

Opinion No. 47-5081

September 26, 1947

BY: C. C. McCULLOH, Attorney General

TO: Mr. Charles E. Bassett, Director, Dept. of Courtesy & Information, Box 1666, Santa Fe, New Mexico.

{*92} We wish to acknowledge receipt of your inquiry of September 24, 1947 pertaining to whether or not you may collect milage tax retroactively from a motor carrier who was not certified by the State Corporation Commission during such period but has subsequently been certified.

Section 68-346 of the New Mexico 1941 Compilation, as amended according to the 1945 Supplement to said compilation, provides in part as follows:

"In addition to the regular license fees and taxes imposed upon motor vehicles, there shall be assessed against and collected under the terms of House Bill 140, Laws of 1937 (68-1347, 68-1348) from every such carrier for the administration of this act and for the **maintenance, repair and reconstruction of the public highways** a milage tax which shall be computed as follows: * *"

It is quite evident that the "milage tax statute" was enacted for the purpose of raising revenue to maintain, repair and reconstruct the public highways that common and contract carriers had in part worn out.

Merely because such a carrier operates unlawfully and does not obtain proper certification from the Corporation Commission before beginning operations does not excuse it from paying the milage tax levied in accordance with Section 68-1346 of the 1941 Compilation. Its operations cause the same deterioration of our public highways, whether said operations are conducted under certification of the Corporataion Commission or not.

Section 68-1302 of the 1941 Compilation defines a common carrier in part as follows:

"The term 'common motor carrier' when used in this act, shall mean any person who or which undertakes, whether directly or by lease or any other arrangement, to transport passengers or property, or any class or classes of property for the general public by motor vehicle for hire over regular routes."

Section 68-1314 of the 1941 Compilation defines a "contract motor carrier" in part as follows:

"The term 'contract motor carrier of property' when used in this act, shall mean any person engaged in the transportation by motor vehicle of property for hire and not included in the term 'common motor carrier of property' as hereinbefore defined."

It is therefore our opinion that if an operation falls within the terms of either of the above provisions, it constitutes either a common carrier or a contract carrier and is subject to the milage tax imposed by Section 68-1346, and merely because it has not been certified to operate as such by the Corporation Commission, does not excuse it from payment of the milage tax.

Trusting the aforementioned satisfies your inquiry, I am

By ROBERT V. WOLLARD,

Asst. Atty. General