

## Opinion No. 49-5202

March 30, 1949

**BY:** JOE L. MARTINEZ, Attorney General

**TO:** Tom C. Cox, Inspector Motor Transportation Division Corporation Commission  
Santa Fe, New Mexico

{\*23} I am writing in response to your letters of February 10th and March 16th, 1949, regarding the authority of the Corporation Commission to regulate the operation of automobile wrecker services and ambulances. It is intended that this opinion will supersede the opinion given by this office to you on March 1, 1949.

It is my understanding that there has been a substantial number of complaints by various persons regarding the exorbitant rates charged by the wreckers in towing disabled motor vehicles into garages and the practice common to both auto wreckers and ambulances of racing to scenes of accidents in order to secure business arising from such accidents.

Section 68-1301 confers on the Corporation Commission broad plenary powers and states:

"(b) It is hereby declared to be the purpose and policy of the legislature in enacting this law to confer upon the commission the power and authority to make it its duty to supervise and regulate the transportation of persons and property by motor vehicle for hire upon or over the public highways of this state in all matters whether specifically mentioned herein or not so as to: (1) relieve the existing and all future undue burdens on the highways arising by reason of the use of the highways by motor vehicles; (2) protect the safety and welfare of the traveling and shipping public in their use of the highways; (3) carefully preserve, foster and regulate transportation and permit the coordination of transportation facilities."

It is my opinion that in view of the known practices and the numerous complaints that the Corporation Commission is justified at this time in exercising a supervisory control over these persons in order to protect the safety and welfare of the traveling public.

Section 1 of Chapter 140, Session Laws of 1947 (68-1302 New Mexico Statutes Annotated, Supplement) amended the term "common motor carriers" to include persons transporting passengers or property over irregular routes under non-scheduled service. In view of the known practices of these operators, their status is that of a common carrier operating over irregular routes under non-scheduled services and not contract carriers.

Section 2, Chapter 140 of the Session Laws of 1947 (Section 68-1308, {\*24} N.M.S.A., Supplement) provides a form of "grandfathers' rights". The term "grandfathers' rights" is

rather confusing and it would, perhaps, be best to ignore it. Section 68-1308, in its pertinent part, provides:

"A certificate, to the extent of actual operations only, shall be granted when it appears to the satisfaction of the corporation commission that such person was or his predecessors were, actually operating as a motor common carrier over irregular routes under non-scheduled service in compliance with existing transportation laws on February 1, 1947, over such irregular routes for which such certificate is sought, in good faith and in a manner deemed by the corporation commission beneficial to the public and adequate as to service, rates and the protection of the public; Provided, that the applicant must comply with the provisions of this act, except that where such irregular route motor carrier was prior to February 1, 1947 operating under a permit, issued by the commission, such applicant shall be entitled to have a certificate of public convenience and necessity issued without making further proof of public convenience and necessity for the issuance of any such certificate and without paying any additional fee for said application."

In order for wreckers and ambulances to qualify under this phase of Section 68-1308, the applicant would be required to prove that he was in fact operating his service prior to February 1, 1947 in a certain geographical area. The Commission should make further inquiry as to the rates charged by such applicant in order to determine whether he was a person charging reasonable rates and acting in good faith and in a manner beneficial to the public. Further inquiries should be made as to the equipment which was used in order to determine whether the equipment was adequate as to service and was effective in the protection of the public.

The Commission is authorized to set up such classifications, particularly with regard to wrecking services, which would justify it in inquiring with great particularity as to the equipment to be used by each applicant. Each applicant will not be able to show that the wrecker or wreckers he uses is capable of handling any wreck.

In short, those attempting to qualify under the so-called "grandfathers' right" provisions of Section 68-1308 must show substantially more than the mere fact that they were operating prior to February 1, 1947.

If there is any further information we can give you, please advise me.