner or by any device, directly or indirectly or through any agent or broker or otherwise, any portion of the rates, fares or charges so specified or extend to any person any privilege or facilities for transportation except as are specified in its tariff.

C. No change shall be made in any rate, fare, charge or classification or the value of the service thereunder, specified in any effective tariff of a common motor carrier, except after thirty days' notice of the proposed change filed and posted in accordance with Subsection A of this section. The notice shall plainly state the change proposed to be made and the time when the change will take effect. The commission may, in its discretion and for good cause shown, allow the change upon notice less than that specified in this subsection or modify the requirements of this section with respect to posting and filing of tariffs either in particular instances or by general order applicable to special or particular circumstances or conditions.

D. No common motor carrier, unless otherwise provided by the Motor Carrier Act, shall engage in the rendition of transportation services unless the rates, fares and charges upon which the same are provided by the common motor carrier have been prescribed or filed and published in accordance with the provisions of the Motor Carrier Act.

E. Notwithstanding any other provision of the Motor Carrier Act, a towing company may establish, collect and receive from any nonprofit not for profit motor club rates lower than the rates provided in the established tariff. Notice of the lower rates shall be filed with the commission but shall not be considered a tariff.

F. The rates of an otherwise valid tariff are not applicable when payment for services is directly paid by a medicaid program.

History: 1978 Comp., § 65-2-97, enacted by Laws 1981, ch. 358, § 18; 1989, ch. 250, § 2.

ANNOTATIONS

The 1989 amendment, effective June 16, 1989, inserted "common motor" near the middle of Subsection D, added Subsections E and F, and made minor stylistic changes throughout the section.

65-2-98. Motor carrier agreements; commission approval; requirement; antitrust immunity; termination.

A. As provided by this section, a common motor carrier providing transportation or service subject to the jurisdiction of the commission under the Motor Carrier Act [this article] may enter into an agreement with one or more such carriers concerning rates

(including charges between carriers and compensation paid or received for the use of facilities and equipment), allowances, classifications, divisions or rules and practices related to them or procedures for joint consideration, initiation or establishment of them. The agreement shall be submitted to the commission for approval by any carriers which are parties to the agreement and shall be approved by the commission upon a finding that the agreement fulfills each requirement of this section, unless the commission finds that the agreement is inconsistent with the transportation policy set forth in Section 65-2-81 NMSA 1978. The commission may require compliance with reasonable conditions consistent with that act to assure that the agreement furthers the transportation policy. If the commission approves the agreement, it may be made and carried out under its terms and under the conditions required by the commission. In such case, the antitrust laws of this state do not apply to parties and other persons with respect to making or carrying out the agreement.

B. Agreements submitted to the commission under Subsection A of this section may be approved by the commission only if each of the following conditions are met:

(1) each common motor carrier which is a party to an agreement shall file with the commission such information as the commission may, by rule, prescribe;

(2) any organization established or continued under an agreement approved under this section shall comply with the following requirements:

(a) the organization may allow any member carrier to discuss any rate, rule or practice proposal docketed, provided that only those carriers with authority to participate in the transportation to which the proposal applies may vote upon the proposal;

(b) the organization may propose general rate increases or decreases or rate, rule or practice restructuring of any commission-ratified organization tariff;

(c) the organization may not interfere with each carrier's right to establish its own rates, rules or practices and may not change or cancel any independently established rate, rule or practice;

(d) the organization may not file a protest or complaint with the commission against any tariff item independently published by or for the account of any common motor carrier;

(e) the organization may not permit one of its employees or any employee committee to docket or act upon any proposal effecting a change in any tariff item published by or for the account of any of its member carriers;

(f) upon request, the organization shall divulge to any person the name of the proponent of a practice, rule or rate docketed with it, shall admit any person to any meeting at which practices, rates or rules will be discussed or voted upon and shall divulge to any person the vote cast by any member carrier on any proposal before the organization;

(g) the organization may not allow a carrier to vote on behalf of one or more other carriers without specific written, notarized authority from the carrier being represented; and

(h) the organization shall make a final disposition of a practice, rule or rate docketed with it by the one hundred twentieth day after the proposal is docketed, except that if unusual circumstances require, the organization may extend the period subject to review by the commission;

(3) no agreement may be approved unless it contains reasonable quorum standards to be applied for meetings of the organization established or continued under the agreement.

C. In any proceeding in which a party to the proceeding alleges that a carrier voted, discussed or agreed on a rate or allowance in violation of this section, that party has the burden of showing that the vote, discussion or agreement occurred. A showing of parallel behavior does not satisfy that burden by itself.

D. The commission shall not approve any agreement between or among carriers of different classes unless it finds that the agreement:

(1) is consistent with the transportation policy set forth in Section 65-2-81 NMSA 1978;

(2) is limited to matters relating to transportation under joint rates, rules or practices; and

(3) meets all other requirements of this section.

E. The commission may impose such terms and conditions upon approval of any agreement under this section as the public interest may require.

F. Each conference, bureau, committee or other organization established or continued pursuant to any agreement approved by the commission under this section shall maintain such accounts, records, files and memoranda and shall submit to the commission such information and reports as may be prescribed by the commission, and all the accounts, records, files and memoranda shall be subject to inspection by the commission or its duly authorized representatives.

G. The commission is authorized, upon complaint or upon its own initiative without complaint, to investigate and determine whether any agreement previously approved by it under this section, or terms and conditions upon which the approval was granted, is not or are not in conformity with the requirements of this section or whether any such terms and conditions are not necessary for the purposes of conformity with the requirements, and, after such investigation, the commission shall by order terminate or modify its approval of the agreement if it finds such action necessary to ensure conformity with the requirements and shall modify the terms and conditions upon which

the approval was granted to the extent it finds necessary to ensure conformity with the requirements or to the extent to which it finds the terms and conditions not necessary to ensure such conformity. The effective date of any order terminating or modifying approval or modifying terms and conditions shall be as provided in Section 65-2-119 NMSA 1978.

H. No order shall be entered under this section except after interested parties have been afforded reasonable notice and opportunity to be heard.

History: 1978 Comp., § 65-2-98, enacted by Laws 1981, ch. 358, § 19; 1989, ch. 359, § 2.

ANNOTATIONS

The 1989 amendment, effective June 16, 1989, rewrote the section to the extent that a detailed comparison would be impracticable.

Am. Jur. 2d, A.L.R. and C.J.S. references. - What constitutes "state action" rendering public official's participation in private antitrust activity immune from application of federal antitrust laws, 109 A.L.R. Fed. 758.

65-2-99. Rates; liability based on value.

A. The commission may require or authorize a common motor carrier of property providing transportation services subject to its jurisdiction under the Motor Carrier Act [this article] to establish rates for the transportation of property under which the liability of the carrier for such property is limited to a value established by written declaration of the shipper or by written agreement between the carrier and shipper if that value would be reasonable under the circumstances surrounding the transportation. A tariff filed with the commission under that act shall refer specifically to the action of the commission under this section.

B. Before a common motor carrier of property may establish a rate for any service under this section, the commission may require the carrier to have in effect, and keep in effect, a rate for such which does not limit the liability of the carrier, during any period such rate under this section is in effect.

History: 1978 Comp., § 65-2-99, enacted by Laws 1981, ch. 358, § 20.

65-2-100. Motor carriers of property; receipts.

Every motor carrier of property subject to the provisions of the Motor Carrier Act [this article] receiving property for transportation within this state shall issue a receipt or bill of lading therefor, the form of which shall be prescribed by the commission.

History: 1978 Comp., § 65-2-100, enacted by Laws 1981, ch. 358, § 21.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. - 13 Am. Jur. 2d Carriers §§ 264 to 314.

13 C.J.S. Carriers §§ 390 to 402.

65-2-101. Annual reports; access to information; production of information.

A. It shall be the duty of each motor carrier or broker holding authority under the Motor Carrier Act [this article] to prepare and transmit to the commission an annual report on or before March 31 of each year, covering the next preceding calendar year ended December 31. The report required by this section shall be in the form and contain information as required by the commission.

B. The commission or its duly authorized agents shall, at all times, have access to all lands, buildings or equipment of motor carriers, brokers and household goods agents used in connection with their operations and also all pertinent accounts, records, documents and memoranda now or hereafter existing, and kept or required to be kept by motor carriers, brokers or household goods agents.

C. The commission, by order, may require any carrier, broker or household goods agent subject to the Motor Carrier Act, or any officer or agent thereof, to produce within this state at such reasonable time and place as it may designate, any books, records, accounts or documents kept in any office or place without or within this state, or certified copies thereof, whenever the production thereof is reasonably required and pertinent to any matter before the commission, in order that an examination thereof may be made by the commission or by any person employed by the commission.

History: 1978 Comp., § 65-2-101, enacted by Laws 1981, ch. 358, § 22.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. - 13 Am. Jur. 2d Carriers §§ 27, 137.

60 C.J.S. Motor Vehicles § 56.

65-2-102. Household goods carrier operations; regulatory requirements; protection of individual shippers; performance standards; estimates; weighing.

A. The regulations and paperwork required of common motor carriers providing transportation of household goods subject to the jurisdiction of the commission under the Motor Carrier Act [this article] shall be minimized to the maximum extent feasible consistent with the protection of individual shippers.

B. The commission may issue regulations, including regulations protecting individual shippers, in order to administer the provisions of the Motor Carrier Act with respect to transportation of household goods by common motor carrier. Regulations of the commission protecting individual shippers shall include, where appropriate, reasonable performance standards for the transportation of household goods subject to the jurisdiction of the commission under that act.

C. In establishing performance standards under this section, the commission shall take into account at least the following:

(1) the level of performance that can be achieved by a well-managed common motor carrier transporting household goods;

(2) the degree of harm to individual shippers which could result from a violation of the regulation;

(3) the need to set the level of performance at a level sufficient to deter abuses which result in harm to consumers and violations of regulations;

(4) service requirements of the carriers;

(5) the cost of compliance in relation to the consumer benefits to be achieved from such compliance; and

(6) the need to set the level of performance at a level designed to encourage carriers to offer service responsive to shipper needs.

D. Nothing in this section shall be construed to limit the commission's authority to require reports from common motor carriers providing transportation of household goods or to require such carriers to provide specified information to consumers concerning their past performance.

E. Every common motor carrier providing transportation of household goods subject to the jurisdiction of the commission under the Motor Carrier Act may, upon request of a prospective shipper, provide the shipper with an estimate of charges for transportation of household goods and for the proposed services. The commission shall not prescribe specific formulas, forms, methods or techniques for providing a prospective shipper with such an estimate. The commission shall not prohibit any carrier from charging a prospective shipper for providing a written binding estimate for the transportation and proposed services. The commission shall not require the final charges to a shipper to be based on an estimate.

F. Any charge for an estimate of charges provided by a common motor carrier to a shipper for transportation of household goods subject to the jurisdiction of the commission under the Motor Carrier Act shall be subject to the antitrust laws of this state.

G. The commission shall issue regulations that provide motor carriers providing transportation of household goods subject to the jurisdiction of the commission under the Motor Carrier Act with the maximum possible flexibility in weighing shipments, consistent with assurance to the shipper of accurate weighing practices. The commission shall not prohibit such carriers from backweighing shipments or from basing their charges on the reweigh weights if the shipper observes both the fare and gross weighings, or, prior to the weighings, waives in writing the opportunity to observe the weighings, and the weighings are performed on the same scale.

History: 1978 Comp., § 65-2-102, enacted by Laws 1981, ch. 358, § 23.

65-2-103. Household goods rates; estimates; guarantees of service.

A. Subject to the provisions of Subsection B of this section, a common motor carrier providing transportation of household goods subject to the jurisdiction of the commission under the Motor Carrier Act [this article] may, subject to the provisions of that act, establish a rate for the transportation of household goods which is based on the carrier's written, binding estimate of charges for providing the transportation.

B. Any rate established under Subsection A of this section shall be available on a nonpreferential basis to shippers and shall not result in charges to shippers which are predatory.

C. Subject to the provisions of Subsection D of this section, a common motor carrier providing transportation of household goods subject to the jurisdiction of the commission under the Motor Carrier Act may, subject to the provisions of that act, establish rates for the transportation of household goods which guarantee that the carrier will pick up and deliver the household goods at the times specified in the contract for the services and provide a penalty or per diem payment in the event the carrier fails to pick up or deliver the household goods at the specified time. The charges, if any, for the guarantee and penalty provision may vary to reflect one or more options available to meet a particular shipper's needs but shall be contained in the tariff the carrier publishes for the service under that act.

D. Before a carrier may establish a rate for any service under Subsection C of this section, the commission may require the carrier to have in effect and keep in effect, during any period the rate is in effect under that subsection, a rate for the service which does not guarantee the pickup and delivery of household goods at the times specified in the contract for the services and which does not provide a penalty or per diem payment in the event the carrier fails to pick up or deliver household goods at the specified time.

History: 1978 Comp., § 65-2-103, enacted by Laws 1981, ch. 358, § 24.

65-2-104. Household goods carriers; dispute settlement programs; commission approval; requirements; attorney's fees.

A. One or more common motor carriers providing transportation of household goods subject to the jurisdiction of the commission under the Motor Carrier Act [this article], which want to establish a program to settle disputes between carriers and shippers of household goods concerning the transportation of household goods may submit an application for establishing such program to the commission. The application shall be in a form and contain information as the commission may, by regulation, require. The commission shall review and approve, in accordance with the provisions of this section, each application submitted under this subsection.

B. The commission shall approve, at least within forty-five days of its filing, any application to establish a program for settling disputes concerning the transportation of household goods which meets the requirements of Subsection D of this section.

C. The commission may investigate at any time the functioning of any program approved under this section and, after notice and an opportunity to be heard, may suspend or revoke its approval for failure to meet the requirements of this section and such regulations as the commission may issue to carry out the provisions of this section.

D. No program for settling disputes concerning the transportation of household goods may be approved under this section unless the program is a fair and expeditious method for settling disputes and complies with each of the following requirements and regulations as the commission may issue:

(1) the program is designed to prevent a carrier from having any special advantage in any case in which the claimant resides or does business at a place distant from the carrier's principal or other place of business;

(2) the program provides for adequate notice of the availability of the program, including a concise, easy-to-read, accurate summary of the program and disclosure of the legal effects of election to utilize the program. The notice shall be given to persons for whom household goods are to be transported by the carrier before the goods are tendered to the carrier for transportation;

(3) upon request of a shipper, the carrier shall promptly provide forms and other information as are necessary for initializing an action under the program to resolve a dispute;

(4) each person, authorized pursuant to the program to arbitrate or otherwise settle disputes, shall be independent of the parties to the dispute and shall be capable, as determined under regulations as the commission may issue, to resolve disputes fairly and expeditiously. The program shall ensure that each person chosen to settle the disputes is authorized and able to obtain from the shipper or carrier any material and relevant information to the extent necessary to carry out a fair and expeditious decision-making process;

(5) no fee for instituting a proceeding under the program may be charged the shipper; except that, if the program is binding solely on the carrier, the shipper may be charged a fee of not more than twenty-five dollars (\$25.00) for instituting a proceeding under the program. In any case in which a shipper is charged a fee under this paragraph for instituting a proceeding under the program and the dispute is settled in favor of the shipper, the person settling the dispute shall refund the fee to the shipper unless the person settling the dispute determines that the refund is inappropriate;

(6) the program must not require the shipper to agree to utilize the dispute settlement program prior to the time that a dispute arises;

(7) the program may provide for an oral presentation of a dispute concerning transportation of household goods by a party to the dispute, or a party's representative, but the oral presentation may be made only if all parties to the dispute expressly agree to the presentation and the date, time and location of the presentation; and

(8) any person settling a dispute concerning transportation of household goods under the program shall, as expeditiously as possible but at least within sixty days of receipt of written notification of the dispute, render a decision based on the information gathered, except that, in any case in which a party to the dispute fails to provide in a timely manner any information concerning the dispute which the person settling the dispute may reasonably require to resolve the dispute, the dispute settler may extend the sixty-day period for a reasonable period of time. A decision resolving a dispute may include any remedies appropriate under the circumstances, including repair, replacement, refund or reimbursement for expenses and compensation for damages.

E. In any court action to resolve a dispute between a shipper of household goods and a common motor carrier providing transportation subject to the jurisdiction of the commission under the Motor Carrier Act concerning the transportation of household goods by the carrier, the shipper shall be awarded reasonable attorney's fees if:

(1) the shipper submits a claim to the carrier within one hundred twenty days after the date the shipment is delivered or the date the delivery is scheduled, whichever is later; and

(2) the shipper prevails in the court action; and

(3) no dispute settlement program approved under this section was available for use by the shipper to resolve the dispute; or

(4) a decision resolving the dispute was not rendered under a dispute settlement program approved under this section within the period provided under Paragraph (8) of Subsection D of this section or an extension of the period under that subsection; or

(5) the court proceeding is to enforce a decision rendered under a dispute settlement program approved under this section and is instituted after the period for performance under the decision has elapsed.

F. In any court action to resolve a dispute between a shipper of household goods and a common motor carrier providing transportation subject to the jurisdiction of the commission under the Motor Carrier Act concerning the transportation of household goods by the carrier, the carrier may be awarded reasonable attorney's fees by the court only if the shipper brought the action in bad faith:

(1) after resolution of the dispute under a dispute settlement program approved under this section; or

(2) after institution of a proceeding by the shipper to resolve the dispute under a dispute settlement program approved under this section but before:

(a) the period, provided under Paragraph (8), Subsection D of this section for resolution of the dispute including, if applicable, an extension of the period under that subsection, ends; and

(b) a decision resolving the dispute is rendered under the program.

G. The provisions of this section shall apply only in the case of collect-on-delivery transportation of those types of household goods described in Subsection J of Section 65-2-82 NMSA 1978.

History: 1978 Comp., § 65-2-104, enacted by Laws 1981, ch. 358, § 25.

65-2-105. Leasing of motor vehicle equipment; commission approval; appearance before commission; circumvention of laws or regulations.

A. A motor carrier for hire operating under a certificate or permit may, as lessor, enter into any agreement of lease relating to any motor vehicle equipment with any other person but only upon first submitting the proposed lease to the commission for its approval and may not, as lessee, enter into any agreement of lease relating to any motor vehicle equipment with any person except upon first submitting the proposed lease to the commission for its approval; provided, however, motor vehicles subject to operation under equipment interchange agreements shall be required to submit proposed equipment interchange agreements to the commission for its approval.

B. Upon any common or contract motor carrier submitting a lease to the commission for approval as provided for in Subsection A of this section, the commission shall have the power to require that the proposed lessor and lessee appear before the commission for the purpose of testifying fully in connection with the proposed lease.

C. If, after a hearing has been held in connection with any proposed lease, as provided in Subsection B of this section, the commission shall find that the purpose of the lease is to circumvent any law or regulation pertaining to the status, service, classification or [of] facilities, or rate [rates] of common or contract motor carriers, then and in that event, the commission shall have power and it is hereby declared to be its duty to issue an appropriate order disapproving that proposed transaction.

History: 1978 Comp., § 65-2-105, enacted by Laws 1981, ch. 358, § 26.

ANNOTATIONS

Liability of defendant advertised as common carrier for injury to equipment. -

Where defendant held himself out to be a common carrier by advertising and otherwise is the holder of a certificate of public convenience and necessity and it was impossible for defendant, a common carrier, to enter a contract of private carriage or of rental when electrical transformer was damaged while being transported on truck defendant owned, the defendant, the owner and operator of a heavy hauling business, was held to liability without fault. *Moorhead v. Stearns-Roger Mfg. Co.* 320 F.2d 26 (10th Cir. 1963)(decided under former law).

Am. Jur. 2d, A.L.R. and C.J.S. references. - State regulation of motor vehicle rental ("you-drive") business, 60 A.L.R.4th 784.

60 C.J.S. Motor Vehicles § 57.

65-2-106. Witnesses; fees and charges; attendance and testimony required; production of documents required; compelling attendance and testimony; oaths; certifications; subpoenas; service; quorum; investigation; taking testimony.

A. Each witness who shall appear before the commission, by its order, shall receive for his attendance the fees and mileage provided for witnesses in civil cases in courts of records, which shall be audited and paid by the state out of the state corporation commission [public regulation commission] motor transportation fund upon the presentation of proper vouchers; but no witness subpoenaed at the instance of parties other than the commission shall be entitled to compensation from the state for attendance and travel.

B. No person shall be excused from attending and testifying or from producing books and papers before the commission, or in obedience to the subpoena of the commission, whether the subpoena be signed or issued by one or more of the members of the commission in any investigation held by or before the commission or in any cause or proceeding in any court by or against the commission, relative to matters provided for in the Motor Carrier Act [this article], on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture; provided that nothing herein contained shall be

construed as requiring any person to produce any books or papers, or to testify in response to any inquiry, not pertinent to some question lawfully before the commission or court for determination. No person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he may be required to testify or produce evidence, documentary or otherwise before the commission, or in obedience to its subpoena or in any such cause or proceedings; provided, that no person testifying shall be exempted from prosecution and punishment for perjury committed in so testifying.

C. In case of failure or refusal on the part of any person to comply with any subpoena issued by the commission or any member thereof, or on the refusal of any witness to testify or answer as to any matters regarding which he may be lawfully interrogated, any district court in this state, or any judge thereof, on application of a member of the commission may issue an attachment for the person and compel him to comply with the subpoena and to attend before the commission and produce the documents and give his testimony upon the matters as may be lawfully required and the court or judge shall have the power to punish for contempt as in cases of disobedience of a like subpoena issued by or from the court or a refusal to testify therein.

D. Each of the members of the commission, for the purposes mentioned in the Motor Carrier Act and in all hearings before the commission, may administer oaths, certify to official acts, issue subpoenas and compel the attendance of witnesses and the production of books and papers.

E. Whenever the commission shall make any order or determination, or issue any subpoena, notice or writ, notice thereof may be served on the person affected thereby, by delivering a copy of the order, subpoena, notice or writ, signed by or in the name of any member of the commission to any person or an officer or agent of that person, as in the case of civil process, which service may be executed by any member of the commission, any employee thereof, the New Mexico state police or by any sheriff in this state. A copy of the order, subpoena, notice or writ, with the service endorsed thereon, shall be returned to the commission and entered of record as a part of the proceeding and the endorsement and return shall be prima facie evidence that the order, subpoena, notice or writ has been duly served.

F. Any two commissioners shall constitute a quorum to conduct hearings, decide motions and make orders, and the concurrence of at least two commissioners shall be required to make any order or determine any matter before the commission. The commission may, however, by writing under its seal authorize any commissioner, its clerk or other person to investigate and take testimony as to any matter pending before it.

History: 1978 Comp., § 65-2-106, enacted by Laws 1981, ch. 358, § 27.

ANNOTATIONS

Cross references. - For references to state corporation commission being construed as references to the public regulation commission, see 8-8-21 NMSA 1978.

For perjury see 30-25-1, 30-25-2 NMSA 1978.

For per diem and mileage for witnesses, see 38-6-4 NMSA 1978.

For subpoenas, see Rule 1-045 NMRA 1997.

Bracketed material. - The bracketed material in this section was inserted by the compiler. It was not enacted by the legislature and is not part of the law.

Effect of failure to comply with subpoena. - Failure to obey the state corporation commission's (now public regulation commission's) subpoena could not justify the denial of a full, fair and impartial hearing. Obedience to the subpoena, if it properly called for production of records, could have been enforced by application to the district court. *McWood Corp. v. SCC*, 78 N.M. 319, 431 P.2d 52 (1967) (decided under former law).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 13 Am. Jur. 2d Carriers §§ 137 to 139.
60 C.J.S. Motor Vehicles §§ 45(5), 54(3).

65-2-107. Time schedules; approval by commission; failure to adhere to schedules; compliance with maximum speed limits.

A. Regular route scheduled service carriers shall maintain with the commission a current time schedule of their holding out of service to the public. The time schedule shall be approved by the commission and filed for public inspection.

B. Failure by the carrier to operate the service on each day as scheduled shall result in appropriate penalties as the commission, in its discretion, shall determine.

C. Time schedules filed with the commission in compliance with the provisions of this section shall in no instance provide for a schedule of operation of any motor vehicle between any given terminals or between any way stations which will require the operation in question or any portion of the same to be made at a rate of speed greater at any point than the maximum speed allowed under the laws of this state.

History: 1978 Comp., § 65-2-107, enacted by Laws 1981, ch. 358, § 28.

ANNOTATIONS

Review by supreme court. - Prior to the enactment of the provisions of the 1933 Motor Carriers Act, it was decided that the jurisdiction of the supreme court to review orders of the state corporation commission (now public regulation commission) on removal did

not extend to order denying approval of time schedule of motorbus line. In re Wallace Transf. Co. 35 N.M. 652, 6 P.2d 199 (1931) (decided prior to former law).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 13 Am. Jur. 2d Carriers §§ 105 to 141.

Rate of motor vehicles for hire, power of municipal corporation to fix, 65 A.L.R. 1364.

60 C.J.S. Motor Vehicles § 52.

65-2-108. Discontinuance of seasonal operations; posting notice; abandonment of service; notice to commission; cancellation of certificate.

A. Motor carriers operating under certificates authorizing operation for certain seasons of the year only, shall cause a notice to be posted in all regular stations along the route of the operations, not less than five days before the close of the season during which the operations can be continued under the provisions of the certificates, notifying the public of the date upon which the operations will be discontinued for the season.

B. Except for the discontinuance of the seasonal operations at the close of the season for which the same are authorized under the terms of the certificate issue therefor, no motor carrier shall abandon all or any portion of its service to the public, except for causes beyond its control, unless it has filed a notice with the commission at least thirty days prior to the discontinuance of the service that it intends to discontinue the same and has posted like notices for a like time in all of its regular stations along the route so to be discontinued. Upon the discontinuance of service upon any route, except in compliance with the provisions of a seasonal certificate, the certificate of public convenience and necessity issued to the carrier shall be canceled insofar as the same applies to the route so discontinued.

History: 1978 Comp., § 65-2-108, enacted by Laws 1981, ch. 358, § 29.

ANNOTATIONS

Compiler's notes. - The notes which appear in the annotations below were extracted from opinions rendered under the former Motor Carriers Act of 1933, as amended, and need to be viewed in connection with the present motor carrier provisions in that context.

No abandonment or discontinuance by mere nonuse. - Mere nonuse by the holder of a certificate of public convenience and necessity authorizing nonscheduled service over irregular routes held not to constitute either abandonment or discontinuance of service by a certificate holder shown to be at all times fully equipped, ready, able and willing to operate. *Musselwhite v. SCC*, 61 N.M. 97, 295 P.2d 216 (1956).

Test of abandonment of a certificate by a nonscheduled carrier operating over irregular routes applied to whether such permit had been allowed to become dormant. As it applied to dormancy, mere nonuse or only occasional use by the holder of a certificate authorizing nonscheduled service over irregular routes did not constitute dormancy of service by a certificate holder who was shown at all times fully equipped, ready, able and willing to operate. Nonuse, plus inability to operate, or refusal to accept business, on noncompliance with a proper order of the corporation commission could amount to dormancy, abandonment or discontinuance of service, which would authorize an amendment to, or revocation of a permit. *Bennett v. SCC*, 73 N.M. 126, 385 P.2d 978 (1963).

Failure to begin immediate service not constituting abandonment. - Failure to begin immediate operation of services over an irregular route and nonscheduled services did not, ipso facto, amount to abandonment which would authorize the commission to revoke outright the certificate of public convenience and necessity. *Musselwhite v. SCC*, 61 N.M. 97, 295 P.2d 216 (1956).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 13 Am. Jur. 2d Carriers §§ 142, 143.

Substitution of motorbuses for streetcars, 66 A.L.R. 1245.

When granting or refusal of permission to substitute motor bus service for rail service justified, 75 A.L.R. 240.

60 C.J.S. Motor Vehicles § 52.

65-2-109. Special rates for students and senior citizens; free transportation prohibited; exceptions.

A. Motor carriers operating within this state may grant special or reduced rates to all students attending schools on or near their routes, for transportation between their homes and the schools, and to persons 65 years of age or older; provided, however, that if special or reduced rates are granted under the provisions of the Motor Carrier Act [this article], the motor carriers shall file with the commission a tariff statement setting forth the terms and conditions upon which they grant special or reduced rates.

B. No motor carrier shall furnish free transportation except to bona fide owners, officers or employees of the motor carriers and their dependents. Stockholders of incorporated motor carrier companies shall not be considered owners thereof within the meaning of this section.

History: 1978 Comp., § 65-2-109, enacted by Laws 1981, ch. 358, § 30.

ANNOTATIONS

No carrier deemed required to transport state employee free of charge whether traveling on official business or not. 1937-38 Op. Att'y Gen. 160 (decided under former law).

65-2-110. Financial responsibility; ticket reclaim bonds; C.O.D. bonds; public liability and property damage; cargo liability and interchange charge liability bonds or insurance policies; self-insurance; amounts; considerations.

A. Every motor carrier of persons holding a certificate issued by the commission shall, before interlining tickets, file with the commission a ticket reclaim bond in the amount of five hundred dollars (\$500) assuring full and prompt payment to all other motor carriers holding the certificates of all money due them for transportation sold over their lines by the carrier filing the bond. Upon failure of any carrier to file the bond, he shall be cited to appear before the commission to show cause why his certificate should not be canceled for such failure. In cases where it is shown to the satisfaction of the commission that the amount of reclaim business among any motor carriers exceeds five hundred dollars (\$500) during any one month, the commission shall increase the amount of the ticket reclaim bond to adequately cover such business.

B. Every carrier holding a certificate issued by the commission in compliance with the provisions of the laws of this state relating to the supervision and regulation of the business of the transportation of persons or property by motor vehicles for hire over the public highways of this state shall, before handling C.O.D. shipments, file with the commission a collect-on-delivery bond in the amount of five hundred dollars (\$500) assuring full and prompt payment to any shipper entrusting a collect-on-delivery shipment of goods to the motor truck operator of all money due the shipper on the shipment or a return within ten days of the shipment to the shipper in the event that the shipment is refused by the consignee of the shipment or in the event that the consignee cannot be located. Upon failure of any motor carrier to file a collect-on-delivery bond, he shall be cited to appear before the commission to show cause why his certificate should not be canceled for such failure. Any shipper entrusting a collect-on-delivery shipment of goods to a motor carrier upon the return of the shipment with no delivery shall be liable to the motor carrier for the transportation charges upon the shipment, and in the event of the failure or refusal of the shipper to pay the charges, the motor carrier shall have a lien upon the shipment for the transportation charges due, which lien may be enforced under the terms and provisions of Sections 48-3-1 through 48-3-15 NMSA 1978 and relating to liens on personal property.

C. No motor carrier subject to the provisions of the Motor Carrier Act [this article], including persons who provide services for which they charge at the time the service is rendered and who transport the public incidentally to that service regardless of whether that transportation is without charge, shall engage in any operations upon the highways of this state and no certificate or permit shall be issued to a motor carrier or shall remain in force unless and until there has been filed with and approved by the commission a certificate showing the issuance of a policy of insurance in a form approved by the

commission or a surety bond or policy of insurance issued by some company authorized to do surety or insurance business in this state, conditioned to pay, within the amount of the certificate showing the issuance of a policy of insurance in a form approved by the commission or surety bond or policy of insurance, all losses and damage proximately caused by or resulting from the negligent operation, maintenance or use of the motor carrier's vehicles or for loss or damage to property of others; nor shall any motor carrier subject to the provisions of the Motor Carrier Act engage in any operations upon the highways of this state, nor shall any certificate or permit be issued to any motor carrier, nor remain in force unless and until there has been filed with and approved by the commission a certificate showing the issuance of a policy of insurance in a form approved by the commission or a surety bond or policy of insurance issued by some company authorized to do surety or insurance business in this state conditioned upon the carrier making compensation to shippers or consignees for all property belonging to shippers or consignees and coming into the possession of the motor carrier in connection with its transportation service.

D. The minimum amounts of a certificate showing the issuance of a policy of insurance in a form approved by the commission or surety bond or policy of insurance referred to by this section shall be prescribed by the commission by rule. In prescribing these amounts, the commission shall take into consideration:

- (1) the creation of sufficient incentives to carriers to maintain and operate their equipment in a safe manner;
- (2) the requirements of the Motor Carrier Act with regard to entry into the transportation business and rate flexibility;
- (3) the size and operating characteristics of carriers;
- (4) vehicle weight; and
- (5) all other factors necessary to assure that carriers maintain an appropriate level of financial responsibility.

E. The commission may, upon application made to the commission and upon terms and conditions to be prescribed by the commission, permit any motor carrier to carry its own insurance in lieu of filing a certificate showing the issuance of a policy of insurance in a form approved by the commission or a surety bond or a policy of insurance. In granting an application under this subsection, the commission shall take into account:

- (1) the financial stability of the carrier;
- (2) previous loss history of the carrier;
- (3) the safety record of the carrier;

- (4) the size, nature of operations and other operating characteristics of the carrier; and
- (5) all other factors necessary for the protection of passengers, shippers and the public.

History: 1978 Comp., § 65-2-110, enacted by Laws 1981, ch. 358, § 31; 1999, ch. 147, § 1.

ANNOTATIONS

The 1999 amendment, effective June 18, 1999, requiring motor carriers transporting the public to have insurance, in Subsection A, deleted "of public convenience and necessity" following "a certificate" in the first sentence; in Subsection B, deleted "of public convenience and necessity" following "a certificate" near the beginning of the first sentence, inserted "including persons who provide services for which they charge at the time the service is rendered and who transport the public incidentally to that service regardless of whether that transportation is without charge", and substituted "the motor carrier's vehicles" for "motor vehicles under the certificate or permit".

Am. Jur. 2d, A.L.R. and C.J.S. references. - Effect of Motor Carrier Act provisions on insurance and indemnity agreements (49 U.S.C.A. §§ 13906, 14102) in allocating losses involving interstate motor carriers, 157 A.L.R. Fed. 549.

65-2-111. Agent for service of process.

A. Every common motor carrier at the time of filing application for a certificate of public convenience and necessity or for a certificate of registration as an interstate carrier, every contract motor carrier at the time of filing an application for a permit and every broker at the time of filing an application for a license, shall also file with the commission an appointment in writing of some agent, resident within this state, upon whom all orders of the commission and all lawful process of any court against any person may be served. The appointment shall specify the address of the agent and shall stipulate and agree that any lawful process against the person when served on the agent shall be of the same legal force and validity as if the person were served in person within the state, and that the authority shall continue in force until the substitution of another agent by filing with the commission a similar appointment of a substituted agent, or until all liability against the person growing out of operations or business done or performed by him in this state has terminated. A copy of the appointment, duly certified by the commission, shall be accepted as sufficient evidence thereof in all courts of this state. The service upon the agent of any order of the commission or of any lawful process of any court shall have the same force and effect as if the service were made upon the person in person within this state.

B. The operation on any public highway of this state of any motor vehicle by any carrier or the operations of a broker engaged in a business subject to the provisions of the Motor Carrier Act [this article], without the appointment of any agent as specified herein, or the failure of any person to appoint in the manner herein provided a substitute for any

agent theretofore appointed within ten days from and after the death, concealment within this state or removal from this state of a previously appointed agent, shall be deemed equivalent to the appointment by the person of the secretary of state of this state or his successor in office to be its true and lawful attorney upon whom may be served all orders of the commission and all lawful process of the any court of this state in any action or proceeding against the person growing out of any accident, collision or transaction in which the person may be involved in so operating in this state. Service of the order or process upon the person by leaving the same with the secretary of state shall, under the conditions aforesaid, have the same force and effect as if the person had been personally served with the same within this state, provided that the secretary of state shall forthwith forward the order or process by certified mail to the person at the address specified in its latest designation thereof to the commission, or to its last known address if no designation has been filed in the office. The certificate of the secretary of state of the mailing shall be attached to the return of service of the process and shall be accepted as prima facie proof thereof. The secretary of state shall be paid a fee of four dollars (\$4.00) for each process of court so served upon him, which shall be assessed as part of the costs in any action where the service is made. No fee shall be charged for a service of any order of the commission.

C. The principal carrier of a household goods agent shall be deemed to be the agent for service of process of the agent unless the agent notifies the commission in writing of the substitution of another agent.

History: 1978 Comp., § 65-2-111, enacted by Laws 1981, ch. 358, § 32.

ANNOTATIONS

Cross references. - For service of process, see Rule 1-004 NMRA 1997.

Legislative intent. - It was intended by the legislature that the motor common carrier should initially appoint as agent for service of process some resident within this state other than the secretary of state. 1955-56 Op. Att'y Gen. No. 6504 (decided under former law).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 14 Am. Jur. 2d Carriers §§ 596, 1133.

Constitutionality of statute which permits action against trucking or bus company for injury to person or property to be brought in any county through or into which the route passes and providing for service of process in such cases, 81 A.L.R. 777.

Service of process, construction and application of provision of Federal Motor Carrier Act requiring designation of agent for, 8 A.L.R.2d 814.

61 C.J.S. Motor Vehicles §§ 501 to 502(7).

65-2-112. Motor transportation division to furnish field information.

The commission may inspect the books and documents of all carriers regulated hereunder, so long as the inspection is handled in a manner which does not interfere with the movement of vehicles. The motor transportation division shall furnish to the commission all information obtainable only in the field, which, for the purposes of this section, means obtainable by patrolling of highways or establishing ports of entry or roadblocks for the purpose of checking commercial motor carriers and similar activities needed by the commission to carry out the responsibilities of the commission.

History: 1978 Comp., § 65-2-112, enacted by Laws 1981, ch. 358, § 33.

65-2-113. Expenditures for administration.

The commission is empowered to expend money as may be necessary for the administration and enforcement of the provisions of the Motor Carrier Act [this article], with the exception of the field enforcement delegated to the motor transportation division including the employment of all clerks and other employees as may be necessary.

History: 1978 Comp., § 65-2-113, enacted by Laws 1981, ch. 358, § 34.

65-2-114. Police powers for inspectors.

The inspectors designated by the commission shall have all the powers of peace officers in all cities, towns, villages and counties in this state with respect to any law or regulation that the commission is empowered to administer or enforce, provided these powers do not include the enforcement authority granted to the taxation and revenue department in Section 65-1-6 NMSA 1978.

History: 1978 Comp., § 65-2-114, enacted by Laws 1981, ch. 358, § 35; 1992, ch. 106, § 16.

ANNOTATIONS

Cross references. - For police powers of motor transportation division inspectors, see 65-1-7 NMSA 1978.

The 1992 amendment, effective July 1, 1992, made minor stylistic changes and substituted all of the present language following "include" for "those duties delegated to the motor transportation division in Section 65-1-6 NMSA 1978".

When inspectors may exercise powers given to peace officers. - Inspectors designated by the state corporation commission (now public regulation commission) could exercise the powers given by law to peace officers only when enforcing or attempting to enforce the constitutional and statutory provisions relative to the supervision and regulation of the business of transporting persons or property for hire by motor vehicles. 1961-62 Op. Att'y Gen. No. 61-40 (decided under former law).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 44 C.J.S. Inspection § 1 et seq.

65-2-115. Interstate carriers; certificate of registration; procedure.

A. No common or contract motor carrier engaged exclusively in interstate commerce shall operate for the transportation of persons or property for hire upon any public highway in this state without first either obtaining from the commission a certificate of registration under the provisions of this section or complying with the provisions of Section 65-2-115.1 NMSA 1978, as directed by the commission.

B. The certificate of registration shall be issued to interstate carriers, as a matter of course, upon proper application being made and shall designate the route and type of service specified in the application. No certificate of registration shall authorize the holder to engage in whole or in part as a common or contract motor carrier in intrastate business within this state or to engage in any business or operate over any route not specified in the certificate of registration. The certificate of registration shall become void unless the applicant to which it is granted begins operations within thirty days from the date the certificate of registration is issued and shall become void if the service is thereafter discontinued or unless, in either event, an extension is granted upon proper showing by order of the commission.

C. The commission shall adopt rules prescribing the manner and form in which interstate motor carriers shall apply for certificates of registration, but the application shall be in writing and sworn to and shall show the name and address of the applicant and, if a corporation, the names of its officers and directors and their addresses, the entire route within this state over which the applicant desires to operate and the kind of transportation, whether passenger or freight or both, in which the applicant proposes to engage, together with a brief description of each vehicle which the applicant intends to use, including the seating capacity if for passenger traffic or the tonnage capacity if for freight, a specification of the proposed schedule, the proposed rate, schedule or schedules of rates for transportation or for services in connection therewith and other information as the commission may require covering observance of New Mexico state police regulations and payment of license taxes and fees.

D. This certificate of registration shall be subject to all the motor carrier provisions of the revised Interstate Commerce Act, as amended, Subtitle 4, Title 49, United States Code.

History: 1978 Comp., § 65-2-115, enacted by Laws 1981, ch. 358, § 36; 1993, ch. 95, § 1.

ANNOTATIONS

The 1993 amendment, effective March 31, 1993, inserted the subsection designations "A" to "D"; inserted "of registration" following "certificate" throughout the section; inserted "either" preceding "obtaining" and added the language beginning "or complying

with" at the end of Subsection A; inserted "New Mexico" preceding "state police" near the end of Subsection C; and made minor stylistic changes in Subsection B.

Compiler's notes. - The notes which appear in the annotations below were extracted from opinions rendered under the former Motor Carriers Act of 1933, as amended, and need to be viewed in connection with the present motor carrier provisions in that context.

Interstate Commerce Act. - The federal Interstate Commerce Act, Subtitle 4 of 49 U.S.C., referred to in the last sentence, appears as 49 U.S.C. §§ 10101 to 11917.

There are deemed to be no alternatives to compliance with registration provisions of this section or exemptions other than those provided. 1951-52 Op. Att'y Gen. No. 5461.

I.C.C. permittees could operate under these provisions or other statutory provision without meeting the requirements of the other provision or provisions. 1945-46 Op. Att'y Gen. No. 4852.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 13 Am. Jur. 2d Carriers § 76.

When granting or refusing certificate of necessity or convenience for operation of motorbuses justified, 67 A.L.R. 957.

Interstate commerce, state requirements as to certificate of convenience and necessity as interference with, 85 A.L.R. 1138, 109 A.L.R. 1245, 135 A.L.R. 1358.

Carrier's certificate of convenience and necessity, franchise, or permit as subject to transfer or encumbrance, 15 A.L.R.2d 883.

60 C.J.S. Motor Vehicles § 92(1) et seq.

65-2-115.1. Interstate carriers; establishment of single state registration system.

A. The commission is authorized to collect an annual ten dollar (\$10.00) fee per motor vehicle, enter into agreements with states, agencies and governments and promulgate all rules and regulations necessary to enable New Mexico to participate in the single state registration system for motor carriers under Section 4005 of the federal Intermodal Surface Transportation Efficiency Act of 1991, and implementing rules and regulations promulgated by the interstate commerce commission.

B. Compliance by any common motor carrier or contract motor carrier with the provisions of the federal Intermodal Surface Transportation Efficiency Act of 1991 shall not in and of itself authorize the carrier to engage in whole or in part as a common motor carrier or contract motor carrier in New Mexico intrastate business.

History: 1978 Comp., § 65-2-115.1, enacted by Laws 1993, ch. 95, § 2.

ANNOTATIONS

Intermodal Surface Transportation Efficiency Act of 1991. - The Intermodal Surface Transportation Efficiency Act of 1991, referred to in Subsections A and B, was enacted as P.L. 102-240, 105 Stat. 1914, and is codified throughout the United States Code.

65-2-116. Farm carriers; registration; commission jurisdiction; applicability; exemptions.

A. No farm carrier shall be operated for hire on any public highway in this state without first obtaining from the commission a certificate of registration.

B. A certificate of registration shall be issued for farm carriers as a matter of course, without hearing, upon proper application being made and filed and fees paid. The application shall be in writing, be sworn to and designate the equipment to be used, the area to be served and other information as the commission may require. The application shall be accompanied by a certificate of insurance or some other showing of insurance coverage for public liability and property damage in amounts determined by the commission. This coverage shall be comparable to that required of other regulated carriers and issued by a company authorized to do business in this state.

C. A fee in the amount provided in Section 65-2-125 NMSA 1978 shall accompany the application for registration, which may be for one or more vehicles. This fee shall be in lieu of mileage taxes and the inspection and supervision fees required under Section 63-7-20 NMSA 1978. However, farm carriers shall not be entitled to one-half rates on license plates as common, contract or private carriers.

D. The certificate of registration shall remain in force until canceled by the commission. Cancellation for failure to maintain prescribed insurance coverage may be ordered by the commission without hearing. Cancellation for other causes may be made only after hearing. A farm carrier certificate of registration is subject to cancellation if the holder fails to operate under the certificate of registration for twelve consecutive months.

E. The commission shall have power and authority over farm carriers as to all matters of public liability and property damage insurance and shall make all necessary rules and regulations in connection therewith and for hearings. Farm carriers covered by certificates of registration shall bear a number or other identification prescribed by the commission.

F. The provisions of this section shall not apply to:

(1) motor vehicles being used in the transportation of, or carrying a cargo consisting exclusively of, unprocessed farm products as a part of harvesting from the place of production to market or to storage or to a processing plant; or

(2) vehicles being used in transporting livestock and hauling lots of less than twenty-five thousand pounds.

G. The owners or operators of motor vehicles described in Subsection F of this section shall not be deemed "common carriers" or "contract carriers" within the meaning of the Motor Carrier Act [this article].

History: 1978 Comp., § 65-2-116, enacted by Laws 1981, ch. 358, § 37; 1987, ch. 134, § 1.

ANNOTATIONS

Cross references. - For perjury, see 30-25-1, 30-25-2 NMSA 1978.

For per diem and mileage for witnesses, see 38-6-4 NMSA 1978.

For writs of mandamus, see 44-2-1 NMSA 1978 et seq.

Compiler's notes. - The notes which appear in the annotations below were extracted from opinions rendered under the former Motor Carriers Act of 1933, as amended, and need to be viewed in connection with the present motor carrier provisions in that context.

Transporter of race horses deemed not to come under provisions exempting "livestock" haulers from the Motor Carriers Act of 1933. 1963-64 Op. Att'y Gen. No. 63-21.

Livestock transported to packing house not "unprocessed farm products". - Livestock which were transported from a ranch, farm or feed-lot to a packing house were not considered "unprocessed farm products." 1972 Op. Att'y Gen. No. 72-43.

Am. Jur. 2d, A.L.R. and C.J.S. references. - What constitutes "agricultural" or "farm" labor within Social Security or Unemployment Compensation Acts, 53 A.L.R.2d 406.

65-2-117. Orders to discontinue, rectify or prevent violations; administrative penalties; continuing violations; penalties cumulative; actions to recover fines.

A. Whenever, after investigation in accordance with the provisions of the Motor Carrier Act [this article], the commission is of the opinion that any provision or requirement of that act or any order or regulation of the commission is being, has been or is about to be violated, it may make and enter of record an order in the premises, specifying the actual or proposed acts or omissions to acts which constitute real or proposed violation and requiring that the violation be discontinued or rectified, or both, or that it be prevented. No order, however, shall be made by the commission affecting any rate or service

except as otherwise specifically provided in the Motor Carrier Act, unless or until a public hearing has been held in accordance with the provisions of that act.

B. Notwithstanding the existence of any other penalties, the commission may assess administrative fines of not more than ten thousand dollars (\$10,000) for each violation of any provision of the Motor Carrier Act or of any lawful rule or order of the commission. In case of a continuing violation, each day's noncompliance shall be deemed to be a separate and distinct offense.

C. Notwithstanding the existence of any other penalties, the commission may assess administrative fines of not more than ten thousand dollars (\$10,000) against any shipper knowingly utilizing common or contract carriers not properly certified by the commission.

D. All penalties accruing under the Motor Carrier Act shall be cumulative, and a suit for recovery of one penalty shall not be a bar to or affect the recovery of any other penalty or forfeiture or be a bar to any criminal prosecution under that act.

E. Actions to recover fines assessed by the commission shall be brought in the name of the state in the district court of Santa Fe county.

History: 1978 Comp., § 65-2-117, enacted by Laws 1981, ch. 358, § 38; 1989, ch. 375, § 2.

ANNOTATIONS

The 1989 amendment, effective June 16, 1989, in Subsection A made a minor stylistic change in the first sentence, and substituted "as otherwise specifically provided in the Motor Carrier Act" for "as herein otherwise specifically provided" in the second sentence; in Subsection B substituted "ten thousand dollars (\$10,000)" for "one thousand dollars (\$1,000)" in the first sentence and made a minor stylistic change in the second sentence; added present Subsection C; and redesignated former Subsections C and D as present Subsections D and E.

Compiler's notes. - The notes which appear in the annotations below were extracted from opinions rendered under the former Motor Carriers Act of 1933, as amended, and need to be viewed in connection with the present motor carrier provisions in that context.

Language deemed permissive rather than mandatory. 1969 Op. Att'y Gen. No. 69-41.

Term "order" usually deemed to refer to the judicial functions of administrative agencies whereas the terms "rule" and "rulemaking" refer to legislative functions and powers, i.e., the issuing of general or particular regulations which in form or effect are like statutes. 1969 Op. Att'y Gen. No. 69-100.

Power to require collection of full rate. - Provisions gave the state corporation commission (now public regulation commission) the power to require that a common carrier collect the full legal rate from a shipper where an undercharge had been made. 1969 Op. Att'y Gen. No. 69-41.

Failure to begin immediate service not constitute abandonment. - Failure to begin immediate operation of services over an irregular route and nonscheduled services held not to, ipso facto, amount to abandonment which would authorize the state corporation commission (now public regulation commission) to revoke outright the certificate. *Musslewhite v. SCC*, 61 N.M. 97, 295 P.2d 216 (1956).

Public hearing necessary for ultimate interpretation. - The ultimate interpretation and construction by the state corporation commission (now public regulation commission) of a certificate constituted an adjudication as to the extent of authority under the certificate, and this adjudication required a public hearing after notice as provided by law. *Springer Corp. v. SCC*, 81 N.M. 133, 464 P.2d 552 (1969).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 13 Am. Jur. 2d Carriers §§ 31, 32.

60 C.J.S. Motor Vehicles § 44(5).

65-2-118, 65-2-119. Repealed.

ANNOTATIONS

Repeals. - Laws 1998, ch. 108, § 81 repeals 65-2-118 and 65-2-119 NMSA 1978, as enacted by Laws 1981, ch. 358, §§ 39 and 40, relating to publication of written orders and effective date of orders, effective January 1, 1999. For former sections, see 1998 Replacement Pamphlet.

65-2-120. Appeal to supreme court.

A. A motor carrier or other party in interest being aggrieved by a final order or determination of the commission pursuant to Chapter 65, Article 2 NMSA 1978 may appeal to the supreme court within thirty days.

B. The appeal shall be on the record of the hearing before the commission and shall be governed by the appellate rules applicable to administrative appeals. The supreme court shall affirm the commission's order unless it is:

- (1) arbitrary, capricious or an abuse of discretion;
- (2) not supported by substantial evidence in the record; or
- (3) otherwise not in accordance with law.

History: 1978 Comp., § 65-2-120, enacted by Laws 1998, ch. 108, § 75.

ANNOTATIONS

- I. General Consideration.
- II. Action in District Court.
- III. Appeal to Supreme Court.

I. GENERAL CONSIDERATION.

Cross references. - For writs of mandamus, see 44-2-1 NMSA 1978 et seq.

For injunctions, see Rule 1-006 NMRA 1997.

For Rules of Civil Procedure for the District Courts, see Judicial Pamphlet 1.

For Rules of Evidence, see Judicial Pamphlet 11.

For Rules of Appellate Procedure, see Judicial Pamphlet 12.

Repeals and reenactments. - Laws 1998, ch. 108, § 75 repeals 65-2-120 NMSA 1978, as enacted by Laws 1981, ch. 358, § 41, and enacts the above section, effective January 1, 1999. For provisions of former section, see 1995 Cumulative Supplement.

Compiler's notes. - The pre-1982 notes which appear in the annotations below were extracted from opinions rendered under the former Motor Carriers Act of 1933, as amended, and need to be viewed in connection with the present motor carrier provisions in that context.

Power and authority of commission legislative and/or administrative, not judicial.

- The powers and authority conferred on the state corporation commission (now public regulation commission) by legislation providing for regulation and supervision of transportation for hire by motor carriers held not a judicial function, but "legislative and/or administrative." State ex rel. SCC v. Zinn, 72 N.M. 29, 380 P.2d 182 (1963).

It has been held exclusive province of commission to determine public need and whether existing services are reasonably adequate. Western Oil Transp. Co. v. SCC, 67 N.M. 380, 355 P.2d 923 (1960).

Ongoing duty to insure fair rates. - The state corporation commission (now public regulation commission) had an ongoing duty to examine records, conduct investigations, grant continuances and do all other things necessary to insure that the public had fair rates. AAA v. SCC, 95 N.M. 227, 620 P.2d 881 (1980).

No court interference unless action capricious, etc. - It has been held not within the province of courts to interfere with the state corporation commission's (now public

regulation commission's) administrative functions unless that agency's action is capricious, arbitrary or confiscatory. *Garrett Freight Lines v. SCC*, 63 N.M. 48, 312 P.2d 1061 (1957).

Power to review dependent upon express constitutional or statutory provisions. - State corporation commission (now public regulation commission) held to be an administrative board exercising a legislative function which courts were without power to control and review except by express constitutional or statutory authority. *Transcontinental Bus Sys. v. SCC*, 56 N.M. 158, 241 P.2d 829 (1952).

Evidence required by courts to reverse commission's decision. - Absent an unreasonable or unlawful order, a showing of bias, arbitrary or capricious acts, an abuse of discretion by the commission, or an order lacking substantial support in the record, appellate court and district court are without power to change the decision of state corporation commission (now public regulation commission). *Groendyke Transp., Inc. v. SCC*, 101 N.M. 470, 684 P.2d 1135 (1984).

Findings to be based on substantial evidence. - A state corporation commission's (now public regulation commission's) finding had to be based on substantial evidence appearing in the record before it. *AAA v. SCC*, 95 N.M. 227, 620 P.2d 881 (1980).

"Substantial evidence" has been held to mean such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *AAA v. SCC*, 95 N.M. 227, 620 P.2d 881 (1980).

Order by commission not rendered void by absence of specific findings. - An absence of specific findings did not render void an order by the state corporation commission (now public regulation commission) renewing a certificate of public convenience and necessity, especially when there was no request made on the board or commission whose acts were challenged to make specific findings. *Ferguson-Steere Motor Co. v. SCC*, 60 N.M. 114, 288 P.2d 440 (1955).

Duty if more adequate findings desired. - If more adequate findings by commission were desired, duty rested on party complaining of their absence to have made a request for them. *Ferguson-Steere Motor Co. v. SCC*, 60 N.M. 114, 288 P.2d 440 (1955).

Record must show all necessary jurisdictional facts. - All necessary jurisdictional facts had to be shown by the record, but it was not necessary that they appear by express findings. It was enough if they appear by necessary implication from the facts expressly found. *Ferguson-Steere Motor Co. v. SCC*, 60 N.M. 114, 288 P.2d 440 (1955).

Court need only find action of commission lawful and reasonable. - The state corporation commission (now public regulation commission) had to find sufficient evidentiary facts on which it could reasonably support its order and decree; the court on

the other hand needed only find as a fact that the action of the commission was lawful and reasonable. *Garrett Freight Lines v. SCC*, 63 N.M. 48, 312 P.2d 1061 (1957).

Law reviews. - For comment on *State ex rel. State Corp. Comm'n v. Zinn*, see 3 *Nat. Resources J.* 356 (1963).

For article, "How to Stand Still Without Really Trying: A Critique of the New Mexico Administrative Procedures Act," see 10 *Nat. Resources J.* 840 (1970).

For 1984-88 survey of New Mexico administrative law, 19 *N.M.L. Rev.* 575 (1990).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 13 *Am. Jur. 2d Carriers* §§ 57 to 69.

60 *C.J.S. Motor Vehicles* §§ 44(6), 45(6).

II. ACTION IN DISTRICT COURT.

Generally. - Provisions conferred no power or jurisdiction upon the district court of Santa Fe county or any other court to amend an order of the state corporation commission (now public regulation commission) but were merely a statutory limitation requiring that actions to vacate or amend determinations by the commission had to be filed within ninety days after the entry of an order by the commission. *Transcontinental Bus Sys. v. SCC*, 56 N.M. 158, 241 P.2d 829 (1952).

Authority of court limited. - The authority of a district court was held limited in its judicial function in determining whether or not the action or order of the state corporation commission (now public regulation commission) was lawful and reasonable. *Garrett Freight Lines v. SCC*, 63 N.M. 48, 312 P.2d 1061 (1957).

Court without jurisdiction until administrative remedies exhausted. - So long as the state corporation commission (now public regulation commission) was proceeding under its statutory authority and administrative remedies had not been exhausted, a district court was without jurisdiction to entertain the proceedings, and accordingly was subject to prohibition by the supreme court. *State ex rel. SCC v. Zinn*, 72 N.M. 29, 380 P.2d 182 (1963).

Power of court generally. - District court had no power or jurisdiction to enter judgment or to compel state corporation commission (now public regulation commission) to enter order dictated by the court which materially modified, altered and amended a previous order of the commission, but had power only to dismiss the cause or to adjudge the order of the commission unlawful or unreasonable and to vacate the same and set it aside. *Transcontinental Bus Sys. v. SCC*, 56 N.M. 158, 241 P.2d 829 (1952).

Where action was brought in district court to set aside order of state corporation commission (now public regulation commission) granting certificate of public convenience and necessity, trial court was limited to determining whether the

questioned order was reasonable or unreasonable, or lawful or unlawful, upon the record made before the commission, and it could not remand the case to the commission for the taking of additional evidence, though if the commission order was only partially valid it could amend the same by approving the valid part on the record made before the commission. *State ex rel. Transcontinental Bus Serv., Inc. v. Carmody*, 53 N.M. 367, 208 P.2d 1073 (1949).

It had no power to stay an order of commission (an administrative board exercising a legislative function) pending a determination whether the order was lawful and reasonable in view of the separation of powers doctrine in N.M. Const., art. III, § 1. *State ex rel. SCC v. McCulloh*, 63 N.M. 436, 321 P.2d 207 (1957).

But can set aside order not supported by evidence. - The courts were vested with the power and authority to set aside an order of the state corporation commission (now public regulation commission) if it was unreasonable, unlawful, arbitrary, capricious or not supported by evidence. *Ferguson-Steere Motor Co. v. SCC*, 63 N.M. 137, 314 P.2d 894 (1957).

When court may enjoin issuance of certificate. - A court could enjoin the issuance of a certificate of public convenience and necessity only when the record showed the order of the state corporation commission (now public regulation commission) was unlawful or unreasonable. *State ex rel. SCC v. McCulloh*, 63 N.M. 436, 321 P.2d 207 (1957).

A court could enjoin issuance of a certificate of public necessity and convenience to operate a bus line provided the record reflected the fact that order of the state corporation commission (now public regulation commission) was unlawful or unreasonable. *New Mexico Transp. Co. v. SCC*, 51 N.M. 59, 178 P.2d 580 (1947).

Meaning of "unreasonable order". - An unreasonable order meant one which is capricious, arbitrary or confiscatory. *Harris v. SCC*, 46 N.M. 352, 129 P.2d 323 (1942).

Court limited to consideration of record made before commission. - A district court in determining whether an order of the state corporation commission (now public regulation commission) was lawful or unlawful, reasonable or unreasonable, was limited to a consideration of the record made before the commission. *State ex rel. SCC v. McCulloh*, 63 N.M. 436, 321 P.2d 207 (1957).

Additional evidence not presented at state corporation commission (now public regulation commission) hearing, nor offered under a recognized exception, may not later be heard by the district court sitting in the posture of an appellate court. *Groendyke Transp., Inc. v. SCC*, 101 N.M. 470, 684 P.2d 1135 (1984).

Trial before court not de novo. - The testimony which could be offered before the district court in suit to restrain state corporation commission (now public regulation commission) from permitting operation under certificate of public convenience and

necessity was limited to that produced before the commission as the trial before the court was not de novo. *Harris v. SCC*, 46 N.M. 352, 129 P.2d 323 (1942).

Court cannot retry case or substitute its judgment for commission's. - Under New Mexico statutes, a court was not authorized to retry the case or even take the record of it as it was and substitute its judgment for that of the administrative body, but was limited in its judicial function to determine whether or not the action or order of the state corporation commission (now public regulation commission) was lawful and reasonable. *Transcontinental Bus Sys. v. SCC*, 56 N.M. 158, 241 P.2d 829 (1952).

A district court was not authorized to retry a case, or even on the basis of the record of the proceedings before the state corporation commission (now public regulation commission) to substitute its own judgment for that of the administrative body. *Garrett Freight Lines v. SCC*, 63 N.M. 48, 312 P.2d 1061 (1957).

It was not the province of a trial court to retry a case brought before it on appeal from the state corporation commission (now public regulation commission) or to substitute its judgment for that of the agency. The trial court is limited to a determination of whether the administrative agency's action was legal or reasonable. *Ferguson-Steere Motor Co. v. SCC*, 63 N.M. 137, 314 P.2d 894 (1957).

Court bound by substantial evidence rule. - The courts could not overrule the acts of the state corporation commission (now public regulation commission) on matters committed to their discretion unless their actions were unlawful, unreasonable, arbitrary, capricious or not supported by evidence, and in reviewing the action of such bodies, a trial court was bound by the substantial evidence rule, that is, whether the findings of the administrative body were supported by substantial evidence. *Ferguson-Steere Motor Co. v. SCC*, 63 N.M. 137, 314 P.2d 894 (1957).

Hearsay and rumor held not to constitute substantial evidence. - Mere hearsay or rumor, and the testimony of "competitors" respecting the mode of operation of their own transportation for hire business, did not constitute substantial evidence so as to support findings concerning whether the operation of a business was within the scope of the 1933 Motor Carriers Act. *McWood Corp. v. SCC*, 78 N.M. 319, 431 P.2d 52 (1967).

Order unlawful when findings not supported by substantial evidence. - Where the findings of the state corporation commission (now public regulation commission) were not supported by substantial evidence, the order was neither lawful nor reasonable as required. *McWood Corp. v. SCC*, 78 N.M. 319, 431 P.2d 52 (1967).

Judgment sustained or reversed. - If evidence was found substantial, commission's order was reasonable and lawful, and the judgment had to be sustained; otherwise, the judgment had to be reversed. *Western Oil Transp. Co. v. SCC*, 67 N.M. 380, 355 P.2d 923 (1960).

III. APPEAL TO SUPREME COURT.

Scope of review generally. - Review by the district court and by supreme court on appeal of order of state corporation commission (now public regulation commission) was limited to questions of law and was restricted to whether the commission's findings and order were supported by substantial evidence, were within the scope of its authority and whether the action was unlawful, arbitrary, capricious or unreasonable. *Bennett v. SCC*, 73 N.M. 126, 385 P.2d 978 (1963); *AAA v. SCC*, 95 N.M. 227, 620 P.2d 881 (1980).

Limited to record and governed by substantial evidence rule. - Supreme court made the same review of the proceeding before the state corporation commission (now public regulation commission) as did the district court. Such a review was limited to the record of the proceeding before the agency and was governed by the substantial evidence rule. *McWood Corp. v. SCC*, 78 N.M. 319, 431 P.2d 52 (1967).

It was not within the province of the trial court, nor was it within the province of the supreme court, to consider any evidence other than that introduced at the hearing before the state corporation commission (now public regulation commission). The commission has been held to be an administrative body and the courts are limited in their review of the actions of such bodies. *Ferguson-Steere Motor Co. v. SCC*, 63 N.M. 137, 314 P.2d 894 (1957).

Sixty-day time limit for appeal in Subsection G is superseded by 30-day time limit contained in Rule 12-201 NMRA. *AAA v. SCC*, 102 N.M. 527, 697 P.2d 946 (1985).

Determination whether judgment reversed or affirmed. - The functions of the state corporation commission (now public regulation commission) have been held legislative and that of the court judicial, so on review, jurisdiction of supreme court was likewise limited to a determination whether the evidence before the commission, and upon which the order was based, was substantial in character. If the evidence was found to be substantial, it follows the order of the commission was both legal and reasonable, and the judgment had to be reversed; otherwise, it had to be affirmed. *Transcontinental Bus Sys. v. SCC*, 67 N.M. 56, 352 P.2d 245 (1959).

65-2-121. Criminal penalties; false statements; false reports; false entries; commission employee divulging information; weight-bumping; other violations; civil penalties for household goods violations; arrest and prosecution of violators.

A. Any person who knowingly makes any false statement of a material fact under oath, whether oral or in writing, as required by the Motor Carrier Act [this article], shall be guilty of perjury, and upon conviction shall be punished as provided for in the perjury statutes of this state.

B. Any person who willfully makes any false return or report to the commission, or to any member or employee of the commission, and any person who knowingly aids or

abets such person, shall be guilty of a felony, and upon conviction shall be imprisoned as the court may direct for a term not exceeding five years.

C. Any person who willfully makes any false entry in the accounts or records required by the commission to be kept under the Motor Carrier Act, or willfully destroys, mutilates or by any other means willfully falsifies the accounts or records, or willfully neglects or fails to make full, true and correct entries of all facts and transportations appertaining thereto, shall be guilty of a felony and upon conviction shall be imprisoned, as the court may direct, for a term not exceeding five years.

D. Any regular or special employee of the commission who divulges any fact or information coming to his knowledge respecting any inspection, examination or investigation of any account, record, memorandum, book or paper or of the property and facilities of a motor carrier, except insofar as he may be authorized by the commission or a court of competent jurisdiction or a judge thereof, shall be guilty of a misdemeanor and upon conviction shall be fined not more than one thousand dollars (\$1,000).

E. Any person who has been found guilty of weight-bumping shall, for each offense, be fined at least one thousand dollars (\$1,000) but not more than ten thousand dollars (\$10,000), imprisoned for not more than two years, or both.

F. Any person who violates or who procures, aids or abets in the violation of any provision of the Motor Carrier Act, or of any lawful rule or order of the commission is guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than one thousand dollars (\$1,000), or by imprisonment for not more than ninety days, or both.

G. Any person shall be assessed a civil penalty of not more than two thousand dollars (\$2,000) for each violation and not more than five thousand dollars (\$5,000) for each subsequent violation who knowingly engages in or authorizes an agent or other person to:

(1) falsify the documents used in the transportation of household goods subject to the jurisdiction of the commission under the Motor Carrier Act which evidence the weight of shipment; or

(2) charge for accessorial services which are not performed or for which the carrier is not entitled to be compensated in any case in which such services are not reasonably necessary in the safe and adequate movement of the shipment.

H. It shall be the duty of the sheriffs of the counties to make arrests and the district attorneys and attorney general to prosecute all violations of the Motor Carrier Act.

History: 1978 Comp., § 65-2-121, enacted by Laws 1981, ch. 358, § 42.

ANNOTATIONS

Cross references. - For perjury, see 30-25-1, 30-25-2 NMSA 1978.

Compiler's notes. - The notes which appear in the annotations below were extracted from opinions rendered under the former Motor Carriers Act of 1933, as amended, and need to be viewed in connection with the present motor carrier provisions in that context.

Cases may legally be brought before magistrate. 1969 Op. Att'y Gen. No. 69-53.

Effect of citizen's refusing to give information. - The refusal of a citizen to give information upon which to base a prosecution deemed not a violation of law, nor was it aiding and abetting. 1937-38 Op. Att'y Gen. 249.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 7A Am. Jur. 2d Automobiles and Highway Traffic §§ 92 to 95.

61A C.J.S. Motor Vehicles §§ 588, 701.

65-2-122. Prior certificates and permits.

Certificates and permits issued to carriers by the commission under the authority of previous acts shall remain in effect, subject to the regulatory provisions of the Motor Carrier Act [this article].

History: 1978 Comp., § 65-2-122, enacted by Laws 1981, ch. 358, § 43.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. - Construction of "grandfather clause" of statute or ordinance regulating or licensing business or occupation, 4 A.L.R.2d 667.

65-2-123. Enforcement of orders.

The commission is authorized to institute civil actions in its own name in the district court of Santa Fe county to enforce its orders and rules.

History: 1978 Comp., § 65-2-123, enacted by Laws 1981, ch. 358, § 44.

65-2-124. Effect on interstate and foreign commerce.

Neither the Motor Carrier Act [this article] nor any provision thereof shall be applied or be construed to apply to interstate or foreign commerce except insofar as the same may be permitted or authorized under the constitution of the United States and the acts of congress of the United States, now in force or hereafter enacted.

History: 1978 Comp., § 65-2-124, enacted by Laws 1981, ch. 358, § 45.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. - 13 Am. Jur. 2d Carriers § 24.

License tax or fee on automobile as affected by interstate commerce clause, 25 A.L.R. 37, 52 A.L.R. 533, 115 A.L.R. 1105.

Interstate commerce, state requirements as to certificate of convenience and necessity as interference with, 85 A.L.R. 1138, 109 A.L.R. 1245, 135 A.L.R. 1358.

State taxation of motor carriers as affected by commerce clause, 17 A.L.R.2d 421.

60 C.J.S. Motor Vehicles § 45(2).

65-2-125. Fees; refunds; disposition of receipts; forfeiture of deposits.

A. The commission shall charge and collect the following miscellaneous fees, except as required in Paragraph (3) of this subsection, in connection with the administration of the Motor Carrier Act [this article]:

(1) for filing application for certificate of public convenience and necessity or contract carrier permit, two hundred fifty dollars (\$250);

(2) for filing application for an intrastate certificate of registration, twenty-five dollars (\$25.00);

(3) for each annual registration number, stamp or decal for each vehicle to be operated intrastate in New Mexico, other than the vehicles provided for in Subsection F of Section 65-2-116 NMSA 1978, provided that the taxation and revenue department may substitute electronic means of identifying vehicles that have paid the annual registration fee in lieu of issuing a stamp or decal, ten dollars (\$10.00) per vehicle per year or portion thereof;

(4) for filing application for broker's or agent's license, one hundred dollars (\$100);

(5) for filing application for intrastate temporary authority, one hundred dollars (\$100) and for each extension of any such authority, fifty dollars (\$50.00);

(6) for filing application for change of name, ten dollars (\$10.00);

(7) for filing application for lease or transfer of any certificate of public convenience and necessity or permit, two hundred dollars (\$200);

(8) for filing application to change intrastate tariff for rate, fare or charge, two hundred dollars (\$200);

(9) for filing application for rate change pursuant to zone of rate freedom provisions, fifteen dollars (\$15.00);

(10) for filing application for voluntary suspension of certificate or permit, fifteen dollars (\$15.00);

(11) for filing proof of insurance or property damage and liability security relating to intrastate motor carrier operations, fifteen dollars (\$15.00) per filing;

(12) for filing application for reinstatement of certificate or permit following voluntary or involuntary suspension, one hundred dollars (\$100);

(13) for filing lease or equipment interchange agreement and other miscellaneous filings, five dollars (\$5.00);

(14) for certifying copies of any record, order, permit or certificate, fifteen dollars (\$15.00);

(15) for filing requests to vacate or continue hearing filed fewer than ten calendar days before the scheduled hearing date, fifty dollars (\$50.00); and

(16) for copies of written commission documents or records, one dollar (\$1.00) per page and for other records, including but not limited to magnetic tapes, an amount set by the commission, in addition to any applicable certification charge.

All fees shall be collected by the commission at the time of performance of the service for which the fees are payable and shall be remitted to the state treasurer and deposited in the "motor transportation fees receipt fund", hereby created.

B. Whenever any fees specified in Subsection A of this section have been erroneously paid, the person having paid such fees may apply in writing to the commission for a refund no later than sixty days after the payment. Upon approval of the application by the commission, the amount erroneously paid shall be refunded to the person who made the payment from the motor transportation fees receipt fund. At the end of each month, the state treasurer shall transfer the unencumbered balance in the motor transportation fees receipt fund to the state road fund.

C. All applications made after the passage of the Motor Carrier Act shall be fully completed within sixty days after all deposits or fees have been tendered. In the event any person, firm or corporation neglects or fails to fully complete an application within the time designated, the deposit or fee shall be forfeited to the state. If the applicant desires to renew his application, he shall tender and pay an additional fee in the same amount as the original.

History: 1978 Comp., § 65-2-125, enacted by Laws 1981, ch. 358, § 46; 1987, ch. 134, § 2; 1990, ch. 21, § 2; 1993, ch. 95, § 3.

ANNOTATIONS

Cross references. - For state road fund, see 67-3-65 NMSA 1978.

The 1990 amendment, effective July 1, 1990, in Subsection A, inserted the proviso in Paragraph (3) and substituted "fewer than" for "less than" in Paragraph (15).

The 1993 amendment, effective March 31, 1993, inserted "an intrastate", "intrastate" and "relating to intrastate motor carrier operations" in Paragraphs (2), (3) and (11) of Subsection A and made a minor stylistic change in the introductory paragraph of Subsection A.

Law not deemed to contemplate refund of erroneously collected mileage taxes. 1935-36 Op. Att'y Gen. 110 (decided under former law).

65-2-125.1. Administration of fee collection and distribution.

The motor vehicle division of the transportation department or its successor agency shall administer the collection and distribution of amounts collected pursuant to Paragraph (3) of Subsection A of Section 65-2-125 NMSA 1978 in the same manner required by the commission. The issuance of the required stamps or decals shall be accomplished at the same time as annual registration of vehicles and such stamp or decal shall be available for purchase at all ports of entry.

History: Laws 1987, ch. 134, § 3.

65-2-126. Exemptions.

A. Neither the Motor Carrier Act [this article] nor any provisions of that act shall apply or be construed to apply to any of the following:

(1) school buses as defined in Section 66-1-4.16 NMSA 1978, or the use of those vehicles under a permit pursuant to Sections 22-17-1 through 22-17-4 NMSA 1978, provided that the vehicles shall, notwithstanding the provisions of this section, be subject to all applicable school bus safety provisions as established by the state transportation director pursuant to Sections 22-16-2 and 22-16-11 NMSA 1978;

(2) United States mail carriers operating star routes, when not engaged in other business as common carriers or contract carriers of property or persons;

(3) hearses, funeral coaches or any other motor vehicle belonging to or operated by any funeral service practitioner or assistant funeral service practitioner licensed pursuant to

the Thanatopractice Act [61-32-1 to 61-32-31 NMSA 1978] in connection with his business;

(4) any municipal bus system; or

(5) private carriers.

B. Exempt from the provisions of Sections 65-2-96 through 65-2-99 NMSA 1978, except as otherwise provided in this section, shall be persons operating motor vehicles engaged in the transportation of materials mixed or unmixed for plant mix bituminous-treated base, base course, cement- or lime-treated subgrade, cold mix asphalt, treated base, plant mix bituminous pavement, hot recycled bituminous pavement, open-grade friction course, slurry seal, bituminous surface treatment, asphalt-rubber crack sealant and aggregates of sand, gravel, rock, crushed rock, rock ballast or dirt, treated or untreated, not transported in tank or tank-type vehicles, obtained or produced on the job and transported over irregular routes under unscheduled service. Persons operating motor vehicles engaged in the transportation of the materials provided for in this subsection shall be deemed to have statewide authority for the transportation of those materials. A minimum tariff for the transportation of the materials provided for in this subsection shall be set by the commission as provided by law. This exemption shall not apply to the transportation of asphalt petroleum and petroleum products and any commodities in bulk by tank vehicle.

C. Motor vehicles, regularly used to convey children to and from schools or school activities, that comply with the safety requirements prescribed by law may, upon application of the vehicle owner and an eleemosynary organization and in the discretion of the commission, be granted a permit for a single trip. Application for a single trip permit shall be in a form prescribed by the commission and shall state the time, purpose, origin and destination of the trip for which the permit is requested and the name, purpose and status of any organization sponsoring the trip. Single-trip permits authorized by this subsection may be issued for a fee not to exceed five dollars (\$5.00) to be determined by the commission, shall not be subject to tariff-filing requirements and shall be issued only upon the determination of the commission that no certified or permitted common or contract carrier service is available for the trip described in the application for permit.

History: 1978 Comp., § 65-2-126, enacted by Laws 1981, ch. 358, § 47; 1983, ch. 113, § 1; 1990, ch. 108, § 1; 1992, ch. 88, § 1; 1999, ch. 244, § 1.

ANNOTATIONS

Cross references. - For Ambulance Standards Act, see 65-6-1 NMSA 1978.

The 1990 amendment, effective May 16, 1990, in Subsection A, substituted "provisions of that act" for "provisions hereof" in the introductory phrase; deleted former Paragraph (7) which read "persons operating motor vehicles engaged in the transportation of sand,

gravel, rock, crushed rock, rock ballast or dirt, treated or untreated, not transported in tank or tank-type vehicles, obtained or produced on the job or for a specified project under a federal, state or municipal contract, transported over irregular routes under unscheduled service" and made a minor stylistic change; added present Subsection B; and redesignated former Subsection B as present Subsection C.

The 1992 amendment, effective May 20, 1992, substituted "Section 66-1-4.16" for "Section 66-1-4" in Subsection A(1); substituted "Sections 61-32-1 through 61-32-24" for "Sections 61-29A-1 through 61-29A-24" in Subsection A(3); in Subsection B inserted "except as otherwise provided in this section" in the first sentence and substituted "set by the commission as provided by law" for "eight cents (\$.08) per ton mile" in the third sentence; and made minor stylistic changes throughout the section.

The 1999 amendment, effective June 18, 1999, in Subsection A, substituted "22-16-11 NMSA 1978" for "66-7-365 NMSA 1978" in Paragraph (1); substituted "the Thanatopractice Act" for "Section 61-32-1 through 61-32-24 NMSA 1978" in Paragraph (3); and deleted former Paragraph (6), relating to common or contract motor carriers of property or persons.

Compiler's notes. - The notes which appear in the annotations below were extracted from opinions rendered under the former Motor Carriers Act of 1933, as amended, and need to be viewed in connection with the present motor carrier provisions in that context.

Interpreting exemptions part of commission's powers. - Since the state corporation commission (now public regulation commission) could promulgate regulations interpreting the Motor Carriers Act of 1933, that power extended to interpreting the exemptions listed therein. 1966 Op. Att'y Gen. No. 69-100.

Raising of exemption issue. - Where plaintiff sought to restrain defendant from transporting bus passengers for hire over routes followed by plaintiff's buses, defendant could defend on the ground that it operated pursuant to city franchise under an exemption in the 1933 Motor Carriers Act and could raise the issue by filing a general denial. *Whitfield v. City Bus Lines*, 51 N.M. 434, 187 P.2d 947 (1947).

Plaintiff assumed burden of showing that defendant's operations not exempt. - See *Whitfield v. City Bus Lines*, 51 N.M. 434, 187 P.2d 947 (1947).

Commission could legally limit school bus exemption to school activities paid for out of the public money of the school activities fund as defined by 1967 Op. Att'y Gen. No. 67-128. 1969 Op. Att'y Gen. No. 69-100.

But not to so-called single trips. - Any regulation issued by the state corporation commission (now public regulation commission) which purported to limit the school bus exemption to school activities paid for from public moneys would have no effect on the

so-called single trip, limited exemption for school buses. 1969 Op. Att'y Gen. No. 69-100.

Motor Vehicle Code serves as guide to define "school bus". - It was not considered unreasonable for the state corporation commission (now public regulation commission) to look to the legislature's definition of the term "school bus" in the Motor Vehicle Code (see 66-1-4(58) NMSA 1978) for a guide to interpreting such exemption. 1969 Op. Att'y Gen. No. 69-100.

Law contemplated bus driver under contract with school board for the transportation of pupils to and from school and had no application to a private bus driver operating for hire for such service, which was considered an evasion of the law. 1937-38 Op. Att'y Gen. 281.

Ambulances operated by federal directors exempt. - Under these provisions and 61-21-4 NMSA 1978 (now repealed), ambulances operated by funeral directors were deemed exempt, and 1960 Op. Att'y Gen. No. 60-109 was therefore overruled. 1967 Op. Att'y Gen. No. 67-85.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 13 Am. Jur. 2d Carriers § 22.

60 C.J.S. Motor Vehicles § 46.

65-2-127. Effect on municipal powers.

Nothing contained in the Motor Carrier Act [this article] is intended or shall be construed:

A. to limit or restrict the police jurisdiction or power of municipalities over their streets and other highways and public places except as otherwise provided by law;

B. in respect to matters other than rates and service regulations, to repeal any power of any municipality:

(1) to adopt and enforce reasonable police regulations and ordinances in the interest of the public safety, morals and convenience; or

(2) to protect the public against fraud, imposition or oppression by motor carriers within their respective jurisdiction.

History: 1978 Comp., § 65-2-127, enacted by Laws 1981, ch. 358, § 48.

ANNOTATIONS

Severability clauses. - Laws 1981, ch. 358, § 50, provides for the severability of the act if any part or application thereof is held invalid.

Am. Jur. 2d, A.L.R. and C.J.S. references. - Points at which jitney bus passengers may be taken on and discharged, validity of restrictions as to, 6 A.L.R. 110.

Conflict between statutes and local regulations as to automobiles, 21 A.L.R. 1186, 64 A.L.R. 993, 147 A.L.R. 522.

Reasonableness and validity of requirement as to bonds from operators of jitney buses, 22 A.L.R. 230.

Solicitation in street for patronage of taxicabs, validity of regulation against, 42 A.L.R. 282.

Validity of requirement of municipality that vehicle make use of "taxicab stands," 55 A.L.R. 1132.

Rates of motor vehicles for hire, power of municipal corporation to fix, 65 A.L.R. 1364.

Municipality's power to deny use of its streets to carrier which has obtained certificate of public convenience, 66 A.L.R. 847.

Street cars, substitution of motor buses for, 66 A.L.R. 1245.

Validity of municipal ordinance requiring indemnity insurance as condition of operating taxicab, 95 A.L.R. 1224.

Certificates by state authorizing operation of motor-bus lines over section of highway as affected by subsequent annexation to city, 154 A.L.R. 1440.

Meaning of term "radius" as employed in exemption provision of statute taxing and regulating motor carriers, as descriptive of area, location or distance, 10 A.L.R.2d 605.

60 C.J.S. Motor Vehicles §§ 23, 45(3).

ARTICLE 3

MOTOR CARRIER SAFETY

65-3-1. Short title.

Sections 65-3-1 through 65-3-13 NMSA 1978 may be cited as the "Motor Carrier Safety Act".

History: 1978 Comp., § 65-3-1, enacted by Laws 1989, ch. 201, § 2.

ANNOTATIONS

Repeals and reenactments. - Laws 1989, ch. 201, § 2 repeals former 65-3-1 NMSA 1978, as amended by Laws 1977, ch. 250, § 95, relating to drivers' hours and enforcement thereof, and enacts the above section, effective July 1, 1989. For provisions of former section, see 1981 Replacement Pamphlet.

65-3-2. Purpose.

The legislature finds that highway safety is of utmost public concern. The purpose of the Motor Carrier Safety Act [65-3-1 to 65-3-13 NMSA 1978] is to protect the New Mexico traveling public by ensuring the safe operation of commercial motor carrier vehicles on New Mexico's highways.

History: 1978 Comp., § 65-3-2, enacted by Laws 1989, ch. 201, § 3.

ANNOTATIONS

Repeals and reenactments. - Laws 1989, ch. 201, § 3 repeals former 65-3-2 NMSA 1978, as amended by Laws 1973, ch. 255, § 1, relating to maximum hours and rest periods for drivers, and enacts the above section, effective July 1, 1989. For provisions of former section, see 1981 Replacement Pamphlet.

65-3-3. Applicability.

A. Notwithstanding any provision of the Motor Vehicle Code to the contrary, the provisions of the Motor Carrier Safety Act [65-3-1 to 65-3-13 NMSA 1978] and the regulations promulgated under that act shall apply to the following motor vehicles operating on the public highways of New Mexico:

- (1) interstate commercial motor carrier vehicles with a declared gross vehicle weight of over ten thousand pounds;
- (2) intrastate commercial motor carrier vehicles with a declared gross vehicle weight of over twenty-six thousand pounds;
- (3) buses designed to transport sixteen or more passengers, including the driver; or
- (4) motor vehicles transporting hazardous materials of a type or quantity requiring placarding under applicable state or federal law.

B. Whenever a motor vehicle of one type is used to perform the functions normally performed by a motor vehicle of another type, the requirements of the Motor Carrier Safety Act shall apply to that motor vehicle and to its operation as if that motor vehicle were actually a motor vehicle of the latter type.

C. Whenever a duty is prescribed for a driver or a prohibition is imposed upon the driver pursuant to the provisions of the Motor Carrier Safety Act, it shall be the duty of the

motor carrier to require observance of such prescription or prohibition. If the motor carrier is also the driver, the motor carrier shall likewise be bound.

History: 1978 Comp., § 65-3-3, enacted by Laws 1989, ch. 201, § 4; 1992, ch. 106, § 17.

ANNOTATIONS

Repeals and reenactments. - Laws 1989, ch. 201, § 4 repealed former 65-3-3 NMSA 1978, as enacted by Laws 1933, ch. 61, § 3, relating to emergencies, and enacted a new 65-3-3 NMSA 1978, effective July 1, 1989. For provisions of former section, see 1981 Replacement Pamphlet.

The 1992 amendment, effective July 1, 1992, rewrote the introductory paragraph of Subsection A, which formerly read: "The provisions of the Motor Carrier Safety Act shall apply to the following vehicles operating on the public highways of New Mexico:"; inserted "commercial" in Subsection A(2); substituted "motor vehicles" for "vehicles" in Subsection A(4); and made minor stylistic changes in Subsection C.

Motor Vehicle Code. - See 66-1-1 NMSA 1978 and notes thereto.

65-3-4. Regulations; inspections.

A. The secretary is directed to adopt in accordance with Section 65-1-10 NMSA 1978 necessary rules and regulations under the Motor Carrier Safety Act [65-3-1 to 65-3-13 NMSA 1978] as they apply to motor carrier safety. Such rules and regulations shall not be inconsistent with or more stringent than applicable federal safety standards.

B. The department is authorized to inspect at the motor carrier's place of business those safety records required to be retained by the motor carrier pursuant to the provisions of the Motor Carrier Safety Act.

History: 1978 Comp., § 65-3-4, enacted by Laws 1989, ch. 201, § 5; 1992, ch. 106, § 18.

ANNOTATIONS

Repeals and reenactments. - Laws 1989, ch. 201, § 5 repealed former 65-3-4 NMSA 1978, as enacted by Laws 1933, ch. 61, § 4, relating to penalty for violation of maximum driving hours provisions, and enacted a new 65-3-4 NMSA 1978, effective July 1, 1989. For provisions of former section, see 1981 Replacement Pamphlet.

The 1992 amendment, effective July 1, 1992, substituted the present section catchline for "Motor Carrier Safety; Director of the Division; Authorization"; in Subsection A, rewrote the first sentence and substituted "or" for "nor" in the second sentence; and, in Subsection B, substituted "The department" for "In addition to the provisions of

Subsection A of this section, the director" near the beginning of the Subsection, and inserted "by the motor carrier" near the end of the subsection.

Temporary provisions. - Laws 1992, ch. 106, § 22, effective July 1, 1992, provides that all regulations in effect issued prior to July 1, 1992, with respect to the Motor Transportation Act shall continue in force until repealed, amended, or superseded by regulations of the secretary of taxation and revenue.

Compiler's notes. - Section 65-1-10 NMSA 1978, referred to in this section, was repealed in 1995. For similar provisions, see 9-11-6.2 NMSA 1978.

65-3-5. Violation of act; penalty.

A. Any person who violates the provisions of the Motor Carrier Safety Act [65-3-1 to 65-3-13 NMSA 1978] is guilty of a misdemeanor and shall be punished by a fine not exceeding five hundred dollars (\$500) or thirty days in jail, or both.

B. The director may, by regulation, authorize a penalty assessment program to impose penalties under the provisions of the Motor Carrier Safety Act.

History: 1978 Comp., § 65-3-4, enacted by Laws 1989, ch. 201, § 6.

ANNOTATIONS

Repeals and reenactments. - Laws 1989, ch. 201, § 6 repeals former 65-3-5 NMSA 1978, as enacted by Laws 1947, ch. 171, § 1, relating to prohibition of stoves for heating private buses or trucks, and enacts the above section, effective July 1, 1989. For provisions of former section, see 1981 Replacement Pamphlet. For current provisions governing heating equipment, see 65-3-9 NMSA 1978.

65-3-6. Repealed.

ANNOTATIONS

Repeals. - Laws 1990, ch. 21, § 5 repeals 65-3-6 NMSA 1978, as enacted by Laws 1947, ch. 171, § 2, relating to penalty for violating former 65-3-5 NMSA 1978, effective July 1, 1990. For provisions of former section, see 1989 Cumulative Supplement.

65-3-7. Qualifications of drivers.

A. A person shall not drive a motor vehicle unless he is qualified to drive a motor vehicle, and a motor carrier shall not require or permit a person to drive a motor vehicle unless that person is qualified to drive a motor vehicle.

B. A person is qualified to drive a commercial motor carrier vehicle if he:

- (1) is at least twenty-one years old; or
- (2) is at least eighteen years old and drives only within the boundaries of the state of New Mexico;
- (3) is physically qualified to drive a motor vehicle;
- (4) is not disqualified from driving a motor vehicle;
- (5) has been issued a currently-valid motor vehicle operator's license or permit of the proper class for the vehicle he is driving;
- (6) can, by reason of experience, training, or both, safely operate the type of motor vehicle he drives; and
- (7) can, by reason of experience, training, or both, determine whether the cargo he transports is properly located, distributed and secured in or on the motor vehicle he drives.

C. The director may adopt regulations pertaining to the qualification and disqualification of commercial motor carrier vehicle drivers including documentation thereof. The regulations shall include but not be limited to background and character, road testing and written examination, physical qualification, examination and waivers of certain physical defects.

D. The director shall adopt regulations requiring motor carriers to maintain appropriate records pertaining to the qualifications of every commercial motor carrier vehicle driver in its employ, either regularly or casually. Such regulations shall not be inconsistent with or more stringent than applicable federal safety standards.

E. The director is authorized to adopt specific exceptions for the qualifications of drivers under the Motor Carrier Safety Act [65-3-1 to 65-3-13 NMSA 1978] for drivers of articulated farm vehicles and intrastate drivers of vehicles transporting combustible liquids.

F. Any disqualification after receipt of a license shall be grounds for revocation of the license.

History: 1978 Comp., § 65-3-7, enacted by Laws 1989, ch. 201, § 7.

65-3-8. Equipment; loading; driving; unsafe practices.

A. No person shall drive a motor vehicle, and no motor carrier shall be required or permit a person to drive a motor vehicle, unless the driver has satisfied himself that:

- (1) all safety-related parts and accessories are in good working order;

(2) the cargo and equipment are properly distributed and secured; and

(3) the cargo and equipment do not obscure the driver's vision or range of motion.

B. The director shall adopt regulations, not inconsistent with nor more stringent than applicable federal safety standards concerning:

(1) the care and safety of stopped and disabled vehicles and the use of emergency signals;

(2) restrictions on and eliminations of unsafe practices pertaining to the operation of vehicles;

(3) the transportation of unauthorized persons and the driving of a vehicle by an unauthorized driver;

(4) the use and operation of a vehicle in which carbon monoxide has been detected in the cab or sleeper berth;

(5) procedures and precautions required for safe fueling of motor vehicles;

(6) requirements for wearing corrective lenses and hearing aids when needed to meet physical qualifications; and

(7) requirements for and use of lighted lamps on the highway.

History: 1978 Comp., § 65-3-8, enacted by Laws 1989, ch. 201, § 8.

65-3-9. Commercial motor vehicles; equipment; regulations.

The director shall adopt regulations not inconsistent with or more stringent than applicable federal safety standards concerning the following parts and accessories necessary for the safe operation of a commercial motor carrier:

A. lighting devices, reflectors and electrical equipment;

B. brake systems and performance;

C. glazing and window obstructions;

D. fuel systems;

E. coupling devices and towing methods;

F. tires and wheels;

- G. heaters;
- H. exhaust systems;
- I. frames and body components;
- J. suspension systems;
- K. steering systems;
- L. cargo securement;
- M. emergency safety equipment; and
- N. any other miscellaneous parts and accessories he deems necessary.

History: 1978 Comp., § 65-3-9, enacted by Laws 1989, ch. 201, § 9.

65-3-10. Notification, reporting and recording of accidents.

The director shall adopt rules and regulations not inconsistent with or more stringent than applicable federal safety standards concerning records and reports required to be made and kept by motor carriers of accidents which occur during their operations. Nothing in this section shall alter the requirements that drivers of commercial motor carrier vehicles report accidents under Section 66-7-201 NMSA 1978.

History: 1978 Comp., § 65-3-10, enacted by Laws 1989, ch. 201, § 10.

65-3-11. Hours of service of drivers.

The director shall adopt rules and regulations not inconsistent with nor more stringent than applicable federal safety standards concerning the hours of service of drivers.

A. These regulations shall include but not be limited to maximum driving and on-duty time, travel time, maintenance of a driver's log or record of duty status, adverse driving conditions, emergency conditions and emergency transportation.

B. These regulations shall authorize a driver to be placed out-of-service for driving or working too many hours or any other conditions identified in federal safety standards and found by the director to contribute to unsafe operations. The out-of-service conditions shall preclude a driver from driving until the condition for placing the driver out-of-service is remedied.

History: 1978 Comp., § 65-3-11, enacted by Laws 1989, ch. 201, § 11.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. - 48A Am. Jur. 2d Labor and Labor Relations § 4125 et seq.

Hours of service or other conditions affecting drivers of motor trucks, statutes relating specifically to, 120 A.L.R. 295.

Deviation from employment in use of employer's car during regular hours of work, 51 A.L.R.2d 8.

Liability of land carrier to passenger who becomes victim of third party's assault on or about carrier's vehicle or premises, 34 A.L.R.4th 1054.

60 C.J.S. Motor Vehicles § 56.

65-3-12. Repair and maintenance.

The director shall adopt rules and regulations concerning the systematic inspection, repair and maintenance of all commercial motor carrier vehicles. The regulations shall not be inconsistent with or more stringent than applicable federal safety standards.

A. The regulations shall provide for:

- (1) proper lubrication and absence of oil and grease leaks;
- (2) inspection of motor vehicles in operation by certified inspectors of the division at ports of entry, at suitable locations along the highway and at a carrier's place of business;
- (3) driver's vehicle inspection reports;
- (4) periodic vehicle inspection by the motor carrier, by a certified inspector of the division or by another inspector authorized by the director;
- (5) inspector qualifications;
- (6) minimum periodic inspection standards; and
- (7) record-keeping associated with these requirements.

B. These regulations shall authorize a vehicle to be placed out-of-service because of mechanical or operational dysfunction causing a vehicle to be unsafe. The out-of-service condition shall preclude the use of the vehicle until the condition for placing the vehicle out-of-service is remedied.

C. Motor carriers shall make safety-related records available to division enforcement personnel upon request.

History: 1978 Comp., § 65-3-12, enacted by Laws 1989, ch. 201, § 12.

65-3-13. Transportation of hazardous materials.

The director shall adopt regulations not inconsistent with or more stringent than applicable federal safety standards concerning the safe transportation of hazardous materials, including hazardous substances and waste.

A. These regulations shall include but not be limited to:

- (1) marking;
- (2) labeling;
- (3) placarding;
- (4) shipping documents;
- (5) hazardous material packaging;
- (6) driving;
- (7) parking;
- (8) attendance and surveillance of motor vehicles;
- (9) smoking;
- (10) fueling;
- (11) checking tires;
- (12) loading and securement;
- (13) cargo tanks;
- (14) damaged and leaking packagings and containers;
- (15) maintenance of emergency instructions and documents; and
- (16) avoidance of heavily populated areas and open fires.

B. These regulations shall authorize a vehicle to be placed out-of-service because of an unsafe condition relating to the hazardous materials being transported. The out-of-service condition shall preclude the movement of the vehicle until the unsafe condition is remedied.

History: 1978 Comp., § 65-3-13, enacted by Laws 1989, ch. 201, § 13.

ARTICLE 4

MOTOR CARRIER TRANSPORTATION AGENTS

65-4-1. [Declaration of purpose.]

The legislature hereby declares that the public welfare requires the regulation and control of those persons, whether acting individually or as officers or employees of any person, firm or corporation, who hold themselves out to act as intermediaries between the public and those motor carriers of passengers operating, as common carriers or otherwise, over the public highways of the state, for compensation, that are not required by law to obtain, or that have not obtained, a certificate from the state corporation commission [public regulation commission] of the state of New Mexico declaring that public convenience and necessity require the operations of such motor carriers; further, that until such time as [the] congress of the United States shall act, the public welfare requires such regulation and control of such intermediaries between the public and interstate motor carriers as well as between the public and intrastate motor carriers.

History: Laws 1933, ch. 120, § 1; 1941 Comp., § 68-1401; 1953 Comp., § 64-29-1.

ANNOTATIONS

Cross references. - For references to state corporation commission being construed as references to the public regulation commission, see 8-8-21 NMSA 1978.

Bracketed material. - The bracketed material in this section was inserted by the compiler. It was not enacted by the legislature and is not part of the law.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 14 Am. Jur. 2d Carriers §§ 733 to 738.

Constitutionality, construction, and application of license or other regulation of transportation agents, 126 A.L.R. 197.

60 C.J.S. Motor Vehicles §§ 46, 56.

§ 65-4-2 Definitions; applicability of act; temporary exemptions. (1998 Repl.)

65-4-2. Definitions; application [applicability] of act; temporary exemptions.

A motor carrier transportation agent within the meaning of this act [65-4-1 to 65-4-18 NMSA 1978] is a person who, acting either individually or as an officer or employee of a corporation, or as a member of a copartnership, or as an employee of another person or persons, sells or offers for sale, or negotiates for or holds himself out as one who sells,

furnishes or provide transportation over the public highways of this state when such transportation is furnished, or offered or proposed to be furnished, by a motor carrier as defined in this act.

A motor carrier within the meaning of this act is any person, firm or corporation, their lessees, trustees, receivers or trustees appointed by any court whatsoever, transporting, or offering or proposing to transport, as a common carrier or otherwise, persons for compensation over the public highways of the state of New Mexico, or any portion thereof, without holding a valid certificate of public convenience and necessity issued by the state corporation commission [public regulation commission] of the state of New Mexico, permitting such carrier to so transport persons over such highways, or any of them.

This act shall not apply to the carriage, or proposed carriage, of any person, or persons, when no compensation for such carriage is paid, or offered or proposed to be paid, or requested or required to be paid, by, or on behalf of, a person, or persons, transported, or to be transported; nor to movements of persons wholly within the corporate limits of a single municipality; provided, however, that the transportation of persons whereby there is paid, or requested or required to be paid, by, or on behalf of, the person, or persons, transported, a portion of the expense incurred in course of such transportation, shall be deemed transportation provided by a motor carrier within the meaning of this act.

The provision [provisions] of this act shall apply regardless of whether such transportation so sold, or offered to be sold, is interstate or intrastate.

Provided further, that for the time during which the United States of America shall remain at war with any foreign nation, this act (meaning Chapter 120 of the Laws of 1933 as amended, and as appearing in Article 4 of Chapter 65 of the NMSA 1978) 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 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.

History: Laws 1933, ch. 120, § 2; 1941 Comp., § 68-1402; Laws 1943, ch. 94, § 1; 1953 Comp., § 64-29-2.

ANNOTATIONS

Cross references. - As to what constitutes acting as motor carrier transportation agent, see 65-4-14 NMSA 1978.

For references to state corporation commission being construed as references to the public regulation commission, see 8-8-21 NMSA 1978.

Bracketed material. - The bracketed material in this section was inserted by the compiler. It was not enacted by the legislature and is not part of the law.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 13 Am. Jur. 2d Carriers § 2.

65-4-3. [License required; copartnerships and corporations not to be licensed; statements in application.]

It shall be unlawful for any person, firm or corporation to engage in the business, or act in the capacity, of a motor carrier transportation agent within the meaning of this act [65-4-1 to 65-4-18 NMSA 1978] without first obtaining a license therefor. No license shall be issued to any copartnership or corporation, it being the intent hereof to require each person acting as a motor carrier transportation agent, in this state, to be individually licensed therefor; provided, however, that if an applicant is an officer or salaried employee of a corporation, or a member of any copartnership, or a salaried employee of any person or copartnership, he shall so state in his application, and the corporation, copartnership, or person of which applicant is an officer, member or employee, as the case may be, shall join in applicant's application and shall set forth therein the relationship between applicant and said person, copartnership and/or corporation so joining.

History: Laws 1933, ch. 120, § 3; 1941 Comp., § 68-1403; 1953 Comp., § 64-29-3.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. - Criminal liability in connection with rental of motor vehicles, 38 A.L.R.3d 949.

60 C.J.S. Motor Vehicles § 98.

65-4-4. Administration of act.

The commission shall administer Sections 65-4-1 through 65-4-18 NMSA 1978 with full power to regulate and control the issuance and revocation of licenses to be issued under the provisions of those sections and to perform all other acts and duties provided in those sections necessary for their enforcement.

History: Laws 1933, ch. 120, § 4; 1941 Comp., § 68-1404; 1953 Comp., § 64-29-4; 1998, ch. 108, § 76.

ANNOTATIONS

Cross references. - For powers of corporation commission, see N.M. Const., art. XI, § 7.

The 1998 amendment, effective January 1, 1999, deleted "State Corporation" preceding "The" at the beginning of the section; substituted "shall" for "of the State of New Mexico is hereby vested with authority to" near the beginning of the section; substituted "Sections 65-4-1 through 65-4-18 NMSA 1978" for "this act" near the middle of the section; substituted "those sections" for "this act", "those sections" for "this act and", and "their" for "its" at the end of the section.

65-4-5. [Collection and disposition of fees.]

All fees charged and collected under this act [65-4-1 to 65-4-18 NMSA 1978] shall be accounted for, paid and disposed of, in the same manner as is now, or may hereafter be, provided by law for the accounting and disposition of fees collected by the state corporation commission [public regulation commission].

History: Laws 1933, ch. 120, § 5; 1941 Comp., § 68-1405; 1953 Comp., § 64-29-5.

ANNOTATIONS

Cross references. - For references to state corporation commission being construed as references to the public regulation commission, see 8-8-21 NMSA 1978.

Bracketed material. - The bracketed material in this section was inserted by the compiler. It was not enacted by the legislature and is not part of the law.

65-4-6. [Application for license; issuance or denial; contents of order granting license; display of certificate by licensee.]

An application for a license as a motor carrier transportation agent shall be made in writing to the state corporation commission [public corporation commission], which application shall be fully verified and shall be in such form and contain such information as the commission may from time to time require.

The state corporation commission [public corporation commission] shall have power, with or without hearing, to issue said license as prayed for, or to refuse to issue the same, or to issue it for the partial exercise of the privilege sought. No license shall be issued to an applicant when, with or without hearing, the state corporation commission [public corporation commission] shall determine that (1) the applicant is not a fit and proper person to receive the same, or (2) the motor carriers for whom applicant proposes to sell transportation have not complied, and are not then and there complying and do not propose to comply, with state and/or federal laws, and/or all general orders of the state corporation commission [public corporation commission] of the state of New Mexico, applicable to the operations of said motor carrier.

The order of the state corporation commission [public corporation commission] granting to an applicant a motor carrier transportation agent's license shall set out the name of the motor carriers for whom said agent is licensed to sell.

In the location at which applicant is licensed to sell transportation, there shall be displayed in a prominent place a certificate setting forth the name of the licensee and the motor carrier or carriers for whom such licensee is authorized to sell under said license.

History: Laws 1933, ch. 120, § 6; 1941 Comp., § 68-1406; 1953 Comp., § 64-29-6.

ANNOTATIONS

Cross references. - For references to state corporation commission being construed as references to the public regulation commission, see 8-8-21 NMSA 1978.

Bracketed material. - The bracketed material in this section was inserted by the compiler. It was not enacted by the legislature and is not part of the law.

65-4-7. [Fees; expiration of licenses.]

The fees for licenses, and each renewal thereof, shall be twenty-five dollars [(\$25.00)] per year, or fraction thereof. All applications for licenses shall be accompanied by the fee as herein provided and all licenses, subject to the provisions of renewal, which the state corporation commission [public corporation commission] shall prescribe, shall expire on December 31st of each year.

History: Laws 1933, ch. 120, § 7; 1941 Comp., § 68-1407; 1953 Comp., § 64-29-7.

ANNOTATIONS

Cross references. - For references to state corporation commission being construed as references to the public regulation commission, see 8-8-21 NMSA 1978.

Bracketed material. - The bracketed material in this section was inserted by the compiler. It was not enacted by the legislature and is not part of the law.

65-4-8. [Bond required.]

No license shall be issued unless the applicant therefor shall provide a good and sufficient bond in the sum of one thousand dollars (\$1,000.00), which bond shall be filed by such applicant as principal and by some solvent surety company, authorized to do business in the state of New Mexico, as surety, payable to the state of New Mexico, and/or any person, or persons, for, or to whom, applicant may, or shall, furnish or provide transportation, and shall be conditioned: (1) upon the faithful performance, by the motor carrier or motor carriers for whom applicant is licensed to act, of the contract

or agreement of transportation negotiated by the licensee, and (2) the honest and faithful performance by applicant of any undertaking as a licensed motor carrier transportation agent under this act [65-4-1 to 65-4-18 NMSA 1978].

History: Laws 1933, ch. 120, § 8; 1941 Comp., § 68-1408; 1953 Comp., § 64-29-8.

ANNOTATIONS

Cross references. - For surety bonds, see 46-6-1 NMSA 1978 et seq.

65-4-9. [License not transferable; limited to specified location.]

No license issued under the provisions of this act [65-4-1 to 65-4-18 NMSA 1978] shall give authority, to do any act for which the license is issued, to any person, other than the licensee, and such license shall not be transferable or assignable. No license issued thereunder shall authorize the licensee to do business except in the location stipulated in the license.

History: Laws 1933, ch. 120, § 9; 1941 Comp., § 68-1409; 1953 Comp., § 64-29-9.

65-4-10. [Suspension or revocation of license; grounds.]

The commission may suspend for ten days pending a hearing before said commission and upon the findings of said commission they may revoke any license theretofore issued if it shall determine that the licensee is not a fit and proper person to hold the same, or if the commission shall determine that the licensee, in acting as such motor carrier transportation agent, has engaged in false advertising and false representation in violation of the laws of this state, or any political subdivision thereof, or has sold, offered for sale, or negotiated for sale, transportation by any carrier that under the laws of this state is conducted in a manner contrary to the public interest, or without proper authority, or in violation of the provisions of this act [65-4-1 to 65-4-18 NMSA 1978] or the general orders, rules and regulations of the state corporation commission [public regulation commission] pertaining thereto.

History: Laws 1933, ch. 120, § 10; 1941 Comp., § 68-1410; 1953 Comp., § 64-29-10.

ANNOTATIONS

Cross references. - For references to state corporation commission being construed as references to the public regulation commission, see 8-8-21 NMSA 1978.

Bracketed material. - The bracketed material in this section was inserted by the compiler. It was not enacted by the legislature and is not part of the law.

65-4-11. [Records kept by transportation agents.]

It shall be the duty of all motor carrier transportation agents to maintain and keep, for a period of two (2) years, an exact and permanent record of all transactions had by them as such agents, including the amount paid to such agent by each person transported, point of destination and the name of the person, firm or corporation acting as motor carrier. The records hereby required to be kept shall at all times be open to inspection by any officer or agent of the state, county or city and county within the state.

History: Laws 1933, ch. 120, § 11; 1941 Comp., § 68-1411; 1953 Comp., § 64-29-11.

65-4-12. [Hearings and determination of matters by corporation commission.]

All powers heretobefore, or hereafter to be vested in the state corporation commission [public regulation commission] of the state of New Mexico, as relates to hearing and determining matters presented to it, are made applicable to the proceedings under the provisions of this act [65-4-1 to 65-4-18 NMSA 1978].

History: Laws 1933, ch. 120, § 12; 1941 Comp., § 68-1412; 1953 Comp., § 64-29-12.

ANNOTATIONS

Cross references. - For hearings in actions involving motor carriers, see 65-2-106 NMSA 1978.

For references to state corporation commission being construed as references to the public regulation commission, see 8-8-21 NMSA 1978.

Bracketed material. - The bracketed material in this section was inserted by the compiler. It was not enacted by the legislature and is not part of the law.

65-4-13. [Penalties under other laws not waived; penalties deemed cumulative.]

This act [65-4-1 to 65-4-18 NMSA 1978] shall not have the effect to release or waive any right of action by the state, state corporation commission [public regulation commission] or any person or corporation, for any fine, penalty or forfeits which may have arisen or accrued, or may hereafter arise or accrue, under any laws of this state. All penalties accruing under this act shall be cumulative of each other, and a suit for the recovery of one penalty shall not be a bar to, or affect the recovery of, any other penalty or forfeit, or be a bar to any criminal prosecution.

History: Laws 1933, ch. 120, § 13; 1941 Comp., § 68-1413; 1953 Comp., § 64-29-13.

ANNOTATIONS

Cross references. - For references to state corporation commission being construed as references to the public regulation commission, see 8-8-21 NMSA 1978.

Bracketed material. - The bracketed material in this section was inserted by the compiler. It was not enacted by the legislature and is not part of the law.

65-4-14. [Operations constituting acting as motor carrier transportation agent; evidence obtained by arresting officer; burden of proof.]

Any person, firm or corporation, shall be understood to be acting as a motor carrier transportation agent within the meaning of this act [65-4-1 to 65-4-18 NMSA 1978] who shall (1) orally or by card, circular, pamphlet, newspaper, radio, sign, billboard or any other way, advertise himself, or itself, as one who sells, furnishes, negotiates for or provides transportation over the public highways of this state when such transportation is furnished or offered, or proposed to be furnished, by motor carriers as defined in this act; (2) manage or conduct as manager, conductor, agent, proprietor, lessor, lessee, ticket collector or otherwise, a place where transportation is, or is offered, or proposed to be, sold, furnished, negotiated for or provided by a motor carrier as defined in this act; (3) aid and abet, or without being present shall have advised and encouraged any person, firm or corporation in acting as, or to act as, a motor carrier transportation agent. One act of the nature herein set forth shall constitute a person, firm or corporation doing or committing such act, a motor carrier transportation agent within the meaning of this act. It is hereby made the duty of any officer arresting any person for violation of this act, to take, and keep in his custody for use as evidence, any materials or indicia used by said person so arrested, for the purpose of advertising said persons acting as, or desiring to act as, a motor carrier transportation agent. Any person who may, or shall be charged with, or complained of as, acting as a motor carrier transportation agent without a license as herein provided, shall bear the burden of proof of proving as a matter peculiarly within the knowledge of the person so charged or complained of: (1) that such person, firm or corporation so charged or complained of is a licensed motor carrier transportation agent; and (2) that the motor carrier or motor carriers for whom such person, firm or corporation is, or has been, acting, or proposed to act, as an agent, as charged or complained of, is not a motor carrier within the meaning of this act.

History: Laws 1933, ch. 120, § 14; 1941 Comp., § 68-1414; 1953 Comp., § 64-29-14.

ANNOTATIONS

Cross references. - For definition of motor carrier transportation agent, see 65-4-2 NMSA 1978.

65-4-15. [Violations; complaint by corporation commission; duty of district attorney.]

The state corporation commission [public regulation commission] may prefer a complaint for violation of this act [65-4-1 to 65-4-18 NMSA 1978] before any court of competent jurisdiction and said commission and its counsel, or other official representatives, may assist in presenting facts at the trial. It shall be the duty of the district attorney of each county in this state to prosecute all violations of the provisions of this act in their respective counties in which such violations occur, either with or without request of said commission.

History: Laws 1933, ch. 120, § 15; 1941 Comp., § 68-1415; 1953 Comp., § 64-29-15.

ANNOTATIONS

Cross references. - For references to state corporation commission being construed as references to the public regulation commission, see 8-8-21 NMSA 1978.

Bracketed material. - The bracketed material in this section was inserted by the compiler. It was not enacted by the legislature and is not part of the law.

65-4-16. Penalties for violations of act.

Any persons, firm or corporation, acting as a motor carrier transportation agent within the meaning of this act [65-4-1 to 65-4-18 NMSA 1978] without a license as herein provided shall, upon conviction thereof, if a person, be punished by a fine of not less than fifty dollars (\$50.00) nor more than one hundred dollars (\$100), or by imprisonment in the county jail for a term not exceeding six (6) months, or by both such fine and imprisonment, in the discretion of the court; or, if a corporation, may be punished by a fine of not less than fifty dollars (\$50.00) nor more than one hundred dollars (\$100).

History: Laws 1933, ch. 120, § 16; 1937, ch. 228, § 1; 1941 Comp., § 68-1416; 1953 Comp., § 64-29-16.

ANNOTATIONS

Cross references. - For acts constituting person a motor carrier transportation agent, see 65-4-14 NMSA 1978.

65-4-17. [Violations by licensed agent; penalty; revocation of license.]

Any person, duly licensed as a motor carrier transportation agent, who shall violate any of the provisions of this act [65-4-1 to 65-4-18 NMSA 1978] shall, upon conviction thereof, be punished by a fine of not less than fifty dollars (\$50.00) nor more than one hundred dollars (\$100), or by imprisonment in the county jail for a term not exceeding six (6) months, or by both such fine and imprisonment in the discretion of the court; and in addition thereto, the license as motor carrier transportation agent therefore

[theretofore] issued shall be revoked by the state corporation commission [public regulation commission] in the manner herein provided.

History: Laws 1933, ch. 120, § 17; 1937, ch. 228, § 2; 1941 Comp., § 68-1417; 1953 Comp., § 64-29-17.

ANNOTATIONS

Cross references. - For references to state corporation commission being construed as references to the public regulation commission, see 8-8-21 NMSA 1978.

Bracketed material. - The bracketed material in this section was inserted by the compiler. It was not enacted by the legislature and is not part of the law.

65-4-18. Commission defined.

The term "commission", when used in Sections 65-4-1 through 65-4-18 NMSA 1978, means the public regulation commission.

History: Laws 1933, ch. 120, § 19; 1941 Comp., § 68-14-18; 1953 Comp., § 64-29-18; 1998, ch. 108, § 77.

ANNOTATIONS

The 1998 amendment, effective January 1, 1999, rewrote the section to the extent that a detailed comparison is impracticable.

ARTICLE 5 PROCEDURES FOR VEHICLES ENTERING OR LEAVING STATE

65-5-1. Vehicles to stop at ports of entry; information; inspection.

A. All commercial motor carrier vehicles, as defined in the Motor Transportation Act [Chapter 65, Articles 1, 3 and 5 NMSA 1978], must enter, leave or travel through the state on designated highways and shall stop at every port of entry as designated by the division for manifesting and clearance stickers.

B. The operators of any motor vehicles described in Subsection A of this section shall, upon request, make out and deliver to the agent of the division a manifest showing that part of the following information requested:

(1) the name of the owner of the vehicle;

- (2) the name of the operator or driver;
- (3) the name of the forwarding or other company in whose service the vehicle is licensed;
- (4) the license number;
- (5) the state in which the vehicle has been granted a common or contract motor carrier permit, if any, and the number of the permit;
- (6) the engine number;
- (7) the serial number of the vehicle;
- (8) a description of the vehicle;
- (9) the point of origin of the shipment;
- (10) the ultimate destination of the shipment;
- (11) the gross vehicle weight of the vehicle and cargo;
- (12) the factory list capacity or the actual capacity if rebuilt;
- (13) the number of taxable miles to be traveled within the state; and
- (14) the nature, amount and coverage of all public liability and other insurance carried upon the vehicle and upon the cargo thereon.

The operator of the vehicle shall declare upon the manifest the name and number of the highways which he intends to use within the state and the place where he intends to leave the state if the point of final destination is outside the state. The manifest shall be signed by the operator and filed with the person in charge of the port of entry. The operator of the vehicle shall present for inspection to the person in charge of the port of entry a copy of the billing or invoice describing the contents of the cargo and the weight of the cargo.

C. The person in charge of the port of entry may verify the information contained upon the billing or invoice and shall check the license, permit, engine and serial numbers, weight and description of the vehicle. The person shall inspect the vehicle and ascertain whether it is in safe and roadworthy condition, properly equipped with all lights, brakes and other appliances required by any statute of this state, in such condition as to be safe for operation upon the public highways of this state.

D. The person in charge of the port of entry may satisfy himself as to the contents of the cargo and, the weight thereof and is authorized to interview operators to obtain

information in respect thereto and, if in doubt as to the declared gross weight, may order the cargo weighed before issuing any clearance certificate for the motor vehicle.

E. The person in charge of the port of entry may inspect the contents of the vehicle to determine whether all taxes on gasoline and motor fuel and excise taxes on alcoholic liquors and all taxes on any other property have been fully paid.

F. The person in charge of the port of entry may inspect the vehicle and its contents to determine whether all laws and all rules and regulations of the departments of this state with respect to public safety, health, welfare and comfort have been fully complied with.

History: 1941 Comp., § 68-1527, enacted by Laws 1943, ch. 125, § 8; 1953 Comp., § 64-30-8; Laws 1967, ch. 97, § 37; 1977, ch. 250, § 96; 1983, ch. 142, § 1.

ANNOTATIONS

Cross references. - For definition of "division," see 65-1-2 NMSA 1978.

As to ports of entry designated by motor transportation division, see 65-1-11 NMSA 1978.

Limitation on stopping of vehicles. - In the absence of reasonable suspicion, stops must be carried out pursuant to a plan which embodies explicit, neutral limitations on the conduct of individual officers. *State v. Clark*, 112 N.M. 500, 816 P.2d 1122 (Ct. App. 1991).

Legal stop ripening into illegal arrest. - Although initial stop of commercial truck was legal under New Mexico's inspection statutes, the stop ripened into an unlawful *de facto* arrest when, without probable cause, officer required the driver to wait an hour; the illegality of the arrest vitiated driver's subsequent consent to the search of his truck, and rendered the stolen motorcycles which were found inadmissible under the exclusionary rule. *State v. Jutte*, 1998-NMCA-150, 126 N.M. 244, 968 P.2d 334, cert. denied, 126 N.M. 533, 972 P.2d 352 (1998).

Invalid stopping of vehicles. - Motor transportation division officer's stop of a rental truck was not made at a port of entry and was invalid, where the officer had not set out any signs or other indication to vehicle drivers that they would be required to stop, had stopped vehicles randomly and at his own discretion, and had chosen his own schedule of where to patrol, as opposed to his supervisor making the decision. *State v. Clark*, 112 N.M. 500, 816 P.2d 1122 (Ct. App. 1991).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 15A Am. Jur. 2d Commerce §§ 26 to 34.

15 C.J.S. Commerce § 71(3).

65-5-1.1. Joint ports of entry; intent; bilateral agreements.

A. It is the intent of the legislature to promote economic development and to streamline the collection of revenues and the regulation of the trucking industry by authorizing the secretary to enter into bilateral agreements for the location, erecting, staffing and operation of ports of entry jointly with contiguous jurisdictions. Because of the many cost efficiencies that can be achieved, the legislature intends that the secretary explore the possibility of entering into bilateral agreements for the joint operation of ports of entry with all neighboring states. The legislature recognizes that officials of the state of Arizona have offered to negotiate an arrangement by which two joint Arizona-New Mexico ports would be established, the first in New Mexico near Gallup and the second on interstate 10 in Arizona; the legislature intends that the secretary and the secretary of highway and transportation use the authority granted in this section to explore this opportunity to serve the public interest. The legislature recognizes that expenditures by the state highway and transportation department will be necessary to contribute New Mexico's share of the total cost for the construction of such facilities and finds that such expenditures are appropriate and in the public interest.

B. The secretary may negotiate and enter into bilateral agreements with designated representatives of contiguous states to provide for the staffing and operation of jointly occupied ports of entry located within the boundaries of this state or an adjoining state. An agreement may allow employees of either state to collect fees, taxes, interest and penalties imposed by the rules, regulations or laws of either state for the operation of vehicles on the highways of either state and for the issuance of required permits. The secretary or the secretary's delegate may appoint employees of the adjoining state as peace officers of the department for the enforcement of tax, weight, size and load, equipment, safety and financial responsibility laws and regulations of this state relating to vehicles entering or exiting this state and may allow employees of the department to accept similar appointments with the adjoining states. Any agreement entered into under the authority of this section shall provide that an employee of the adjoining state appointed pursuant to this section shall not be compensated by this state or for the purpose of employment rights and benefits to be considered an employee of this state. An employee of the adjoining state must agree that he shall not be compensated by this state or for purposes of employment rights or benefits be considered an employee of this state. Employees of this state accepting appointments from the adjoining state shall not be by virtue of the appointment be considered employees of that state nor be compensated by that state or for purposes of employment rights or benefits be considered an employee of that state.

History: 1978 Comp., § 65-5-1.1, enacted by Laws 1988, ch. 69, § 1.

ANNOTATIONS

Compiler's notes. - Both Laws 1988, ch. 67, § 1, approved March 8, 1988, and Laws 1988, ch. 69, § 1, approved later on March 8, 1988, enacted new sections designated 65-5-1.1 NMSA 1978. The two sections are identical, except for the addition in the Chapter 67 version of a Subsection C, which read "This act shall have no force and

effect on any boundary of New Mexico adjoining a foreign country". The section enacted by Laws 1988, ch. 69, § 1 is set out above. See 12-1-8 NMSA 1978.

65-5-1.2. Joint ports of entry; enforcement authority.

The department may require commercial motor carrier vehicles to stop at a joint port of entry in an adjoining state. The joint port of entry shall be established pursuant to an agreement entered into between the department and another state pursuant to Section 9-11-12 NMSA 1978.

History: 1978 Comp., § 65-5-1.2, enacted by Laws 1989, ch. 319, § 7.

65-5-2. Proof of compliance; schedule of penalties.

Except as otherwise provided in this section, no commercial motor carrier vehicle having a gross vehicle weight or combination gross vehicle weight of over twenty-six thousand pounds shall travel on New Mexico highways without either proof that the trip tax has been paid for the movement of the vehicle or both evidence of registration and a tax identification card issued by the department, unless that vehicle is exempt from the weight distance tax. The department may, by regulation, exempt portions of a highway from the requirements of this section if those portions are prior to reaching a port of entry where the trip tax may be paid.

History: 1941 Comp., § 68-1528, enacted by Laws 1943, ch. 125, § 9; 1953 Comp., § 64-30-9; Laws 1967, ch. 97, § 38; 1977, ch. 250, § 97; 1983, ch. 142, § 2; 1987, ch. 272, § 1; 1992, ch. 106, § 19.

ANNOTATIONS

Cross references. - For definition of "department," see 65-1-2 NMSA 1978.

The 1992 amendment, effective July 1, 1992, rewrote this section to the extent that a detailed comparison would be impracticable.

65-5-2.1. Repealed.

ANNOTATIONS

Repeals. - Laws 1992, ch. 106, § 23 repeals 65-5-2.1 NMSA 1978, as enacted by Laws 1987, ch. 272, § 2, relating to multiple-offense citations, effective July 1, 1992. For provisions of former section, see 1990 Replacement Pamphlet.

65-5-3. Clearance certificates; types of carriers.

After inspection of the vehicle and related documentation and any necessary registration, clearance certificates or special permits may be issued by the department for:

A. commercial motor carrier vehicles operating in compliance with the provisions of the Motor Carrier Act [Chapter 65, Article 2 NMSA 1978] when:

(1) all taxes and registration fees required by the laws of this state upon the vehicles and contents of the vehicles have been paid and all other laws and rules and regulations of departments of this state applicable to the vehicles and contents have been complied with; and

(2) the operator or owner of the vehicle is not in default or delinquent in the payment of any tax, the filing of any report or the observance of any requirements of the Motor Carrier Act;

B. commercial motor carrier vehicles classified and designated in law as exempt when:

(1) all taxes required by the laws of this state upon the contents of the vehicles have been paid and all other laws and rules and regulations of departments of this state applicable to the contents have been complied with; and

(2) the vehicles have been registered in this state or another state and evidence of registration, including proper display of registration plates, required by the laws of this state is provided;

C. commercial motor carrier vehicles not registered or licensed in this state that are transporting passengers for hire or property for hire or resale when:

(1) all taxes and registration fees required by the laws of this state upon the vehicles and contents of the vehicles have been paid and all other laws and rules and regulations of departments of this state applicable to the vehicles and contents have been complied with;

(2) the vehicle is properly covered by liability insurance in accordance with the provisions of the Motor Carrier Act and the regulations of the state corporation commission [public regulation commission]; and

(3) the trip tax has been fully paid; and

D. commercial motor carrier vehicles not registered or licensed in this state that are transporting property not for hire or resale when:

(1) all taxes required by the laws of this state upon the contents of the vehicles have been paid and all other laws, rules and regulations applicable to such contents have been complied with; and

(2) the trip tax has been fully paid.

History: 1941 Comp., § 68-1529, enacted by Laws 1943, ch. 125, § 10; 1953 Comp., § 64-30-10; Laws 1967, ch. 97, § 39; 1992, ch. 106, § 20.

ANNOTATIONS

Cross references. - For references to state corporation commission being construed as references to the public regulation commission, see 8-8-21 NMSA 1978.

Bracketed material. - The bracketed material in this section was inserted by the compiler. It was not enacted by the legislature and is not part of the law.

The 1992 amendment, effective July 1, 1992, rewrote this section to the extent that a detailed comparison would be impracticable.

Legislative intent. - Although the wording of this section is not entirely clear, it appears that the intention of the legislature was to include and describe therein all types of commercial motor vehicle operations. Certain types under Subsections A and B were to be given clearance certificates or special permits. All other types would then fall under Subsections C and D. As to those a mileage tax is assessed. 1955-56 Op. Att'y Gen. No. 6447 (rendered under prior law).

Meaning of "registration". - The reference to "registration" means that if such carrier is required under licensing statutes to obtain a license tag, such inspection station shall require a purchase of such license tag. 1953-54 Op. Att'y Gen. No. 5940.

65-5-4. Recompiled.

ANNOTATIONS

Recompilations. - Laws 1998 (1st S.S.), ch. 10, § 10, recompiles former 65-5-4 NMSA 1978, relating to unregistered foreign commercial motor carrier vehicle operations, as 66-3-1.3 NMSA 1978, effective July 1, 1998.

ARTICLE 6 AMBULANCE STANDARDS

65-6-1. Short title.

Sections 1 through 6 [65-6-1 to 65-6-6 NMSA 1978] of this act may be cited as the "Ambulance Standards Act."

History: 1953 Comp., § 64-40-1, enacted by Laws 1974, ch. 82, § 1.

ANNOTATIONS

Cross references. - For regulation of motor carriers by state corporation commission (now public regulation commission), see 65-2-80 NMSA 1978 et seq.

For ambulance service for political subdivisions, see 5-1-1 NMSA 1978.

For emergency medical care, see 24-10-1 to 24-10-5 NMSA 1978.

For traffic laws pertaining to authorized emergency vehicles, see 66-7-6 and 66-7-332 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. - Liability of operator of ambulance service for personal injuries to person being transported, 68 A.L.R.4th 14.

65-6-2. Definitions.

As used in the Ambulance Standards Act [65-6-1 to 65-6-6 NMSA 1978]:

A. "ambulance" means a vehicle, including motor vehicles or watercraft, designed and used or intended to be used for the transportation of sick or injured persons;

B. "driver" means a person who, on a regular or irregular basis, either paid or voluntary, serves as the operator of an ambulance;

C. "attendant" means a person who, on a regular or irregular basis, either paid or voluntary, serves as an assistant to the driver in the operation of the ambulance; and

D. "commission" means the public regulation commission.

History: 1953 Comp., § 64-40-2, enacted by Laws 1974, ch. 82, § 2; 1977, ch. 156, § 1; 1998, ch. 108, § 78.

ANNOTATIONS

The 1998 amendment, effective January 1, 1999, deleted "ambulance" preceding "assistant to the" near the end of Subsection C, substituted "public regulation" for "state corporation" at the end of Subsection D, and made minor stylistic changes.

65-6-3. Legislative purpose.

The purpose of the Ambulance Standards Act [65-6-1 to 65-6-6 NMSA 1978] is to provide uniform standards of design, equipment and operation of ambulances used in the transportation of the sick and injured, and to ensure the highest standards of competence in the ambulance drivers and attendants providing service to the public.

History: 1953 Comp., § 64-40-3, enacted by Laws 1974, ch. 82, § 3.

65-6-4. Corporation commission [public regulation commission]; duties.

The corporation commission [public regulation commission], in accordance with its responsibilities to regulate common carriers, shall, within one year of the effective date of this act, hold public hearings, as prescribed in Article 2 of Chapter 65 NMSA 1978, and adopt regulations:

A. for the establishment of reasonable, flexible standards for ambulances, including but not limited to:

(1) vehicle design;

(2) health and safety equipment to be maintained and used in ambulances;

(3) procedures for the operation of ambulances; and

(4) at least annual inspection of ambulances; and

B. for the licensure of all ambulance drivers and attendants, to include:

(1) minimum training requirements to include basic and advanced red cross and such other available training as the commission finds reasonable and in the best interests of the public; and

(2) a written and practical examination of competence limited to that material, information and training required of ambulance drivers and attendants, respectively, in the regulations adopted by the corporation commission [public regulation commission].

In establishing standards for ambulances, the commission shall give serious consideration to the vehicle needs and limitations imposed by the topography and road and weather conditions of various localities. Further, the commission shall take into consideration the resources of the various communities, institutions and sponsoring organizations providing ambulance service to the public.

History: 1953 Comp., § 64-40-4, enacted by Laws 1974, ch. 82, § 4.

ANNOTATIONS

Cross references. - For references to state corporation commission being construed as references to the public regulation commission, see 8-8-21 NMSA 1978.

Bracketed material. - The bracketed material in this section was inserted by the compiler. It was not enacted by the legislature and is not part of the law.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 7A Am. Jur. 2d Automobiles and Highway Traffic §§ 185, 202.

60 C.J.S. Motor Vehicles § 26.

65-6-5. Applicability of act.

Upon the effective date of the Ambulance Standards Act all ambulances operating in New Mexico, except those excluded in Section 6 [65-6-6 NMSA 1978], shall be issued a three-year certificate of public convenience and necessity by the state corporation commission [public regulation commission].

History: 1953 Comp., § 64-40-5, enacted by Laws 1974, ch. 82, § 5.

ANNOTATIONS

Cross references. - For references to state corporation commission being construed as references to the public regulation commission, see 8-8-21 NMSA 1978.

Bracketed material. - The bracketed material in this section was inserted by the compiler. It was not enacted by the legislature and is not part of the law.

65-6-6. Exceptions.

The Ambulance Standards Act [65-6-1 to 65-6-6 NMSA 1978] does not apply to:

- A. gratuitous assistance by any individual in the case of an emergency;
- B. law enforcement officials in the pursuit of their duties; and
- C. ambulances owned by a private company, corporation or business used primarily for the transportation of sick or injured employees from the place of business to a hospital or other facility for treatment; however, no such ambulance may be used to transport any person from one hospital to another hospital or similar facility, or from a hospital to the sick or injured person's home.

History: 1953 Comp., § 64-40-6, enacted by Laws 1974, ch. 82, § 6.