

Opinion No. 47-5054

July 15, 1947

BY: C. C. McCULLOH, Attorney General

TO: W. W. Nichols, Chairman Public Service Commission Santa Fe, New Mexico

{*71} We wish to acknowledge receipt of your letter of July 11, 1947, pertaining to whether or not the Public Service Commission has any jurisdiction in a case where a railroad has been furnishing water service to an unincorporated town for a period of years and now propose to abandon or dispose of same.

Section 2, Chapter 84, Laws of 1941 (Section 72-303, 1941 New Mexico Compilation) provides in part as follows:

"Limitations and Exceptions. The term "public utility" or "utility" when used in this Act (72-301 72-1105) shall not include any person not otherwise a public utility who furnishes the service or commodity only to himself, his employees or tenants when such service or commodity is not resold to or used by others; **and shall not include a corporation engaged in the business of operating a railroad and which does not primarily engage in the business of selling the service or commodity but which only incidentally to its railroad business, or occasionally, furnishes the service or commodity to another under a separate limited or revocable agreement** or sells to a utility or municipality for resale * * *"

In view of the above specific exemption granted by statute, it is my opinion that the Public Service Commission does not have any jurisdiction in such a case and the railroad may dispose of or abandon the service.

{*72} However, if and when the water system is sold to a private individual or corporation it will then come under the jurisdiction of your Commission.

Trusting the aforementioned satisfies your inquiry, I am

By: ROBERT V. WOLLARD

Asst. Atty. General