

Opinion No. 46-4931

July 23, 1946

BY: C. C. McCULLOH, Attorney General

TO: George W. Armijo Chairman State Corporation Commission Santa Fe, New Mexico

{*255} In your letter of July 23, 1946, you state that the New Mexico Corporation Commission has been requested to file a petition in the forthcoming case of Arizona-New Mexico, to be held before the Civil Aeronautics Board in Albuquerque on August 12, 1946.

There appear to be several applicants who will appear before the Board. The routes applied for involve interstate commerce only.

The State Corporation Commission would like to file a petition on behalf of the State of New Mexico to prove public convenience and necessity for the state, and not for the purpose of testifying on behalf of any particular applicant.

The question which you put is: Would there be a possibility of disqualification of the State Corporation Commission on a subsequent hearing of an intrastate case with identical routes, because of the fact that the Commission had intervened in the interstate case?

Since the only purpose of your intervention in the present case is to promote and protect the interests of the State of New Mexico, I can find no legal objection to your filing a petition for intervention.

Furthermore, since the Commission will not testify on behalf of or against any particular applicant, I can see no valid reason for a disqualification of the Commission on a subsequent hearing of an intrastate case, involving identical routes simply because the Commission intervened in an interstate case for the purpose of showing public convenience and necessity for the state, without testifying in support of any particular route or for any particular applicant.

Section 285.4 (a) of the Rules and Practice of the Civil Aeronautics Board provides:

"Any person, including any state, political subdivision thereof, state aviation commission, or other public body, may appear at any hearing and present any evidence which is relevant to the issues. Such persons may also suggest questions or interrogatories to be propounded by public counsel to witnesses called by other persons. With the consent of the examiner, or of the Board, if the hearing is held before the Board, such persons may also cross-examine witnesses directly."

Section 285.4 (b) of the Rules and Practice of the Civil Aeronautics Board provides, in part, as follows:

"Any person having a substantial interest in the subject matter of any proceeding may petition for leave to intervene in such proceeding and become a party thereto upon compliance with the provisions of this paragraph. In general, such petitions will not be granted unless the Board, or, in appropriate cases, the examiner, shall find,

- (1) That such person has a statutory right to be made a party to such proceeding, or
- (2) That such person will or may be bound by the order to be entered in the proceeding;
or
- (3) That such person has a property or financial interest which may not be adequately represented by existing parties, {256} if such intervention would not unduly broaden the issues or delay the proceedings.

However, the denial of such a petition for leave to intervene shall not prevent the petitioner from participating in the proceeding in the manner described in paragraph (a) of this section."

Under these two rules the State Corporation Commission may do

one of two things: It can appear at the hearing and present its testimony, without filing a petition of intervention (Section 285.4 (a)); or it can file a petition of intervention and become a party to the proceedings under Section 285.4 (b).

It is a matter of policy for the Commission to determine which method, if any, should be followed. I should mention also, that in view of Section 285.4 (b), there is a question as to whether a formal petition of intervention might be granted by the Civil Aeronautics Board or the Examiner.

In your letter, you state that the State of Arizona has filed a petition of intervention and you have shown me this petition. In this respect, it should be noted that the State of Arizona, through its corporation commission, had previously certificated an airline to operate an intrastate route, which route is now being considered as a part of the interstate hearing. This seems to be one of the basis for the petition of intervention filed by the State of Arizona.

By WM. R. FEDERICI,

Asst. Atty. General