

Opinion No. 48-5162

July 16, 1948

BY: C. C. McCULLOH, Attorney General

TO: State Corporation Commission, Rate Department, Santa Fe, New Mexico. Attention Eugene Allison, Commissioner.

{*157} In your letter of July 12, 1948 you request the opinion of this office as to whether a Corporation Commission has jurisdiction over the regulation and operation of crop dusting, crop seeding or crop fertilizing by aircraft when it is done on a for hire basis.

Section 47-106 of the 1941 Compilation provides as follows:

"Every person, firm, corporation, association or company at any time engaged, either regularly or for the time being only, in the **transportation** of persons or **property** for hire **between points within this state** or from a point within this state and return thereto, is hereby declared to be a common carrier within the meaning and purview of section 7 of article 11 of the Constitution of the state of New Mexico."

You will note that before a person or firm is declared to be a common carrier by that Act, it must be engaged in the transportation of property, and that transportation must be for hire, and must be between points within this state.

I do not know the exact methods used in dusting crops by air. However, it appears that the landowner purchases the dust and then the aircraft operator charges a certain price per pound for the service of dusting the crop. In other words, there is some question as to whether or not the operation constitutes transportation of property in the common sense meaning of the term.

{*158} Furthermore, I doubt very much that the operation involved would be the transportation of property **between points within this state**.

In view of the above, I am of the opinion that a Corporation Commission does not have jurisdiction over the regulation and operation of crop dusting, crop seeding or crop fertilizing by aircraft although done on a for hire basis.

By WILLIAM R. FEDERICI,

Asst. Atty. General